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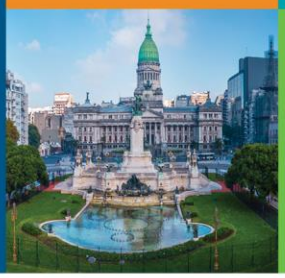

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MBB Balado Bevilacqua Abogados – a leading labor and employment boutique founded by Mercedes Balado Bevilacqua in November 2012 – counsels and represents local and international clients, as well as assists international law firms with their matters in Argentina. Recognized for its expertise in complex local and cross-border employment law matters, MBB Balado Bevilacqua Abogados recently expanded its practice to include counseling in corporate, trade, contractual and tax matters, thereby providing comprehensive legal services to minimize clients' legal risks and liability exposure and help them thrive during challenging times.

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MBB Balado Bevilacqua Abogados has been recognized by The Legal 500 Latin America for 2013-2021, Chambers & Partners Latin America for 2013-2021, Who's Who Legal 2015-2021, distinguished Mercedes Balado Bevilacqua as "Thought Leader" and described her as: "*The "globally renowned" Mercedes Balado Bevilacqua at MBB Balado Bevilacqua Abogados is an "inspirational figure in the market*" with more than twenty years of experience, and also recognized her as Best Lawyer 2018-2020. Also, she was recently appointed Vice Chair- Latin America for the Outreach to the International Lawyers Committee by the American Bar Association Section of Labor and Employment Law Leadership. She has also been recognized as "Best Labor Boutique Firm in South America" for Women in Business, England. As an advocate of anti-discrimination policies and gender diversity in the workplace, a prolific author and frequent

speaker in local and international conferences around the world, Ms. Balado Bevilacqua has received multiple recognitions for her work, including having recently received the "Gender Diversity Lawyer of the Year – Argentina" recognition by the "Chambers Diversity & Inclusion Awards - Latin America 2019" for her work to promote gender diversity; and for being the only leading female lawyer in her practice area by Legal 500 Latin America for the years 2012-2020, Chambers & Partners for the years 2011-2020, and Who's Who Legal for the years 2015-2021 in the field of Labour and Employment and in the area of Pensions and Benefits. Also, Who´s Who Legal Global Elite Latin America 2019-2021 distinguished Mercedes Balado Bevilacqua as Thought Leader and described her as "*The "Globally Renowned" Mercedes Balado Bevilacqua at MBB Balado Bevilacqua Abogados is an "inspirational figure in the market" with more than 20 years of experience in employment law*", and also recognized her as Best Lawyer 2018-2020. Additionally, Ms. Balado Bevilacqua is part of the management committee of the Forum of Cross Border Human Resources Experts (XBHR) and a participating member of various committees within the International Bar Association (IBA), the American Bar Association (ABA), among other professional associations. In addition, Mercedes is member of the "Editorial Advisory Board" of the International Employment Lawyer.

The firm and Ms. Balado Bevilacqua have received multiple other important recognitions by the legal community, chambers of commerce and professional associations. Such recognitions, publications, and speaking engagements are featured on the firm's website.

ABOUT THE LITTLER INTERNATIONAL GUIDE

The Littler International Guide provides an overview of workplace laws and regulations of over 40 countries and territories. Written by selected attorneys and scholars from around the globe, as well as Littler attorneys, the *Guide* tracks the employment life cycle in a question-and-answer format, covering over 90 workplace law topics under 13 categories. Each jurisdiction provides responses to the same questions, facilitating comparison across jurisdictions. To meet the needs of our expanding audience, it is now available in a variety of electronic formats.

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IMPORTANT NOTICE

This publication is not a do-it-yourself guide to resolving employment disputes or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. This publication is for informational purposes only, not for the purpose of establishing an attorney-client relationship. Use of and access to this publication does not create an attorney-client relationship between the user and Littler Mendelson, P.C. or any of the contributing firms. Although the major developments are generally covered, this publication is not all inclusive, and the current status of any decision or principle of law should be verified by counsel. Developments and decisions subsequent to **January 15, 2021** are generally not covered.

EDITORIAL NOTICE

Due to the effects of the COVID-19 pandemic, governments across the world have implemented various measures that affect employers (*e.g.*, to slow the spread of the virus, protect workers' health and safety, assist employers to recover from the economic crisis, etc.). Littler's global team has compiled a supplement to *The Littler International Guide*— "**COVID-19: The New Normal**"—which covers 42 jurisdictions and is designed to help employers adapt their operations to the different measures (and timetables) happening in select jurisdictions across the world.

COVID-19: The New Normal addresses various topics, including:

- Economic relief programs to support employers and workers
- Eligibility threshold for such relief programs
- New rules restricting dismissals or providing special dismissal protection
- New compliance obligations on employers related to COVID-19
- Government enforcement and penalties for noncompliance
- Government plans to ease restrictions on freedom of movement/business openings
- Guidelines on "social distancing," face coverings, temperature screening, etc.
- Obligations (or lack thereof) on employers or employees to report suspected or confirmed cases of COVID-19 infection
- Changes to employers' consultation, bargaining or codetermination responsibilities relating to trade unions and/or Works Councils on return-to-work protocols/measures
- Risks connected to requesting employees return to work and how to mitigate such risks
- Tracking of litigation related to COVID-19
- Changes to rules on collective dismissals, business cessation, and/or sale of a business

Please contact Geida Sanlate at gsanlate@littler.com to request a copy of **COVID-19: The New Normal** supplement.

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§ 1 OVERVIEW OF EMPLOYMENT & LABOR LAWS IN ARGENTINA

§ 1.1 What are the primary constitutional provisions, statutes, and regulations related to employment?

§ 1.1(a) *Constitutional Provisions*

The National Constitution grants the right to work and protects work in all its forms and guarantees to employees the following rights: limited workday, fair compensation, minimum wage (currently, ARS 20,587.50, which is approximately USD 224),[1] decent and equitable labor conditions, equal compensation for equal tasks, paid annual vacations, participation in the company's profits, protection against termination without cause, stability of public employment, and free and democratic trade union organization.

It also establishes that the state will grant social security benefits, which must be complete and irrevocable, especially mandatory social insurance.

As for trade union rights, the Constitution guarantees the right to: (1) enter into Collective Bargaining Agreements (CBAs); (2) initiate conciliation or arbitration procedures; and (3) to go on strike and the stability of any union representative's job position.[2]

In addition, the National Constitution establishes the prohibition to discriminate employees' right to privacy and freedom of expression.[3]

§ 1.1(b) *International Treaties*

Argentina is part of several international treaties that apply on employment matters; some of them have constitutional status.

Argentina is part of the following international treaties that apply to employment:

- Universal Declaration of Human Rights (UDHR).
- Inter-American Convention of Human Rights (IACHR).

[1] Current exchange rate: USD 1=ARS 92.
[2] National Constitution, Section 14 *bis*.
[3] National Constitution, Sections 14, 16, and 19.

- International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

The above-mentioned treaties have constitutional status, and, thus, prevail over national laws.[4]

Argentina has also ratified main conventions of the International Labor Organization (ILO).

As a member of the regional bloc, Mercosur, Argentina has implemented the "National Standardization Program of Migration Documents Patria Grande." Although the aim of this program is not strictly addressed to employment issues, it is related to migration matters, since it aims to regularize the immigration status of foreigners who were born in any of the member states of Mercosur and its associated states. The purpose of this program is to grant legal residence by an easy and fast procedure.

§ 1.1(c) *Main Statutes & Regulations*

- Labor relationships are mainly ruled by the National Employment Law, No. 20,744 (NEL). It covers the majority of labor relationships in their different modalities and the consequences thereof, such as: (1) employers' and employees' rights and obligations; (2) main mandatory principles that govern labor relationships; (3) compensation; (4) annual vacation and special leave of absence provisions; (5) holiday and nonworking days; (6) daily and weekly working and resting hours; (7) special provisions for women and child workers; (8) illness; (9) assignment of the employment contract; (10) its termination; (11) employee's privileges; etc.

  Certain activities, such as civil service (public sector employment), domestic and rural work, are excluded from the NEL and governed by special laws.

  The NEL establishes *labor public order provisions*, which cannot be waived by agreement of the parties, and governs an individual's employment relationship. It also sets the principles that will apply in case of a conflict.

- Law No. 24,013: regulates, *inter alia*, (1) temporary personnel service companies; (2) the protection of unemployed workers; and (3) applicable fines and penalties for incorrect registration of labor relationships.

- Law No. 25,877: amended the NEL including changes on: (1) trial period; (2) prior notice; (3) calculation on severance payments due to dismissal with no cause; and (4) promotion of employment.

- Law No. 24,467 amended by Law No. 25,300: provides certain benefits to companies that have no more than 40 employees and that have a net annual billing not exceeding a sum determined by regulation. Such benefits include, *inter alia*: looser regulations on bonuses and vacations.

- The Retirement and Pension Law No. 24,241 amended by Law No 26,425 and by Law No. 27,426: mainly determines (1) the requirements to be met in order to apply for retirement;

[4] National Constitution, Section 75, subsection 22.

(2) rules governing pension funds; and (3) employer's and employee's obligations regarding social security issues.

- Labor Risks Law, No. 24,557 ("*Ley de Riesgos del Trabajo*" or LRT), Decree No. 1,649/2009, Resolution No. 35,550, Law No. 26,773, Decree No. 49/2014, Decree No. 472/2014 regulating Law No. 26,773, Decree No. 54/2017, and Law No. 27,348: regulate work-related accidents and professional hazards.

- Workday Law No. 11,544: establishes the limits to the workday and overtime payment scheme.

- Law No. 25,323: determines fines for incorrect labor registration and failure to pay severance compensation in due time when termination with no cause occurs.

- Trade Unions Law No. 23,551: states the rights and duties of union representatives.

- Collective Bargaining Agreement Law No. 14,250.

- Health and Safety Law No. 19,587.

- Home-Office Regime – Law No. 25,777. However, this Law has not become into force yet[5].

§ 1.2 What are the primary mechanisms for enforcement?

The main mechanism for enforcement is the law itself. Argentinean labor law is of a protective nature. The "labor public order provisions" (as defined in **§ 1.1(c)**) cannot be waived by agreement of the parties unless it grants the employee broader rights.

The Ministry of Labor and Social Security ("*Ministerio de Trabajo, Empleo y Seguridad Social* " or MTEySS) is the national agency in charge of establishing and executing public policies regarding employment and, together with the National Tax Authority ("*Administración Federal de Ingresos Públicos*" or AFIP), monitor social security matters.

The MTEySS is also the main agency responsible for monitoring the accomplishment of labor laws.

§ 1.3 What are the primary means for resolving disputes between employees and employers?

Local procedural rules applicable to resolution of labor claims vary from province to province. For example, in the city of Buenos Aires, the exhaustion of a conciliation process ("*Servicio de Conciliación Laboral Obligatoria*" or SeCLO) before the MTEySS is a precondition to filing a complaint before a Court of Law. In this process, both parties must attend a conciliation stage addressed to try to settle the claim.[6]

If the parties reach an agreement, MTEySS must approve the settlement for it to be valid. Once the agreement is approved, the parties have a legal certainty of 99% that the agreement is valid and it may be executable in the future, if an employee brings a claim in this matter.

[5] It is still pending that the Ministry of Labor must issue a Resolution establishing the start date to count the ninety (90) days for the Law to enter into force.
[6] Mandatory Labor Conciliation Procedure Law (No. 24,635).

Nowadays, in views of the health crisis due to the COVID-19 outbreak, the conciliation processes will be held virtually. In order to reach an agreement, an appointment must be made, and the parties will try to settle the claim through a video-conference.

In case the parties do not reach an agreement, the claimant will be entitled to file a judiciary claim for a Court of Law to resolve the issue.

§ 1.4 What are the most important characteristics of the legal culture relating to employment?

The *protective principle* involves both individual and collective employment relationships. The application of this principle tends to balance the preexisting differences between the employer and the employee, and it is expressed in three rules:

1. In case of doubt, the criterion most favorable to the employee must prevail.

2. Application of the most favorable provision.

3. Application of the most beneficial condition.

The most important characteristics of the legal culture relating to employment are linked to this protective principle, which are:

- The "labor public order provisions" (as defined in **§ 1.1(c)**), which establish minimum rights and rules governing labor relationships that cannot be waived by agreement of the parties. Terms of individual labor agreements that establish less rights or benefits than those established by applicable law or CBAs will be void and automatically replaced by the more beneficial terms as established by law or CBA. Any modification must always be made to increase an employee's rights and not to reduce them.

- An employer's incorrect registration of employment is punished with severe fines.

- The employer must provide the working tools necessary for employees to perform the tasks related to their jobs. In case the tools are used for personal purposes, they will be deemed as of part of the compensation and, thus, they will be part of the calculation of the severance payment and impact on other concepts, such as semi-annual bonus and vacations.

  However, in case the employee is under the scope of Law No. 27,555 (Home-Office Regime) –once the Law enters into effect-, the provision of working tools will not be considered remunerative and, therefore, they will not be included in the calculation base for any severance calculation nor union/social security contributions[7].

- The scope of the employer's safety duty has been extended by case law. Currently, it not only encompasses the compliance with safety and hygiene standards and the measures taken to avoid damages on the employees' physical health, but also the obligation of providing a healthy workplace free of moral or sexual harassment or discrimination in order to avoid physiological harm to employees.[8]

[7] Section 9 of Decree No. 27/2021, which regulates Law No. 27,555.
[8] National Employment Law (No. 20,744), Section 75.

- An employee's abuse of drugs or alcohol must be considered a disease, and, thus, the employer must provide for medical support and paid sick leave in such cases. It is advisable to avoid the application of any disciplinary measure, since it may be considered as a discriminatory action by the employer.

§ 1.5 What are the most common mistakes foreign employers make and what can be done to help avoid them?

Employers commonly make the following mistakes:

- Entering into independent contractor, distributor or sales representative or other designated status agreements without considering the protective nature of the Argentine labor regime, which—generally—causes claims based on incorrect registration of the relationship. Employers have to be careful to avoid subordination notes.

- Applying international agreements or policies in a foreign language without local legal review. Based on the protective nature of labor regulations, all documents executed should be in Spanish, in addition to any other language that the employer/contractor wishes to use.

- Risks to claims based on construction of a labor relationship out from a commercial agreement: avoid exclusivity, business cards with corporate logo, corporate email address, granting employee benefits, correlative invoices for services, reducing frequency of services, granting direct orders.

- Staffing agency employees: main regulation to consider avoiding exposure to labor claims and construction of a labor relationship with company hiring services from staff agency. Comply with requirements of time, forms, etc. Otherwise, in case of a conflict, there is a risk that the staffing agency employee argues the existence of a labor relationship with the company.

- Sometimes an employer wishes to apply the law of its country of origin. However, in Argentina, based on the territorial principle, the law of where services are rendered applies, disregarding any agreement about jurisdiction made by the parties.

§ 2 HIRING

§ 2.1 What are the definitions of employee, employer, independent contractor, and contingent worker (*i.e.*, a temporary or agency worker)?

An *employee* is defined by law as any natural person who voluntarily renders services in favor of another within a legal, technical and economic subordination relationship, in exchange for compensation.[9]

On the other hand, an *employer* is defined as any natural person or group of them, or legal person that benefits from the services rendered by the employee.[10]

[9] National Employment Law (No. 20,744), Section 25.
[10] National Employment Law (No. 20,744), Section 26.

There is not a specific definition for an independent contractor. However, this type of relationship is characterized by the lack of any kind of subordination.

There is a legal presumption that the rendering of services implies the existence of a labor relationship, and it is the employer who has to prove otherwise.[11]

A *temporary* or *agency worker* is the one provided by a temporary labor agency for short-time employment, related to temporary (not more than six months in a period of one year or one year in a period of three years) or extraordinary tasks or needs to be faced by a third company. The employment relationship will be deemed as of a temporary nature when the relationship begins and ends with the completion of the task, the execution of the act or the provision of service for which the employee was hired. Nevertheless, the employer who claims that the employment relationship is of a temporary nature has the burden of proving it.[12]

According to the principle of reality, facts prevail over formalities. So, if by reason of the agreement the person renders services exclusively for the third company, the term of rendering services is longer than six months, there is also a chance that such person may argue that the third company has fraudulently used the staffing personnel agency to avoid correct registration of the labor relationship in violation of local labor laws.

§ 2.2 What are the consequences of misclassifying a worker as an independent contractor, contingent worker, or temporary worker?

Based on the principle of reality, Labor Courts will consider facts over formalities. If from the particular circumstances of the case, the relationship evidences technical, economic or legal subordination, it will be deemed as an employment relationship regardless of the formalities and the name parties have given it.

There is a legal presumption that the rendering of services implies the existence of a labor relationship, and the company/employer has the burden to provide evidence to show otherwise.[13]

In the case of misclassification, the independent contractor will be considered a nonregistered employee and request that the employer "regularize" his/her situation. If the employer refuses to do so, the employee may consider him/herself under a constructive dismissal situation and claim for severance compensation, plus fines for incorrect registration.[14] In this sense, please bear in mind that it is applicable the double severance compensation due to dismissals without fair cause and due to constructive dismissals[15]. Duplication of severance includes all compensation items due by reason of dismissal without cause: i) seniority compensation; ii) prior notice; iii) pending days of the termination month. In addition, the amount corresponding to the duplication may not exceed, in any case, the amount of five hundred thousand pesos - AR$ 500.000- (equivalent to USD 5,435). Moreover, the double severance compensation will not be applicable to the employees hired as from December 13, 2019, nor to Public Sector employees.

If a direct employee is misclassified as a temporary worker hired through a TEA, he/she may claim that this kind of contract was fraudulently used to avoid correct labor registration in violation of local labor laws and claim to be correctly registered by the company for which the services are rendered. If it denies to do

[11] National Employment law (No. 20,744), Section 23.
[12] National Employment Law (No. 20,744), Section 99.
[13] National Employment Law (No. 20,744), Section 23.
[14] National Employment Law (No. 20,744), Sections 232, 233, 245, and 246.
[15] Decree No. 34/2019 and the complementary Decrees (the last one was Decree No. 39/2021).

so, the employee may be considered constructively dismissed and claim severance compensation[16] and applicable fines for an unregistered employment relationship.[17]

§ 2.3 Does your jurisdiction allow or prohibit outsourcing? If allowed, what are an employer's obligations to avoid liability?

According to Argentine labor regulations, companies that decide to entrust others (Contractors) the performance of normal and specific activities of their premises, are jointly and severally liable with the Contractor for all labor and social security obligations, whether the activities are carried out inside or outside the establishment.[18] This type of liability implies that if the activities developed by the Contractor's employees are considered normal and specific activities of the User Company (company that requests the services), the worker may require the User Company be the entity to meet the labor and social security obligations that are owed to the worker.

Case law and jurisprudence have defined the concept of "normal and specific activity" differently. Under one position, the concept includes not only the main activity of the User Company, but also its ancillary and secondary activities. The other position maintains that only those activities strictly connected to the User Company's main activity should be included (those that cannot be separated from the main activity without altering the production process), and all secondary activities should be excluded.

For each employee rendering services for the User Company, the User Company has a duty under the law to control its relationship with the Contractor and require the Contractor provide the following documentation: (1) Labor Identification Code ("*Clave Única de Identificación Laboral*" or CUIL); (2) proof of salary payment (*e.g.*, pay slips); (3) receipt of monthly payment to the social security system; (4) a current bank account; and (5) insurance coverage against labor risks ("*Aseguradora de Riesgos del Trabajo*" or ART). The User Company may also request additional documentation from the User Company to ensure that the Contractor is complying with its labor and social security obligations.

If an employee of the Contractor files a labor complaint, suing the User Company and arguing that both companies are jointly and severally liable for their failure to comply with their labor and social security obligations, the success of the claim largely will depend on how the hearing judge defines the concept of "normal and specific activity" (as discussed above). If the judge deems the service provided by the worker consisted of an inseparable part of the User Company's production process, the User Company will be deemed to be jointly and severally liable, unless the User Company may evidence compliance with its obligation of control, as explained above.

§ 2.4 What rules apply to background checks?

Employees' personal information is protected by the Habeas Data Law.[19] Background checks are permissible as long as the information collected complies with the following requirements:

- It is not used for discriminatory purposes.
- It does not violate the applicant's right to privacy.[20]

[16] National Employment Law (No. 20,744), Sections 232, 233, 245, and 246.
[17] Law No. 25,323, Section 1 and 2; and Law No. 24,013, Sections 8, 9, 10, and 15.
[18] National Employment Law (Law No. 20,744), Section 30.
[19] Habeas Data Law (No. 23,326).
[20] National Constitution, Section 19.

- It is reasonably used.
- It does not include criminal records. Criminal records can only be required for a judge or, personally, by the prospective employee. The information cannot be required by employers or prospective employers.

§ 2.5 What rules apply to medical examinations or health-related tests?

Pre-employment medical examinations are mandatory.[21] Employers must carry out these exams to determine whether the applicant has the ability to carry out the activities related to his/her job position and to accurately determine preexisting disabilities at the time of hiring the employee. To avoid discrimination issues, certain tests are excluded such as VIH, Chagas disease, also known as American trypanosomiasis. Additionally, in public sector, pregnancy tests are not allowed.

It is common practice that pre-employment examinations are made by the employer's ART.

Although not mandatory, there are other kinds of medical examinations that the employer may conduct. These are:

- Periodic examinations.
- Examinations prior to a transfer of activity.
- Examinations prior to the termination of the employment relationship.

§ 2.6 May an employer require drug and alcohol testing?

The employer may require drug or alcohol testing due to his/her power of control.

This power encompasses the employer's right to demand medical examinations provided that the methods of selection are automatic or at random, addressed to the entire personnel, and not on a discriminatory basis.

Nevertheless, for such examinations to be valid, they must not violate the employee's dignity and must respect the right of privacy constitutionally granted.

In view of the above, it is recommended that any employer's drug/alcohol-testing policy comply with the following requirements:

- It must not be discriminatory.
- It must guarantee the confidentiality of the information provided by the employee.
- Employees and their representatives must be properly informed of the policy.
- It must be in writing, pointing out the permissible and forbidden conduct. In addition, it must clearly establish possible sanctions in case of breach.

[21] Labor Risk Law (No. 24,557).

- If possible, it should be drafted together with the union representatives in order to grant employees representation and facilitate their consent.

- It must introduce a preventive program that grants assistance, treatment and rehabilitation according to the company's size.

- It is important that the MTEySS is aware of the proceedings, and gives its authorization, and that the employees consent to the policy in order to reduce the risk of possible claims by the employee.

In addition, the abuse of drugs or alcohol is considered to be a disease, and thus the employer must provide medical support and paid sick leave in such cases. It is not advisable to state as a condition of employment the results of drug or alcohol tests, since this behavior may be deemed discriminatory and a violation of employees' right to privacy.

§ 2.7 Are there mandated preferences in hiring?

The only mandated preferences in hiring are established for the public sector under the quota system.

It is mandatory for public agencies, state companies and public enterprises that carry out public services to hire a minimum of 4% disabled people over the total of their personnel[22] and 1% trans-persons over the total of their personnel.

§ 2.8 Are there any rules regarding inquiry into an applicant's salary history or prior compensation? Are there any requirements related to employers disclosing the salary range for open positions?

No, there are no specific rules regarding inquiry into applicant's salary history or prior compensation. However, applicants are not obliged to provide this type of information and, in fact, may refuse to provide it, based on privacy concerns.

Likewise, there are no specifics requirements related to employers disclosing the salary range for open positions. Nevertheless, it is a common practice that employers disclose this information when posting open positions or interviewing the applicants.

§ 2.9 Are there restrictions on filling openings with contingent workers?

Contingent employee services can only be used in certain specific cases. There are Temporary Employment Agencies (TEAs) in Argentina that are in charge of selecting workers and introducing them to companies according to the profiles searched by them.

A breach of the TEA regime will be viewed as a fraudulent act under local labor law. This can result in the employee being deemed to be a direct employee of the company that benefits from his/her service.[23]

[22] Law No. 22,341, Section 8 (amended by Law No. 25,689).
[23] National Employment Law (No. 20,744), Section 29.

TEAs must have an exclusive corporate purpose of supplying industrial, administrative, technical and professional staff to third-party companies ("User Company") to:[24]

- perform, on a temporary basis, extraordinary services defined in advance; or
- meet the specific and temporary needs of the User Company.

Hirers may engage employees through a TEA only in the following cases:

- To cover for the absence of a permanent employee, during the term of his/her absence.
- Leave of absence of a permanent employee, legal or contractual suspension due to strike or *force majeure*, reduction or absence of work.

In the above two situations, the name of the employee who is on leave must be specified in the agreement and, if the substituted worker returns to his/her position and the employee hired through a TEA is still working, he/she will be considered a direct employee of the User Company.

- In the event of increased business activities of the User Company, requiring more workers, on an exceptional and extraordinary basis.
- To organize or participate in congresses, conferences, fairs, exhibitions or programs.
- To perform urgent tasks to prevent accidents or repair equipment when such duties cannot be performed by regular staff.
- When, due to extraordinary or temporary needs, tasks not related to the usual business activities of the User Company are required.

In the above four situations, the hiring period must not exceed six months in a one-year period, or one year in a three-year period. If the hiring exceeds these limits, the employee will be considered a direct employee of the User Company.

Therefore, to hire employees through a TEA, the User Company will have to provide evidence that the hiring responds to one of these extraordinary circumstances. In case of noncompliance with the legal requirements, the employee may claim that the User Company fraudulently used the TEA to avoid correct labor registration in violation of local labor laws and claim to be correctly registered by the User Company. If the User Company refuses to do so, the employee may be considered constructively dismissed and claim severance compensation, plus applicable fines for incorrect registration.

Openings that are not related to an extraordinary need of the company cannot be covered by contingent workers. To do so would be against the law.

However, if parties understand that the opening could be covered by the contingent worker, that worker should resign his/her job position and enter into a new employment contract for an indefinite period of time with the company where the opening takes place.

[24] National Employment Law (No. 20,744), Section 99.

§ 2.10 Must a foreign employer set up a local entity to employ local workers, and if so, what are the requirements?

Those foreign employers who wish to hire employees in Argentina must establish a subsidiary, branch or legal presence in the country in order to register as employer before the AFIP) and social security authorities ("*Administración Nacional de la Seguridad Social*" or ANSeS). Otherwise, it is not possible to register as an employer.

To get this registration, the foreign employer/company must accomplish the following requirements:

- The first step is to incorporate a local branch and register it before the Registry of Commerce (bylaws and all necessary corporate documentation—depending on the kind of branch they decide to incorporate—must be filed).[25] This procedure takes approximately one to two months, depending on whether the Registry of Commerce makes any objections to the filing or requires further clarifications.

- After that, the foreign employer/company has to be registered as an employer before the AFIP by filing a form. In the case of companies, such procedure must be done by the legal representative. Once this step is complete, the company will be able to obtain a tax code to run a business before the AFIP, and with such code, it will be able to register as an employer. This procedure will take two weeks at most.

§ 2.11 What rules apply to the employment of foreign nationals? How much time should an employer allow to obtain the required work authorization documents?

There is no restriction regarding the employment of foreigners provided they hold temporary or permanent residence permits.

According to Argentine Migration system, every person who wishes to reside in Argentina must fall within one of the temporary or permanent admissions criteria.

The following individuals will be considered as *permanent residents*:[26]

- Every foreigner that, with the purpose to definitively establish (permanently reside) in Argentina, who obtains an admission from the National Immigration Direction ("*Dirección Nacional de Migraciones*" or DNM).

- The immigrant relatives of Argentine citizens, native or nationalized by option, such as spouse, children, and parents.

- Also, a native or "optional" Argentinean's children born abroad are recognized as permanent residents. The law establishes that the authorities will allow free entrance and permanence in the territory.

[25] Business Corporations Law (No. 19,550).
[26] Migration Law (No. 25,871), Section 22.

On the other hand, every foreigner entering in the country in the following subcategories will be considered as a *temporary resident*,[27] for example:

- **Migrant Worker:** those entering the country in order to serve a compensated and lawful activity, with authorization to remain in the country for a period of no more than three extendable years, with multiple entrance and exit, with a permission to work under an employment relationship.

- **Investor:** those contributing their own goods in order to execute activities of interest for the country. A term of no more than three extendable year of residence, with multiple entrance and exit, could be granted.

- **Scientifics and Specialized Personnel:** those dedicated to scientific, investigative, technical, or assessment activities hired by public or private entities in order to execute works related to the specialization.

- **Athletes and Artists:** hired for the reason of their specialties by legal persons or companies that develop activities in the country. A term of no more than three extendable years of residence can be conceded, with multiple entrance and exit.

In order to achieve resident status, the DNM will compel foreigners not only to provide personal documentation but also supporting documentation for suitability of each person according to the admission criteria under which the residence is requested.

For operational purposes, and according to current legislation, the requirements and forms to obtain temporary or permanent residence are different depending on whether the requestor is a native citizen of one of the Mercosur member countries[28] or is Extra-Mercosur.

Argentine companies may request from the DNM temporary residence permits for employees: (1) whom they are planning to bring into Argentina; or (2) whom are at that time residing in Argentina. For this purpose and for nonMercosur applicants, the Argentine company must be registered with the Foreign Petitioners National Registration Office ("*Registro Nacional Único de Requirentes Extranjeros*" or ReNURE) and the applicant must submit: (1) an employment agreement entered into between the Argentine company and the foreign employee; (2) evidence that the Argentine company has no outstanding obligations vis-à-vis the tax and social security authorities; (3) the foreign employee's birth certificate; and (4) a good-conduct certificate issued by the police (both Argentine and from the country where the foreign employee has resided in the preceding five years), among others.

Mercosur applicants may apply for permission to work independently and do not require a local employer to act as sponsor.

The processing of a temporary or permanent residence permit in the city of Buenos Aires lasts between two and three months.

[27] Migration Law (No. 25,871), Section 23.
[28] MERCOSUR ("*Mercado Común del Sur*") includes Argentina, Brazil, Paraguay, Uruguay, and Venezuela.

It is important to mention that, due to the health crisis caused by the COVID-19 outbreak, Argentine borders will remain closed until February 28, 2021[29] for non-resident foreigners However, this term may be extended.

Additionally, the issuance of visas and temporary, transitory and special residences in Argentina is suspended.[30]

The processing and issuance of applications for temporary/transitory residences, electronic travel authorizations and special residences are temporarily suspended. The processing of applications for admission as a "transitory resident" of foreigners who are abroad are also temporarily deferred.

§ 3 EMPLOYMENT CONTRACTS

§ 3.1 Are written employment contracts required for certain employees?

Since the applicable principle in this regard is the freedom of formality, parties may freely choose the form of the employment contract, except as provided by law or CBAs in individual cases.[31]

Due to the continuity principle, the rule is that employment relationships are meant to be for an indefinite period of time, and there is no need to execute an employment agreement. The existence of the employment relationship will be determined based on the facts and subordination of the worker. For employment agreements other than those for indefinite term, they must be in writing and comply with certain formal requirements, depending on the kind of employment agreement.

Notwithstanding the above, in regard to indefinite-term labor relationships, it is advisable to enter into written employment agreements in order to minimize possible risks of misinterpretations.[32]

Regarding the home-office regime, Law No. 27,555 –which has not come into force yet[33]- established the following: i) The working day must be previously agreed in writing in the employment contract, according to the current legal standards.[34] Therefore, the employment writing must be executed in writing; and ii) Employees' consent is required when shifting from Company´s workplace to home office modality in writing, except for force majeure cases.[35]

§ 3.2 What terms are required in employment contracts (if any)?

The principle is that employment contracts are for an indefinite period of time. This means that employment relationships are intended to continue until the employee complies with requirements to apply for retirement.

[29] Administrative Decision No. 44/2021.
[30] Resolution No. 1644/2020, issued by the National Migration Office ("*Dirección Nacional de Migraciones*" or DNM).
[31] National Employment Law (No. 20,744), Section 48.
[32] National Employment Law (No. 20,744), Section 90.
[33] It is still pending that the Ministry of Labor must issue a Resolution establishing the start date to count the ninety (90) days for the Law to enter into force.
[34] Section 4, Law No. 27,555.
[35] Section 7, Law No. 27,555.

Fixed-term employment agreements are an exception and may only be valid if they meet all of the following requirements:

- The agreement must fix the term in writing.
- The term cannot exceed five years.
- Employers must justify, in writing, the objective cause for this type of agreement.

Making continuous use of fixed-term contracts or in breach of legal requirements will automatically convert it into an employment contract for an indefinite period of time.[36]

Employment contracts do not have to specify any termination provisions since they are provided by local regulation and corresponding applicable CBA. Due to the "public order provisions" (as defined in **§ 1.1(c)**), termination provisions may not be modified by agreement of the parties unless they agree on better terms that are more beneficial for the employee.

§ 3.3 In what language(s) must employment contracts be written?

Employment agreements may be in any language. However, it is highly advisable to execute a version in Spanish to avoid misinterpretations in case of a conflict due to the protective nature of Argentine Labor System. Consider that, in case of a conflict, a Court of Law may dismiss a contract written in a different language, since it may argue that the foreign language version could not be clearly understood by the employee.

§ 3.4 What rules exist relating to the duration of employment contracts?

The NEL provides the following alternatives.

Indefinite-term Contract:

- Under NEL, indefinite-term contracts are the rule as labor relationships are supposed to last until the employee is entitled to social security benefits.[37]
- The trial period is up to three months.[38]
- Termination during trial period can occur without any compensation or severance payment liability for the employer (except for prior notice of 15 days and the wages due).
- If the employer terminates the employment without any cause and beyond the trial period, severance compensation must be paid or claimed by employee (seniority compensation, compensation in lieu of notice, etc.).

Fixed-term Contract:

- This scheme requires as an essential condition, that is, a written contract in which the fixed-term has been agreed between the parties.

[36] National Employment Law (No. 20,744), Sections 91 and 93.
[37] National Employment Law (No. 20,744), Section 90.
[38] National Employment Law (No. 20,744), Section 92 *bis*.

- An extraordinary requirement is also required by law in order to duly justify a fixed-term contract.[39]

- Making continuous use of such fixed-term contracts or in breach of legal requirements will automatically convert it into an employment contract for an indefinite period of time.

- There is a maximum five-year term, but only if the above-mentioned requirements are duly complied with.[40]

- Advanced written notice of termination is required. The omission in giving such advanced notice cannot be replaced by any compensation and will convert the contract into one for an indefinite period of time. Advanced notice must be given no less than one month and not more than two months prior to the termination. The only exception is a fixed-term contract with a duration of less than one month, in which case no notice is required.[41]

- Regarding the compensation due for terminating a fixed-term contract, if an unfair dismissal occurs before the agreed-upon term is finished, the employee is entitled to the corresponding compensation (severance compensation due for termination without cause), plus a special compensation that is usually determined by calculating the wages due to the agreed date of termination.[42]

- At the end of the fixed term, the mere termination of such period does not entail the employer's liability to pay compensation, unless the contract period is more than one-year. In such case, the employer must pay a severance compensation equivalent to 50% of regular severance compensation.[43]

- A fixed-term contract has no trial period.

Contract for Contingent Workers (hired on a temporary basis to perform a specific activity—contingent or temporary contract):

This contract takes place when extraordinary and transitory production demands or requirements are foreseeable, although a specific term for the contract termination may not be foreseen.[44] Furthermore, this regulation provides that this kind of contract will also take place when the relationship begins and ends with the specific execution of a certain task or with the specific service for which the employee was hired.

The main legal characteristics are:

- There is no obligation to give any notice of termination.

- No severance payments or compensations are owed when the contract finishes.

[39] National Employment Law (No. 20,744), Section 90.
[40] National Employment Law (No. 20,744), Section 93.
[41] National Employment Law (No. 20,744), Section 94.
[42] National Employment Law (No. 20,744), Section 95.
[43] National Employment Law (No. 20,744), Sections 95 and 250.
[44] National Employment Law (No. 20,744), Section 99.

- Execution of a written contract.
- Specific cause of the contract must be clearly described, as the employer must prove the temporary nature of the contract.
- No trial period is applicable.

§ 3.5 Are probationary periods allowed, and if so, what restrictions apply?

A probationary period of three months applies to all employment agreements for an indefinite period of time.[45]

The main aspects of a valid probationary period are:

- It is not applicable to fixed-term, temporary, learning or seasonal employment agreements.
- The employer is not allowed to hire the same employee more than once using a probationary period.
- In case of terminating the agreement during this period, if—in the future—the employee enters into a new labor relationship with the same employer, the probationary period will not apply to the new labor relationship. This benefit may be used only once in regard with each employee.
- It is forbidden to abuse this period with the purpose of avoiding registration of employees.
- The employer must register the employee during this period. The lack of registration implies that the employer has resigned its benefits (the employee may claim the severance payment for termination without cause and in lieu of prior notice).
- Both parties have the rights and duties inherent to any employment relationship, including union rights.
- It is mandatory for the parties to make the contributions and withholdings to the Social Security System.
- This period must be deemed as the period during which the employee has rendered services for the purpose of seniority.
- Termination of this period requires that the party who wishes to terminate the agreement give a 15-day prior notice to the other. If the *employer* chooses to terminate during the period but does not provide adequate prior notice to the employee, it must pay a severance in lieu of notice. However, if the *employee* chooses to terminate during the period but does not provide adequate prior notice to the employer, the employer will not be obliged to pay the remaining days or severance payment for termination.
- Employees have the right during this period to get the benefits granted in case of a work-related accident and/or sickness. If the employment agreement is terminated by the employer before

[45] National Employment Law (No. 20,744), Section 92 *bis*.

the period of three months, the mentioned benefit will remain valid until the expiration term occurs.

Since the COVID-19 outbreak, terminations without cause (regular terminations), terminations based on lack or reduction of work, and suspensions due to *force majeure* or for lack or reduction of work are forbidden until the end of April, 2021. (e)The referred prohibitions will not be applied to employees hired after December 13, 2019)[46]

The Decree's wording is very broad since it refers generally to "terminations without cause" without establishing any exceptions for terminations that may occur within the probationary period. However, it is understood that terminations within probationary period are also forbidden and will have no effect, since the aim of the Decree is to guarantee labor stability to all employees. In addition, case-law was issued in this same sense.

§ 3.6 Do employment contracts customarily contain covenants to safeguard the employer's intellectual property, covenants not to compete, and/or agreements not to solicit the employer's customers or employees?

An employee's obligations with regard to the employer's intellectual property, and noncompetition and nonsolicitation are for an indefinite term during the employment relationship. The employee has no duty in this regard after the employment relationship is terminated, unless he/she has signed an agreement that provides otherwise.

Post-employment noncompetition or non-solicitation agreements are allowed under local regulations, but to be enforceable it is necessary to comply with certain requirements as established by case law:

- Such agreements must be limited to a reasonable period of time. In Argentina, the duration of these covenants after termination is not regulated statutorily. However, courts will conduct a fact-specific inquiry on a case-by-case basis to determine whether any of these covenants are reasonable in duration. The majority of case law in Argentina has ruled that a reasonable restriction should not exceed five years. However, such a determination is not mandatory to follow in subsequent cases. Therefore, courts may find shorter restrictions to be reasonable or unreasonable, depending on the specific facts of the particular circumstances of the case.

- The employee's compliance with these covenants should not affect or limit the employee's constitutional right to work.[47]

- In the event the post-employment compliance of these covenants affects the employee's right to work, a payment of an amount similar to the employee's monthly salary (approximate equal to 70% to 100%, percentage depends on negotiation and extend of the restriction, of the employee's monthly salary for the period the covenant is effective) must be granted as consideration for the compliance with such duty for these agreements to be enforceable.

In short, as post-employment covenants of these types are not expressly banned in Argentina, and they are not regulated. But, for them to be valid there must be a balance between these covenants, trade secret

[46] Decree No. 39/2020.
[47] National Constitution, Section 14.

protection and the employee's constitutionally granted right to work. Otherwise, they will be void and null, and thus, not enforceable in Argentina.

§ 4 DISCRIMINATION, HARASSMENT & RETALIATION

§ 4.1 What prohibitions against discrimination exist, and how are they defined (*e.g.*, what are the specific protected categories)?

It is forbidden to discriminate against employees based on sex, race, nationality, religion, marital status, political or trade union ideas, age, disability or physical appearance.

The Argentinean Constitution establishes the principle of equality before law,[48] which extends to salaries when stating "equal compensation for equal tasks."[49]

In addition, provisions against discriminations can be found in:

- International Treaties with constitutional status, such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).[50]
- ILO Conventions, such as Equal Compensation Convention (C100), and Discrimination (Employment and Occupation) Convention (C111).
- National Employment Law.[51]
- Antidiscrimination Law.[52]
- Trade Unions Law.[53]
- The Resolution No. 11-E/2018 issued by MTEySS.

Arbitrary discrimination (*i.e.*, where employers make distinctions on unreasonable grounds) is forbidden. However, employers are allowed to make distinctions as long as they are based on objective criteria, such as productivity.

Amid infectious pandemics, such as the novel coronavirus (COVID-19), employers should consider consulting with local counsel to help ensure that all workplace policies implemented to protect workers from infection are applied uniformly to all employees and job applicants regardless of their ethnicity, race or other protected categories.

[48] National Constitution, Section 16.
[49] National Constitution, Section 14 *bis*.
[50] National Constitution, Section 75, subsection 22.
[51] National Employment Law (No. 20,744), Sections 17, 70, 72, 73, 81, 172, and 187.
[52] Antidiscrimination Law (No. 23,592).
[53] Trade Union Law (No. 23,551), Sections 7 and 53(j).

§ 4.2 What prohibitions exist against religious discrimination, and what accommodations of religious practices are required of the employer?

Religious discrimination is expressly forbidden in several local instruments, such as the National Constitution, International Treaties with constitutional status and laws. (See **§ 4.1**.) To avoid discriminatory acts based on religion, the employer must respect the following religious holidays set as mandatory by the Ministry of Internal Affairs and excuse employees from work:

- Employees who practice Jewish religion:
  - Pesaj (Passover—first two days and last two days).
  - Rosh Hashana (Jewish New Year).
  - Iom Kippur (Pardon Day).
- Employees who practice Muslim religion:
  - Eid al-Adha (Feast of Sacrifice).
  - Hegira (Islamic New Year).
  - Eid al-Fitr (End of Ramadan).

§ 4.3 What prohibitions exist against disability discrimination, and what accommodations of disabilities are required of the employer?

Any act of discrimination based on the disability of a person is forbidden.

On the other hand, it is mandatory for public agencies, state companies and public enterprises that carry out public services to hire a minimum of 4% disabled people over the total of their personnel.[54] (See **§ 2.7**.)

It is also mandatory to eliminate any architectural obstacle or barrier in order to achieve access for disabled people (*i.e.*, creation of ramps).[55]

§ 4.4 What prohibitions are there against harassment?

Recent case law and doctrine have extended the scope of the employer's duty of safety, to include not only the obligation to take all measures necessary to protect employees' physical health but also those related to their mental and physiological health.[56] In view of this, the employer has the obligation to provide a healthy workplace free of hostilities.

For that reason, if the employee suffers moral or sexual harassment in the workplace, and due to this situation damage is caused to his/her physiological health, a Court of Law will determine the employer's responsibility, unless the employer provides evidence of compliance with the duty of safety.

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[54] Law No. 22,431, Section 8 (amended by Law No. 25,689), Section 20.
[55] Accessibility for People with Reduced Mobility Law (No. 24,314).
[56] National Employment Law (No. 20,744), Section 75.

Notwithstanding the above, prohibition against sexual harassment is statutorily regulated only in the public sector.[57]

As for the private sector, there was a bill whose aim was to punish violence and sexual harassment in the workplace, but it has been filed since the period for it to be discussed in Parliament has expired.[58]

In addition, Law No. 27,580, published in the Official Gazette on December 15, 2020, approved the Violence and Harassment Convention, 2019 (No. 190) of the International Labour Organization ("ILO"). However, this Convention will come into force on June, 2021.

§ 4.5 What exceptions are permitted to the prohibitions against discrimination (*e.g.*, job requirements that mandate hiring candidates of a certain age or gender, or quotas to address past discrimination)?

The exceptions permitted to the prohibitions against discrimination are those based on objective grounds, such as the principle of the common good, the principles related to greater efficiency, diligence, or compliance with the duties by the employee.[59]

§ 4.6 What prohibitions exist regarding retaliation/reprisal?

There are no specific laws prohibiting retaliation/reprisal, including related to pay equity/pay transparency.

However, employers are required to comply with the principles of nondiscrimination and pay equity (*i.e.*, equal remuneration for equal tasks in similar conditions).

§ 4.7 May individual persons be liable for discrimination, harassment, or retaliation/reprisal?

Individual persons may be liable for their discriminatory acts, as well as in case of moral or sexual harassment.

As for retaliation/reprisal, in Argentina there is not a specific regulation on this issue.

§ 4.8 Are employers required to investigate allegations of sexual harassment from employees?

In Argentina, there is no in-force specific regulation prohibiting sexual harassment in the workplace (except for the public sector).[60] However, employers must investigate allegations of sexual harassment from employees based on the "duty of safety." (See **§ 4.4**).

Under Section 75 of the NEL and recent case law,[61] employers' duty of safety extends beyond compliance with the safety and hygiene standards to protect employees' physical health, to the employer's obligation

[57] Decree No. 2,389/1993.
[58] Bill No.S-0565/14.
[59] National Employment Law (Law No. 20,744), Section 81.
[60] Decree No. 2385/1993.
[61] National Employment Law (No. 20,744), Section 75.

to provide a healthy workplace free of any kind of violence (moral or sexual harassment or discrimination) to avoid physiological harm to employees.

Due to the lack of specific labor regulation on the matter, Argentine labor case law has built up guidelines to prevent, deal, manage and solve sexual harassment situations within the workplace. In this sense, case law has sustained that:

- In cases of sexual harassment, an employer breaches its duty of safety and may be held liable if, knowing the existence of the hostile working environment, no measures were taken to prevent it.[62]

- The employer must be held liable for the acts or conducts of its employees, including for any damage caused by the employees while rendering their services (based on National Civil and Commercial Code Section 1,753, formerly Section 1,113 of the National Civil Code).[63]

- The wrongful behavior of a defendant (coworker) and the company's failure to take any measures to stop it is deemed a serious breach that prevents the continuation of the employment relationship and justifies the victim's constructive dismissal.[64]

Also, Convention No. 190 of the ILO[65], which pretends to eliminate violence and harassment in the workplace, must be applied once it come into force. Below. The main aspects of this Convention:

- It provides the following definitions: i) the term "violence and harassment" in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment; and ii) the term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.[66]

- This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.[67]

- It applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.[68]

- This Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work: i) in the workplace, including public and private spaces where they are a place of work; ii) in places where the worker is paid, takes a rest break

[62] "*S., C.V. vs. H.A. de P. s/ Despido*," National Labor Court of Appeals, Courtroom V (Mar. 12, 2012).
[63] "*A.M.A. vs. S.O.D S.A. y O. s/ Despido,*" National Labor Court of Appeals, Courtroom VI (Feb. 28, 2014); "*A.A.Y. vs. S.C.A. de P. S.A. y otros s/ Despidos*."
[64] "*A.M.A. vs. S.O.D S.A. y O. s/ Despido*," National Labor Court of Appeals, Courtroom VI (Feb. 28, 2014); "*S., C.V. vs. H.A. de P. s/ Despido,*" National Labor Court of Appeals, Courtroom V (Mar. 12, 2012).
[65] Approved by Law No. 27,850.
[66] Section 1.1 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[67] Section 2.1 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[68] Section 2.2 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.

or a meal, or uses sanitary, washing and changing facilities; iii) during work-related trips, travel, training, events or social activities; iv) through work-related communications, including those enabled by information and communication technologies; v) in employer-provided accommodation; and vi) when commuting to and from work.[69]

- It establishes that each Member (in this case, to the Government of Argentina) shall adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable, and includes: i) prohibiting in law violence and harassment; ii) ensuring that relevant policies address violence and harassment; iii) adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment; iv) establishing or strengthening enforcement and monitoring mechanisms; v) ensuring access to remedies and support for victims; vi) providing for sanctions; vii) developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and viii) ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.[70]

- Argentina shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.[71]

- Argentina must also: i) take appropriate measures to prevent violence and harassment in the world of work[72]; ii) adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment, and in particular, so far as is reasonably practicable[73]; iii) ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work[74]; iv) protect the privacy of those individuals involved and confidentiality, to the extent possible and as appropriate, and ensure that requirements for privacy and confidentiality are not misused[75]; v) provide for sanctions, where appropriate, in cases of violence and harassment in the world of work[76]; vi) provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies[77]; among others.

[69] Section 3 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[70] Section 4.2 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[71] Section 6 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[72] Section 8 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[73] Section 9 of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[74] Section 10.b of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[75] Section 10.c of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[76] Section 10.d of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[77] Section 10.e of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.

§ 4.9 Are employers required to provide antiharassment/antiretaliation training to their workers?

Employers are not required to provide antiharassment/antiretaliation training to their workers. However, it is strongly recommended for employers to provide such training to minimize any risks based on the breach of the employer's duty of safety. Based on the duty of safety, employers are required to provide a safe and hostile free work environment. (See **§ 4.4**). Providing antiharassment/antiretaliation training may be used as a defense, to prove that the employer has taken all preventive measures to avoid a hostile work environment.

In addition, Convention No. 190 of the ILO established that the Government shall: i) adopt developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate[78]; ii) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned[79]; and iii) ensure that employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment[80]

§ 5 COMPENSATION

§ 5.1 What restrictions are there on hours that may be worked?

The normal working hours for employees are limited to eight hours per day or 48 hours per week.[81] The 48 hours per week may be distributed in an unequal way during the days of the week, as long as they do not exceed nine hours in a day, and employees do not work after 1 P.M. on Saturdays.[82]

Daytime shift takes place between 6 A.M. and 9 P.M.

Below are some exceptions:

- *Night work shift* takes place between nine (9 P.M. of a day and 6 A.M. of the following day, and it is limited to seven hours per day.[83]
- Workers under 18 years old cannot be employed in night work. In this case, night work is from 8:00 P.M.[84]
- The workday is mixed when the employee renders services partially during the day and partially at night. In this case, the workday will be reduced proportionally in eight minutes per night hour worked. That is, one hour in a night shift equals one hour and eight minutes of

[78] Section 2.g of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[79] Section 9.d of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[80] Section 11.b of the Violence and Harassment Convention, 2019 (No. 190) of the ILO.
[81] Workday Law (No. 11,544), Section 1.
[82] Decree No. 16,115, Section 1.b.
[83] Workday Law (No. 11,544), Section 2.
[84] National Employment Law (No. 20,744), Section 190.

ordinary workday.[85] Hazardous or unhealthy work is allowed only up to six hours per day or 36 hours per week.[86]

- "Team work" has a specific system (limited to 144 hours in a three-week period).

- Overtime cannot exceed 30 hours per month and/or 200 hours per year.[87]

- Weekly rest must be for at least 35 continuous hours.

- It is forbidden for employees to work between Saturday at 1 P.M. and Sunday at midnight.[88] But if for some reason the employee provides exceptional work (*i.e.*, works during the forbidden times) on those days, the employer must grant paid compensatory rest of equal duration. If the corresponding compensatory rest is granted, the employee must be paid his/her regular salary for the exceptional work. If not, the employee is entitled to regular salary plus an additional 100% on top of regular salary.

- Between the end of a workday and the beginning of another, there must be a pause of not less than 12 hours.[89]

However, in case the employee is under the scope of Law No. 27,555 (Home-Office Regime) –once the Law enters into effect-, the following provisions regarding working time must be complied:

- The working day must be previously agreed in writing in the employment contract, according to the current legal standards. Platforms and/or software used by the employer to the specific purpose of the Home-Office regime must be developed taking into account the working day, preventing the connection during time-off[90];

- Employees under the Home-Office regime are entitled to the right to disconnect during time-off, and leave periods. Also, employers are not allowed to request employees to perform any tasks, or to send communications during time-off;[91]

  In addition, to contact the employee during time-off is only admitted if the company's activity is carried out in different time zones or in those cases where it is strictly necessary. Nevertheless, the employee is not forced to answer until the beginning of his/her working day, except for the following cases: i) danger/force majeure accident -occurred or imminent-, or ii) company's or national exceptional requirements[92].

- Employees living with or taking care of children under thirteen (13) years old, disabled people, or elderly adults with special needs, duly evidenced, have the right to perform their tasks during compatible hours with their care tasks and/or to interrupt their working day[93];

[85] National Employment Law (No. 20,744), Section 200.
[86] Workday Law (No. 11,544), Section 2.
[87] Decree No. 484/2000, Section 1.
[88] National Employment Law (No. 20,744), Section 204.
[89] National Employment Law (No. 20,744), Section 197.
[90] Section No. 4, Law No. 27,555.
[91] Section No. 5, Law No. 27,555.
[92] Section No. 5, Decree No. 27/2021.
[93] Section No. 6, Law No. 27,555.

Regarding this aspect, Decree No. 27/2021 established the following[94]: i) Employees that interrupt their tasks due to care-giving reasons must communicate virtually and accurately when the inactivity begins and when it ends; ii) In those cases where the care-giving tasks are not compatible with the employee's workday and/or tasks, it may be agreed to reduce them according with the conditions established in the applicable CBA; iii) No incentives can be given to employees in order to prevent them from performing care-giving tasks; and iv) Care-giving tasks should be fair, in terms of gender, promoting the participation of men in such duties.

- Any act, conduct, decision, retaliation or obstruction made by the employer that violates the aforementioned rights will be considered discriminatory. In view of this, employees may file a claim alleging discrimination and eventually consider themselves constructively dismissed, requesting the corresponding severance compensations and, additionally, damages[95].

§ 5.2 What minimum wage requirements exist?

The minimum wage is set at ARS 20,587.50, which is approximately USD 224, as of December, 2020 until March 1, 2021, which will be equivalent to ARS 21,600 (approximately USD 235). Nevertheless, each CBA sets forth the minimum wage for the employees that render services in the industry involved, considering different categories, and regulates any additional compensation the employee may be granted, such as punctuality, seniority, etc.

§ 5.3 What is the required schedule for paying wages, and in what form and currency must they be paid?

Required schedule for paying wages is determined as follows:

- **Personnel paid on a monthly basis:** must be paid upon expiration of every calendar month.
- **Personnel paid on a daily or hour basis**: must be paid every week or fortnight.
- **Personnel paid for piece of work:** must be paid very week or fortnight.[96]

Salary payments will be made once the above-mentioned periods have expired, within the following time limits:

- Four business days for monthly or fortnight payments.
- Three business days in case of weekly payments.

As for the forms of payment, salaries may be paid by any of the following means:

- In cash.
- By check.

[94] Section No. 6, Decree No. 27/2021.
[95] Section No. 6, Law No. 27,555.
[96] National Employment Law (No. 20,744), Section 126.

- Deposited in a bank account held by the employee. This bank account will be free for the employee and will not generate any expenses for him/her.

Currency in which salaries must be paid:

- Wages must be paid in Argentina pesos (ARS).
- Foreign currency payment is not recommended; it is considered to be a payment in kind and it may only be up to 20% of the monthly salary.

§ 5.4 What overtime pay requirements exist?

The CBAs often regulate overtime and overtime pay entitlements.

However, by law, the employee-except for directors and managers-will be entitled to the following overtime payment scheme:[97]

- **Normal working days (*i.e.*, Monday to Saturday up to 1 P.M.:** entitled to regular salary and an additional 50% on top of regular salary.
- **On Sundays, public holidays or after 1 P.M. on Saturday:** entitled to regular salary and an additional 100% on top of regular salary.

Overtime cannot exceed of 30 hours per months or 200 per months. Additionally, overtime hours cannot be performed by part-time workers or those who work in hazardous conditions.

§ 5.5 What bonuses are mandated or customary?

Employers must pay a mandatory annual bonus ("*aguinaldo*") in two installments (June 30 and December 18) equivalent to 50% of the best monthly salary earned in the prior six-month term.[98]

In addition, employees have the right to receive their vacation pay in the pay period before the start of their vacation. For those employees paid on a monthly basis, it is calculated as follows: the employee's monthly salary is divided by 25 and then it is multiplied by the corresponding days granted to the employee according to his/her seniority.[99]

Some bonuses are customarily granted to certain employees, usually employees in higher positions. Companies often have their own specific bonus plans since there is not a statutory regulation on this issue. The bonus plan must establish in detail the goals to be achieved by the employee so that it is clear when the employee has the right to its payment.[100]

Otherwise, the repetition of payment over time may be deemed an acquired right and as part of the employee's compensation. In which case, if the employer decides not to grant a bonus payment for any reason, the employee involved will be entitled to claim its payment. In addition, in the event of a termination without cause, the sum paid for these bonuses will be included in the calculation of the severance payment, and proportional accrued bonus may also be claimed to be paid as part of the severance compensation.

[97] Workday Law (No 11,544), Section 4.
[98] National Employment Law (No. 20,744), Section 121; Law No. 23,041.
[99] National Employment Law (No. 20,744), Section 155.
[100] National Employment Law (No. 20,744), Section 245.

§ 5.6 Are there any rules related to pay equity or pay transparency?

Section 14 bis of the National Constitution establishes the principle of equal remuneration for equal tasks. Argentina ratified the International Labor Organization (ILO) Equal Remuneration Convention No. 100, which forbids different compensation between men and women performing the same tasks. It implies that companies may not grant different salaries to their employees based on gender, unless an objective distinction justifies it.

Argentina also ratified the Convention on the Elimination of all forms of Discrimination against Women and Convention concerning Discrimination in Respect of Employment and Occupation (ILO - No. 111). These conventions promote equal treatment for men and women in labor relationships. This includes equal promotion opportunities and equal compensation for the same tasks. These two principles are included in Sections 17 and 81 of the NEL. These international treaties were incorporated to our legal framework in 1994, after the last amendment to our National Constitution.

Disregarding the existence of the mentioned general regulations, there are no specific rules that require employers to collect or disclose employee pay information publicly (to other employees, to the government and/or to third parties such as unions).

For employees covered under a particular CBA, employers must notify the union regarding their compensation, but only for purposes of calculating the amount of contributions to be made (not as a way of verifying compliance with equal pay between men and women and/or minorities or historically disadvantaged groups).

§ 6 TIME OFF FROM WORK

§ 6.1 What public, statutory, or national holidays are required, and what are the requirements if employees work on such holidays?

Holiday	Date
New Year's Day	January 1
Carnival Holidays (Monday and Tuesday)	February or March (changeable dates)
National Day of Memory for Truth and Justice	March 24
Day of the Veterans and Fallen in Malvinas War	April 2 (transferred to March 31 – one-time modification)
Good Friday	Friday before Easter (changeable date)
Labor Day	May 1
May Revolution Day	May 25
Day in which General Martín Miguel de Güemes entered immortality	June 17. It may be transferred.
Flag's Day (Day in which General Manuel Belgrano entered immortality)	June 20
Independence Day	July 9
Day in which General José de San Martín entered immortality	August 17. It may be transferred.
Day of Respect for Cultural Diversity	October 12. It may be transferred.

Holiday	Date
Day of National Sovereignty	November 20. It may be transferred.
Mary's Immaculate Conception	December 8
Christmas Day	December 25

Whenever services are actually performed during those days, the employee is entitled to his/her regular salary plus an additional 100%.

§ 6.2 What are the requirements for short-term sick pay, and who pays it?

If the employee has an accident or suffers an illness, he/she must be paid a compensation that cannot be less than the one that he/she would have been paid if he/she continued working, if the accident or illness:

1. is not related to the job and is not a consequence of an employee's intentional act;
2. prevents the employee from rendering services; and
3. takes place during the employment relationship.

If all the above-mentioned requirements are met, the employer must provide sick leave according to the employee's seniority as follows:[101]

- **Less than five years of services and no family allowances:** three months of paid leave.
- **Five years of services or more and no family allowances:** six months of paid leave.
- **If the employee has family allowances:** the periods are six and 12 months, respectively.

The employer is responsible for paying the employee the corresponding compensation as long as the sick leave lasts.

If the paid sick leave period is finished, and the employee is not able to resume his/her job, the employee has the right to save his/her position for 12 months, but the employer does not have to pay the employee's salary during this period.

§ 6.3 What are the requirements for paid vacation or annual leave?

Employees are entitled to an annual vacation period when they have been employed with their employer for over six months.

In case the period of employment is less than six months, the employee will have an annual leave equivalent to one day off for every 20 days of effective work.[102]

[101] National Employment Law (No. 20,744), Section 208.
[102] National Employment Law (No. 20,744), Sections 151 and 153.

Vacations are compulsory and the employer must grant them between October 1 and April 30. Its duration varies according to the employee's seniority.[103]

- Less than five years of service: 14 running days.
- More than five and less than 10 years of service: 21 running days.
- More than 10 and less than 20 years of service: 28 running days.
- More than 20 years of service: 35 running days.

The periods of annual leave mentioned above apply unless increased benefits are established in the applicable CBA or in the individual employment agreement.

§ 6.4 What requirements exist for paid or unpaid maternity and paternity leave?

Maternity leave consists of a period of 90 days paid by the ANSeS. This period is divided into 45 days prior to the date of birth and 45 days after the date of birth. Nevertheless, a woman may reduce the period prior to the date of birth—but not to less than 30 days—accumulating the remaining days to the period after the childbirth.[104]

After the paid leave is finished, the woman can:[105]

- Resume her job position.
- Resign her employment. In such case, she will be paid a compensation equivalent to 25% of the severance that would be owed for unfair termination.
- Enter into a period of unpaid leave for three to six months.

As for paternity leave, Argentine legislation grants to fathers only two days in case of childbirth. Paternity leave in case of adoption process is not statutorily established.

This treatment is deemed to be discriminatory and there are several bills to change paternity leave extension.

A bill that proposes to amend the paternity leave law was introduced in October 2018 and remains pending. This bill includes various proposals, including:

- Paternity leave of absence would be increased from two days to 15 calendar days to give the father a reasonable time to collaborate and adapt to the changing conditions.
- Leaves related to adoption procedures are extended to two calendar days and up to 10 days per year.
- All employees may agree with their employer up to 30 days of unpaid leave.

[103] National Employment Law (No. 20,744), Sections 150 and 154.
[104] National Employment Law (No. 20,744), Section 177.
[105] National Employment Law (No. 20,744), Section 183.

- Allow parents who have children under four years old to schedule a temporary reduction of their working hours with their employer, receiving a proportional monthly compensation.

In October 2018, the Autonomous City of Buenos Aires enacted a new regime applicable to public sector employees, which provides:

- Paternity leave consisting of a period of 15 running days;
- Optional paid leave for 30 additional running days during the child's first year;
- Optional unpaid leave of 120 running days;
- The aforementioned is also applicable in case of adoption;
- If the mother of the child is also an employee of the public sector, she may transfer the last 30 days of her maternity leave to the other parent.

It is important to mention that CBAs may extend the period of the maternity/paternity leave.

§ 6.5 What requirements are there for new mothers (*e.g.*, part-time work, breaks for breast feeding, or day care)?

Any new mother will have two breaks of 1/2 hour each to breastfeed her child, in the course of the working day, for a period that cannot exceed one year after the date of birth, unless it is medically necessary that the mother continue breastfeeding her child for a longer period of time. These breaks cannot be replaced by monetary compensation.[106]

As to day care facilities, the law establishes that, in those places where a minimum number of women render services, the employer must provide day care facilities and nurseries for children up to the age and conditions that will be established through a regulatory decree.

Such decree has not been issued so far.

§ 6.6 What requirements exist for paid or unpaid medical leaves of absence?

Requirements for paid or unpaid medical leaves of absence have been explained in **§ 6.2**.

§ 6.7 What other paid or unpaid leaves of absence must be provided by employers?

Other paid leaves that must be provided by employers are:[107]

- For birth of employee's child: two running days.
- For the employee's marriage: 10 running days.

[106] National Employment Law (No. 20,744), Section 179.
[107] National Employment Law (No. 20,744), Section 158.

- For death of employee's spouse, common-law husband or wife, child or parent: three running days.

- For death of brother or sister: one day.

- For secondary or university exams: two running days for each, with a maximum of 10 days per calendar year.

The periods of special leaves mentioned above applies unless longer periods are established in the applicable CBA or in the employment agreement.

Since the COVID-19 outbreak, the National Government established the "mandatory, social and preventive isolation" ("the Isolation") for everyone staying temporarily in the territory.[108] After that, the Isolation was changed into the Mandatory, Social and Preventive Distance ("the Distancing") and it is valid until February 28, 2021 (inclusive)[109].

In this sense, employees whose normal tasks may be carried out remotely must agree in good faith with their employer the conditions to render services from their home, and they are entitled to receive their full normal salary.

However, the following employees are exempted from attending the workplace, even if they are considered essential personnel:

- People who has COVID-19 or has contact with an individual infected;

- people who are 60 years old or more;

- pregnant employees; and

- people included in the risk groups, which include: (1) people with chronic respiratory diseases; (2) people with heart disease; (3) diabetic people; (4) people with chronic kidney failure on dialysis; (5) people with immunodeficiencies; (6) cancer and transplant patients; and (7) people with disability certificate.

§ 7 BENEFITS

§ 7.1 What benefits must employers furnish to employees?

Employers must contribute to the Social Security Administration for:

- mandatory retirement and pension;

- health care insurance;

- family allowances system;

[108] Decree No. 297/2020.
[109] Decree No. 67/2021.

- health medical services for retired people ("*Programa de Atención Medical Integral*" or PAMI);
- Labor Risk Insurance; and
- unemployment fund.

In addition, employees must be paid for vacation time, as well as a supplementary annual salary in two periods during the year.

Employees must be provided with health coverage for themselves and their primary family group during the labor relationship plus three months after the employment relationship ends. The contribution to the health coverage, through the Social Security Administration, is calculated as follows:[110] 6% of the employee's salary: paid by the employer; 3% of the employee's salary: paid by the employee; and an additional 1½% per beneficiary covered under the employee's health coverage plan (the employee's primary family group): paid by the employee. It is a right of the employee to choose[111] the health coverage to which he/she wants to contribute during the employment contract.

The pension contribution, through the Social Security Administration,[112] is calculated as follows: 11% of the employee's salary: paid by the employee; and 10.17% or 12.71% of gross payroll, depending on the type of enterprise: paid by the employer.

§ 8 CODES OF CONDUCT/WHISTLEBLOWING

§ 8.1 Are codes of conduct governing employees required (*e.g.*, internal work rules)?

According to the employer's regulatory power, the employer may organize the employment relationship through a code of conduct. The provisions of the code of conduct are compulsory, and employees must comply with them provided they do not violate mandatory rules of the NEL, the applicable CBA, professional statutes, or individual employment contracts.

Employees must be notified about the existence of a code of conduct, and the employer must give them a copy of this code.

The content of a code of conduct varies according to the business needs.

§ 8.2 What whistleblowing protections exist?

There is not a specific protection for whistleblowing related to employment matters. However, Law No. 24,401, which rules the criminal liability of companies, has established that, as part of a compliance program, companies must put in place a code of conduct, which must contain, amongst other aspects, a protection policy for the individuals who reports a crime (policy against retaliation).[113]

[110] Medical Insurance Law (No. 23,660), Section 16.
[111] Dec. 446/2000, Section 1.
[112] Law No. 24,241, Section 11.
[113] Law No. 27,401, Section 23.

§ 9 PRIVACY & PROTECTION OF EMPLOYEE PERSONAL INFORMATION

§ 9.1 What rules regulate an employer's obligation to protect the privacy of personal data about employees, and what is the scope of the employees' protection(s)?

Employees are protected by the Habeas Data Law.[114] The purpose of this law is the complete protection of personal data. The employee's data must be used only for the reason for which the data was obtained and with the employee's consent.[115]

However, consent is not required if the data:

- has been obtained from a source of unrestricted public access;
- has been collected for the performance of the State's duties;
- consists of lists limited to name, ID number, tax or social security identification, occupation, date of birth, domicile and telephone number; or
- arises from a contractual, scientific or professional relationship and the data is necessary for the development or fulfillment of such relationship.

In addition, this law establishes the employee's right to access and modify any incorrect or false information.[116]

Access
Employees are entitled to access their personal data regardless whether it is included in a public or private database. Requests may be made free of charge and in six-month intervals, unless there is a legitimate reason for more frequent access.[117] Requests must be answered within 10 calendar days of having received it.

The information must be provided clearly, with an explanation of any codes or terms used, in a language that can be understood by a citizen with an average level of education. A full copy of the information about that data owner must be provided, even if the request only refers to one item of personal data.

The information may be provided to the data owner in writing or by electronic, telephonic, visual or other adequate means.

Rectification rights
Every employee has the right to rectify, update, and, when applicable, suppress or keep confidential his/her own personal data included in a personal database. If the personal data has been transferred to a third party,

[114] Habeas Data Law (No. 25,326), Section 1.
[115] Habeas Data Law (No. 25,326), Section 5.
[116] Habeas Data Law (No. 25,326), Section 33.
[117] Habeas Data Law (No. 25,326), Section 14.

that third party must be notified of any rectification or deletion of personal data within five days of such amendments or deletions being made.[118]

Given the recent COVID-19 pandemic, employers should keep in mind that a person's health data is considered sensitive information and protected under the privacy laws. Unlawful infringement of the right to privacy—such as obtaining health data without consent or unlawfully disclosing it to third parties—constitutes a tortious act, which can form the basis for damages. In this sense, the following consequences may be applicable: (1) criminal sanctions; (2) civil judicial complaint; (3) sanctions, warnings, suspensions, or fines established by the National Direction for Personal Data's Protection (NDPDP). Accordingly, employers implementing policies or practices to collect employees' health data (*e.g.*, screening for temperature and symptoms of an infectious disease) should consider working with local counsel to help ensure such policies and practices comply with local law.

§ 9.2 What information must the employer provide to employees before processing (*e.g.*, collecting, storing, using, disclosing, etc.) their personal data, and what are the potential consequences for failure to comply?

Before processing personal data, employers must clearly inform their employees of the following:[119]

- The aim of its use and possible addressee.
- The existence of a register or database and the identity and address of its holder.
- If the employer seeks to collect personal information from an employee, whether it is mandatory or optional for the employee to respond.
- The consequences to the employee of providing personal information, and the consequences of refusing or supplying false or inaccurate data.
- The employee's right to access, rectify, or eliminate information concerning his/her person.

The processing of personal data requires express consent from the data owner, which must be accompanied by appropriate information, in a prominent and express manner, explaining the nature of the consent sought. This can be achieved by having the employee sign a general consent form upon starting the employment relationship. However, consent may be withdrawn by the employee at any time.

The data owner's consent must be express and in writing.

A data owner claiming a violation of the Habeas Data provisions with regards to his or her personal data may file a complaint before a civil court of law to rectify, suppress, conceal or update the personal data if it is presumed to be false, inaccurate or outdated.[120] This enforcement mechanism is available whether the personal data is stored in public or private archives, registers or databases.

[118] Habeas Data Law (No. 25,326), Section 16.
[119] Habeas Data Law (No. 25,326), Section 6.
[120] Habeas Data Law (No. 25,326), Section 33.

If the case is found to have merit, a court may order the defendant to delete, rectify, update or declare confidential the information in question, establishing a deadline for its compliance, as well as requesting that the NDPDP maintain a record of the court's decision.

In addition, the NDPDP may impose administrative penalties, consisting in a warning; suspension; closure or cancellation of the file, register or database; or a fine ranging between ARS 1,000 (approximately USD 11) to ARS 100,000 (approximately USD 1,087).[121]

§ 9.3 What restrictions apply to an employer's export of its employees' personal data to related companies in the United States?

The export of data to related companies abroad is only allowed if it complies with certain requirements, as follows:[122]

- The export must be addressed to a country that guarantees proper level of data protection.
- The data owner must consent to the export.
- The consent must be free, express, and informed. It also must be in writing.
- In case of lack of consent, the export of data to related companies in the United States can only be made if its owner cannot be identified (data dissociation).

§ 10 REPRESENTATION OF WORKERS, TRADE UNIONS & WORKS COUNCILS

§ 10.1 Do workers have a freedom of association and representation?

In Argentina, workers have the ability to join, establish, associate with, represent, and take part in the government and administration of a trade union. This right can be exercised or not since it is at the option of the worker.[123]

§ 10.2 Does the law require workers to be a member of a trade union, and/or require the employer to establish a works council?

As stated above, by law, workers obtain the representation in the union that relates to the area of their activity or their profession. It is not mandatory to be enrolled with a union.[124]

Regardless, union affiliation and representation is given by the application of a CBA to the activity rendered by a worker at the employer's establishment.

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[121] Habeas Data Law (No. 25,326), Section 31.
[122] Habeas Data Law (No. 25,326), Sections 2, 5, and 12.
[123] ILO (International Labor Organization) Convention No. 87; National Constitution, Section 14 *bis*; Trade Unions Law (No. 23,551).
[124] Trade Unions Law (No. 23,551), Section 10.

In Argentina there are no works councils. However, there may be union representatives within the company's premises.

The number of union representatives within the company depends on the number of employees:[125]

- one union representative for 10 to 50 employees;
- two union representatives for 51 to 100 employees; or
- if having more than 101 employees, one additional union representative for each one 100 employees.

Union representatives may be selected through direct and secret vote made by all the employees represented (affiliated or not – framed under the CBA). Union representatives fulfill multiple functions, including representing:[126]

- employees before the employer;
- employees before the union;
- employees before the administrative labor authority when it conducts inspections at the workplace;
- the union before employees; and
- the union before the employer.

To be elected as a union representative, the candidate employee needs to[127]:

- be affiliated to an officially recognized union and be chosen by direct and secret vote of the represented employees;
- be a union member for at least one year;
- be minimum 18 years old; and
- be an employee of the company for the whole year before the election takes place.

The union representative is elected for a term of two years.[128]

§ 10.3 How do workers obtain trade union representation?

It is not necessary to be associated in order to get union representation; workers obtain the representation of the union that relates to the area of the worker's activity or profession and that has been recognized by the MTEySS (through a resolution called "*Personería Gremial*").[129] However, due to the constitutional right

[125] Trade Unions Law (No. 23,551), Section 45.
[126] Trade Unions Law (No. 23,551), Section 40.
[127] Trade Unions Law (No. 23,551), Section 41.
[128] Trade Unions Law (No. 23,551), Section 42.
[129] Trade Unions Law (No. 23,551), Section 25.

of freedom of association[130] there is a case law trend that supports the legality of several unions within the same activity, regardless of the fact that the union has been recognized by MTEySS.

The right to affiliate at a certain trade union begins at 14 years old and there is not an option for the trade union to reject the request.[131]

§ 10.4 Does the law permit picketing, strikes, lockouts, and/or secondary action?

Lockouts have not been regulated in Argentina either constitutionally[132] or statutorily.[133]

In contrast, the right to go on strike is constitutionally guaranteed and supported by law.

Nevertheless, before going on strike, there are some requirements that must be met for it not to be deemed as illegal.

- The parties in conflict must comply with the mandatory conciliation procedure.
- Unions with legal recognition are the only ones entitled to call a strike.
- During this procedure, parties are not allowed to take any measures that may affect the other.
- Essential services provisions must be granted.[134]
- Once the period of mandatory conciliation is finished, if parties have not reached an agreement, they are entitled to continue with the measures.

Generally, union strike activity that restricts free movement or any confirmed acts of violence would have criminal consequences.

§ 11 WORKPLACE SAFETY

§ 11.1 What general health and safety rules apply in the workplace?

The employer has a general duty of safety and security. Among other things, it means the employer is responsible for providing decent working conditions in a healthy and safe environment for all employees. Also, employees must comply with the rules about health and safety at the workplace such as wearing appropriate clothing for the activity or using the right tools. Employers are also obliged to retain insurance with a Labor Risk Insurer ("*Aseguradora de Riesgos del Trabajo*" or ART), an entity responsible for controlling employers' compliance with its duty of safety and taking measures to prevent work-related accidents and diseases.

The National Superintendent of Insurance ("*Superintendencia de Seguros de la Nación*" or SSN) has issued a resolution[135] on civil liability insurance for occupational accidents and diseases, which complements the

[130] National Constitution, Section 14 *bis*.
[131] Trade Unions Law (No. 23,551), Section 13.
[132] National Constitution, Section 14 *bis*.
[133] Labor Conflicts Conciliation Law (No. 14,786).
[134] Law No. 25,877, Section 24 and Decree No. 272/2006.
[135] Resolution No. 35,550.

Labor Risk Law.[136] Employers may also retain civil liability insurance to address possible claims of work-related diseases or accidents (as stated below).

Labor Risks Law, No. 24,557 ("*Ley de Riesgos del Trabajo*" or LRT) created a new compensation system for work-related accidents and illnesses, and it has been modified and complemented by the following:

- Decree No. 1,649/2009 on Upgrade of Disability Compensation;
- Resolution No. 35,550 on Civil Liability Insurance for Occupational Accidents and Diseases;
- Law No. 26,773 about a new regime to organize the repair of damage caused by occupational accidents and diseases;
- Decree No. 49/2014 on New Illnesses incorporated into the Official List of Occupational Diseases and Decree No. 472/2014 regulating Law No. 26,773; and
- Decree No. 54/2017 about the obligation for the employees to get through a medical commission before proceeding to a labor trial. Since Argentina is a Federation, all Provinces will have to decide to adhere to the legal standard.

Additionally, an employer's duty to provide a healthy working environment now extends to preventing any damage to employees' psychological health.

Certain industries that involve high-risk services within an unhealthy environment require specific rules on hygiene and safety matters, such as the adoption of special safety measures to protect employees' health, regular medical examinations to monitor the employees' health, use of adequate clothing and equipment for protection, etc.[137] Due to the potential health damage arising from work performed in these industries, employees usually have shorter working days, additional social contributions, major medical coverage, and early retirement, among other benefits.

Due to the spread of COVID-19, employers who enable their employees to work from their home ("home office") must inform the corresponding ART of the following:

1. list of employees who will be rendering services under a home office regime, including name, surname, and Labor Identification Code (*Código Único de Identificación Laboral* or CUIL);
2. address where the tasks will be carried out;
3. frequency of the provision of tasks (number of days and hours per week).[138]

Regarding the employer's duty of safety and prevention, employers are advised to train the cleaning personnel (and employees in general) on the recommendations issued by the Ministry of Health, such as:

1. frequent hand washing with water and soap;
2. cover both nose and mouth with the elbow fold when coughing or sneezing;

[136] Labor Risk Law (No. 24,557).
[137] Health and Safety Law (No. 19,587).
[138] Resolution No. 21/2020.

3. open doors and windows to ventilate the room;

4. frequently clean objects and surfaces that are used often.

Also, it is reasonable for employers to request temperature tests before beginning to work. The Labor Health authority has renewed the health and safety protocols to provide for necessary tools and disinfection materials within the working place. New protocols will be in place within the employer's duty of safety. In this sense, the employees' right to privacy (regarding the information related to the health tests) will have as a limit the exposure of third parties' health, which will prevail. Employees must be properly informed of the policy regarding how the temperature tests are conducted. Also, due to the protective nature of Argentine regulations, it is advisable to have the policies notified in Spanish or in a double column format to avoid its challenge before a Court of Law.

Below are the main obligations that employers currently have:

- guarantee social distancing between employees;
- provide cleaning and disinfection supplies;
- provide face masks, gloves, hand sanitizer, water and soap;
- implement a daily and hourly cleaning process for all touch-point surfaces, including but not limited to: (1) printers, fax machines, phones, countertops, desks, doorknobs, drawer handles and knobs; (2) tables and chairs throughout; (3) keyboards, mouse, tablets, laptops; (4) pens (all employees should have/use their own pen, kept on their person); (5) all interactive touch screens; (6) TV buttons and remote controls; (7) bathrooms; (8) the entire workplace; and
- provide means of transport if the activity is not considered "essential".

As for the use of masks within the workplace, the Labor Risks Superintendent ("*Superintendencia de Riesgos de Trabajo*" or SRT) establishes that respiratory protection elements must be provided by the employer.

These respiratory protection elements will be used when employees must perform tasks in a distance less than two meters away from any other person.

§ 12 TERMINATION OF EMPLOYMENT

§ 12.1 What grounds for dismissal/termination of contract are permitted?

Within the framework of the crisis caused by the COVID-19 outbreak, the National Government established that terminations without cause (regular terminations), terminations based on lack or reduction of work, and suspensions due to *force majeure* or for lack or reduction of work are forbidden until the end of April, 2021 (the referred prohibitions will not be applied to employees hired after December 13, 2019.).[139] Due to the protective nature of Argentine regulation, we believe that this measure will be extended.

[139] Decree No. 39/2020.

Notwithstanding the above, one of the main principles of the Argentine Labor Law is the principle of the continuity of the labor relationship. This principle considers that the labor relationship ends with the employee's retirement. However, the employer may dismiss an employee without cause, paying the compensation established by law[140] –which is currently double according to Decree No. 39/2020, please see point 12.5 below-, and taking into account all the preventive measures for the dismissal not to be considered as a discriminatory act. An employer may also dismiss an employee with cause, provided that the employer can prove the grounds for the dismissal. If the employer has evidence to establish grounds for dismissal, the employer should not pay any compensation to the employee.[141]

Dismissal with cause must be the last recourse after having implemented other disciplinary measures or the offense should be serious enough that it would make the continuity of the employment relationship impossible.

Legislation imposes certain requirements for dismissal with cause:

- Notification of dismissal must be in writing (as outlined in **§ 12.3**).
- The cause and reasons alleged as the grounds for termination must be clear, accurate, and detailed.
- The alleged cause cannot be changed in successive legal notifications or during the judicial process.[142]

In the case that the cause is challenged before the Court of Law and requirements were not met, there is a high chance that the judge can rule that an employer has failed to comply with legal requirements and order it to pay severance compensation as if termination was with no cause. Each judge who is presented a dispute about termination with cause must objectively evaluate: (1) the facts giving rise to the dispute to determine whether there was cause for dismissal; and (2) if formal requirements of notification were accomplished.

The party invoking the existence of the offense that caused termination must submit evidence supporting such cause. However, the decision on whether the cause was sufficient lies with the judge, who analyzes the facts and evidence under the light of labor regulations and principles that govern employment relationships.

When evaluating the existence of just cause, the judge also considers:

- the proportionality of the discipline measure considering the offense committed;
- the disciplinary background of the employee; and
- the employee's seniority.

If the employee is a union representative, the employer must conduct a previous summary trial to dismiss him/her, since union representatives have a special protection against dismissals.[143]

[140] National Employment Law (No. 20,744), Section 245.
[141] National Employment Law (No. 20,744), Section 242.
[142] National Employment Law (No. 20,744), Section 243.
[143] Trade Unions Law (No. 23,551), Section 48.

Additionally, there are special protections by law for employees that are in other particular situations, such as the cases of marriage and pregnancy. (See **§ 12.2**.)

§ 12.2 What grounds for dismissal/termination of contract are prohibited?

According to the nondiscrimination principle in force in the Argentine Labor Law, an employee's dismissal may not be based on reasons of sex, religion, marital status, race, etc. If an employer dismisses an employee because any of these reasons, the employee may file a judicial claim to be reinstated or to get compensation for the material and moral damage caused by the discriminatory act.

There are some employees that have special protection against dismissal: (1) pregnant women within seven and a half months before or after the expected date of birth; and (2) employees that get married within three months before or six months after the marriage celebration. The "special protection" is an assumption that any dismissal within the time period proscribed under each circumstance was because of the contracted marriage or pregnancy. To avoid the discriminatory dismissals, the law compels the employer to pay, along with the severance compensation, a full year of compensation.

Union representatives also have a special protection by law. They may not be dismissed if there is no prior judicial resolution that removes such protection. If an employer equally dismisses an employee of these characteristics, the employee may:

- file a judicial claim to be reinstated and collect the lost wages; or
- request the corresponding severance compensation for the moral and material damage caused because of the dismissal, plus the payment of the pending salaries until the expiration of the employee's employment contract and the payment of severance equivalent to a one-year salary.

In the case of employees on leave due to an occupational accident or disease, if an employer dismisses such employee, it shall pay, in addition to severance compensation, the wages for all the time remaining to the expiry date of the license or to the release date, as appropriate.[144]

Another assumption is the dismissal for reasons of *force majeure* or lack or reduction of work. (See **§ 13**.). However, this option is currently forbidden until the end of April, 2021.[145]

Regarding the special protection for union representatives, in 2010, the Supreme Court of Justice[146] established that if a union representative is dismissed, the employer may reinstate him/her. The Court also declared that if an employee can prove that he/she was discriminated against for any reason, the employee can request his/her reinstatement because a discriminatory act is void, therefore, it produces no effect and things should return to the previous state.

§ 12.3 What notice requirements are there for dismissal and may the employer provide pay in lieu of notice?

In Argentina, there is no automatic extinction of the labor relationship. It is essential to notify the employee of his/her dismissal. Such communication must be made through reliable means of communication to document exactly the date and circumstances of the dismissal. Means of notification are: (1) legal

[144] National Employment Law (No. 20,744), Section 213.
[145] Decree No. 39/2020.
[146] National Supreme Court of Justice, "*Álvarez, Maximiliano y otros v. Cencosud s/ acción de amparo*."

notification; (2) notary deed; or (3) personal written communication that has to be signed by the terminated employee as evidence of notification.

Verbal communication may be used but it is highly recommended to back it up by ratification in writing by any of the means mentioned.

In practice, notary deed communications are used in the case of employees in high positions or in certain conflictive cases in order to provide a more personal treatment to the termination process.

Prior notice periods have been established by law as follows:[147]

- 15 days' notice when the employee is in trial period.
- One month's notice when the employee has less than five years at work.
- Two months' notice when the employee has seniority that exceeds five years.

If the employer prefers not to give the prior notice, it must pay an amount equal to the period of time of prior notice that would correspond.[148]

§ 12.4 How is termination pay calculated, including any commissions, and when must it be paid?

In cases of employee resignation, unjustified absence by the employee or dismissal with justified cause by the employer, the employer must pay the employee the following:

1. wages for days worked that month;
2. the proportional semi-annual bonus ("*sueldo anual complementario*" or SAC);
3. proportional vacations; and
4. proportional SAC calculated upon vacations.

In the event of dismissal without cause by the employer or constructive dismissal by the employer, in addition to the items mentioned above, the employer must pay the employee:

1. seniority compensation;
2. wages for remaining days of termination month;
3. compensation in lieu of prior notice in case the employer fails to give prior notice; and
4. SAC on prior notice.[149]

If commissions are part of the employee's salary, they will be included in the calculation base. Also, a regular bonus may be included in the calculation base for purposes of termination payment. See **§ 5.5**.

[147] National Employment Law (No. 20,744), Section 231.
[148] National Employment Law (No. 20,744), Section 232.
[149] National Employment Law (No. 20,744), Sections 232, 233, and 245.

§ 12.5 Are there rights to severance pay and how is severance calculated?

Severance compensation is due in cases of dismissals without cause and includes:

- **Seniority Compensation:**[150] This compensation is equivalent to a monthly salary times years of service or fraction over three months. Such basis has a maximum cap amount provided by the applicable CBA (three times the average of all wages provided by such CBA) and a minimum equal to one employee's gross monthly salary.

  The application of any cap amount to the seniority compensation could be challenged by the employee on grounds of disparity between such cap and the real salary. The Supreme Court established that said cap must not be less than 67% of the best monthly regular salary of the terminated employee to be constitutional.

- **Severance in lieu of notice:**[151] The NEL provides that the employer must give a prior written notice to the employee in the event of a wrongful termination of employment. Such notice must be given by the employer with 15 days if the employment contract is under the trial period; and with one or two months' notice depending on the employee's seniority (less or higher than five years). If the employer does not give such prior notice, it must pay an indemnification in lieu of notice equivalent to the term of prior notice that applies to the particular case.

  At least 15 days' prior notice is to be given by the employee regardless of his/her seniority.

- **Remaining days of the termination month:**[152] If the dismissal does not take place on the last day of the month, the employer must pay a compensation equivalent to those pending days to complete the entire month.

- **Severance for proportional vacations:**[153] Disregarding the cause of termination, the employee is entitled to compensation equivalent to the vacation pay in proportion to the days effectively worked.

- **Semi-annual bonus:**[154] The employer must pay an annual bonus ("*aguinaldo*") in two installments (June 30 and December 18) equivalent to 50% of the best monthly salary earned in the prior six-month term; and, whatever the cause of termination of employment, the employee is entitled to the proportional amount of the semi-annual bonus.

- **Statutory annual bonus over severance in lieu of notice:** Court decisions have ruled that the employee is also entitled to 1/12th of the amount provided for severance in lieu of notice.

- **Wages due/other benefits:** The employer must pay any pending salary and any other benefits, incentives, compensation due an employee.

[150] National Employment Law (No. 20,744), Section 245.
[151] National Employment Law (No. 20,744), Section 232.
[152] National Employment Law (No. 20,744), Section 233.
[153] National Employment Law (No. 20,744), Section 156.
[154] Law No. 23,041.

The seniority compensation is reduced by 50% if reduction of business activity or lack of work objectively justifies the dismissal. The compensation is also limited to 50% if the seniority payment is made as a result of the employee's death.

Due to socio-economic challenges, in December 2019, the government issued the emergency decree No. 34/2019 (known as "*Decreto de Necesidad y Urgencia*," or DNU), declaring the employment situation a public emergency, for the term of 180 days, effective December 13, 2019. Afterwards, on June 10, 2020 this term was extended for another 180 days until December 6, 2020 inclusive)[155], and currently, it was extended again up to December 31, 2021[156].

The DNUs changed the calculation of the severance payment as follows:

1. An employee who is dismissed without cause on or after December 13, 2019 until December 31, 2021 is entitled to the double amount of severance compensation, regardless of the type of employment contract.

2. As the decree is not retroactive, the double severance pay does not apply to dismissals without cause that occurred prior to December 13, 2019, nor to Public Sector employees.

3. The double severance pay applies when calculating seniority compensation; compensation in lieu of prior notice; and the remaining days of the termination month. Whether the doubling of the compensation should be applied to remaining vacation days is subject to a case-by-case analysis.

4. The provisions of the Decree also could be apply when the employee considers himself/herself constructively dismissed, due to the fact that, in the past, the labor judges understood that the double severance compensation established within the framework of an economic emergency situation, should also apply to that kind of termination of the employment relationship.

5. As a novelty, the Decree No. 39/2021 established that the amount corresponding to the duplication may not exceed, in any case, the amount of five hundred thousand pesos -AR$ 500.000- (equivalent to USD 5,435).

In the past, when the double severance pay has been made available, labor judges have ruled that the doubling also applies to constructive dismissals, as well as to penalties and fines.

§ 12.6 How can former employees bring claims on behalf of other workers (*i.e.*, a collective or class action)?

In Argentina, there are no mechanisms for a former employee to bring claims on behalf of other employees. However, a former employee who is also a union representative could bring claims of employees in the performance of his/her function.

§ 12.7 May employers compel employees to arbitrate claims of wrongful dismissal?

No, it is not possible for an employer to compel an employee to arbitrate claims of wrongful dismissal.

[155] Decree No. 528/2020.
[156] Decree No. 39/2021.

§ 12.8 Can an employer obtain a release of claims from a former employee?

An employer and an employee may ratify a termination by executing a termination agreement before the MTEySS in which the employee declares that he/she has no further claims against his ex-employer and requests the approval of the MTEySS. Once the agreement is approved, it has the effect of *res judicata*, which means that the parties have a 99% legal certainty that the agreement is valid, and any employee's claim based on the labor relationship that was terminated will be dismissed.

§ 12.9 What procedures and terms are required to have an enforceable separation agreement with a former employee?

Separation agreements are not mandatory. However, such agreements may be executed before a public notary or before the labor authority (MTEySS or a Labor Court).

In the case that the termination settlement is executed before a Labor Court or before the MTEySS, the employee must also be represented by the corresponding union representative or by an attorney. In practice, the most common way of executing a termination agreement is before the MTEySS due to the time efficiency. (See **§ 12.8**.)

§ 13 COLLECTIVE DISMISSALS (LAYOFFS) & BUSINESS CESSATION & SALE OF A BUSINESS

§ 13.1 What rules apply to collective dismissals?

As previously mentioned, terminations without cause (regular terminations), terminations based on lack or reduction of work, and suspensions due to *force majeure* or for lack or reduction of work are forbidden until the end of April, 2021.

In this sense, the only option available by the Decree are the suspensions of personnel for economic causes under Section 223 bis of the NEL. These are temporary suspensions for economic causes negotiated with the employee. In turn, the employee will receive an amount agreed among the parties. Such amount will be of noncompensatory nature (the only contribution that needs to be made is the one corresponding to medical insurance). Special procedures need to be followed in case the employer wants to impose these suspensions.

Notwithstanding the measures taken within the framework of COVID-19 pandemic, in general, if collective dismissals pursue payment of reduced severance compensation, the NEL authorizes the employer to carry out collective dismissals in cases of *force majeure*, lack of work or reduction of work not attributable to the employer provided it is duly justified.

In such cases, dismissal must begin with the least senior staff within each specialty.

Regarding the staff hired in the same time period, dismissals must begin with whoever has fewer family responsibilities, although the order of seniority is altered.

The dismissed employee is entitled to receive a compensation of one-half of the seniority compensation. However, if the company is willing to pay complete severance to terminated employees, the above-mentioned procedure is not applicable.

In case of massive dismissals see below *Preventive Crisis Procedure*.

§ 13.2 Are there special rules that apply when an employer ceases operations?

A special process applies if an employer that is ceasing operations pursues reduction of severance compensation.

Under local labor law, there is a special procedure *Preventive Crisis Procedure* ("*Procedimiento Preventivo de Crisis*" or PPC)[157] that addresses the cases where the employer needs to suspend or terminate all or the majority of its employees due to *force majeure* or lack of work. Such procedure seeks the payment of a reduced severance—50% of the severance for seniority—and takes place before the MTEySS and with the participation of the unions involved.

To file for the PCP, the company must evidence that the lack of work is not based on its negligence and that it has done everything to avoid terminations.

The PPC must be followed if:

- More than 15% of the workforce is to be terminated in a company with up to 400 employees;
- 10% of the workforce is to be terminated in a company with between 400 and 1,000 employees; and
- 5% of the workforce is to be terminated in a company with more than 1,000 employees.

The MTEySS and the union representing the employees must be notified and take part in the proceedings. During the procedure, both parties are unable to pursue any actions, such as strikes, suspensions, or dismissals.

Once the relevant labor authority has been notified of the PPC, it calls for negotiations between the union and the employer to discuss the collective dismissals and draft a social plan. The employer will have to file before the labor authority evidence of its financial situation and will also have to explain that the dismissals that the company intends to make are reasonable, justified, and proportional to its financial situation, in order to save the company.

§ 13.3 Are certain employees protected from collective dismissal?

Yes, employees on maternity leave are not included in the order of seniority for the dismissals. As a consequence, they may be equally dismissed, but they will be the last employees to be dismissed.

The union representatives have no special protection. It implies that they lose their union stability and may also be dismissed.

§ 13.4 How long does the collective dismissal process usually take?

If the PCP is filed, the process usually takes between one and two months.

[157] Law No. 24,013, Sections 98 to 105.

§ 14 EMPLOYMENT & SALE OF A BUSINESS

§ 14.1 In the sale of a business's *stocks* (shares), what (if anything) does corporate law or labor/employment law require of the seller as to pre-deal-closing notification to, or consultation with, the seller's employees, employee representatives, or government labor agencies?

Under the NEL, there are two possible situations[158]:

- A transfer of the establishment or undertaking:

  A transfer of the establishment or undertaking (or part) takes place when essentially the same undertaking (or part) is transferred by way of asset transfer to another employer. This involves an assessment of what happens to the main assets of the business or part. These might include some or all of assets such as premises, machinery and equipment, customer goodwill, intellectual promises, existing contracts and employees assigned to the undertaking or part. Where the undertaking (or part) is essentially a labour intensive based activity, then the employees will be regarded as the key asset. The change of ownership of the assets is not so much the key as the change in the legal entity who is running the undertaking (or part) using those assets However a transfer of an ancillary function (e.g. facilities management, IT support and maintenance etc) do not count as a transfer of undertaking (or part).

- An assignment of employees:

  An assignment of employees takes place when the whole or part of the personnel is transferred to another employer or company. Where only part of the workforce transfers, the assignment will only be treated as having occurred when a material proportion of the relevant employees have transferred. There is no specific statutory threshold test for what constitutes a material proportion – it is assessed on a case by case basis. However, as a very general rule of thumb, if 20% of the workforce transferred, this would likely be regarded as sufficient proportion to constitute an assignment of employees.

  It must be remembered that even the assignment of one employee to another employer will need the employee's consent.

In this case, we consider that the assumption mentioned may be a transfer of the establishment or undertaking.

In case of cross border transfers same rules apply. However, in case of a conflict, the labour regulations of the country where the employee has been employed for the longer period of time will apply.

[158] Title XI of the National Employment Law No. 20,744.

§ 14.2 Regarding seller's employees, what (if any) mandates does the law impose on a seller contemplating a stock (shares) sale of its business?

In the event of a transfer there must be a change in the identity of the employer, and of the debts and credits related to the business. In this case all obligations arising from employment contracts are transferred to the acquiring employer (transferee employer), transferring even those obligations created by reason of the transfer itself. The employment contracts continue with the transferee employer and the employee maintains the acquired seniority (period of service) and all the rights arising from it.

However, an employee may decide to terminate the employment contract if, by reason of the transfer, he/she suffers damage that justifies the termination. These are cases where, by reason of the transfer, the essential employment contract conditions are modified and / or acquired seniority (period of service) is not acknowledged. In this sense, one of employers' rights is to redesign or reassign job responsibilities. Such right is known as the employer's right to modify labour conditions (ius variandi)[159]. Modifications of the terms of the employment agreement are allowed by law provided they do not amount to a modification to essential working conditions and do not cause any moral or material damage to the employee. Employers have the right to modify working conditions unilaterally provided that certain limits are respected: i) it does not involve a modification related to essential working conditions, such as compensation, place of work, working schedule or tasks; ii) It must be reasonable; and iii) it does not have to cause any material or moral damage to the employee.

However, if the employee agrees to such changes, then these agreed changes are enforceable. There is nothing in the law which prevents the parties from agreeing changes in working conditions which are connected to the transfer of undertaking or assignment. However, it is good practice to have an agreement of modification of working conditions ratified before the MTEySS in order to avoid exposure to prospective claims.

For the other hand, in the case of an assignment of employees, without transfer of undertaking, the express written agreement of the employees is required and the same rules that govern the transfer of undertaking also apply to assignments. For this report, the assignor and assignee employer are referred to as the transferor employer and transferee employer respectively.

For both transfers of undertakings and assignments (without a transfer of undertaking) and both the transferor and transferee employers are jointly and severally liable regarding the obligations arising from the employment contracts existing at the time of transfer or assignment.

§ 14.3 In a sale of a business's *assets*, do the seller's employees transfer to the buyer by operation of law?

In a transfer of undertaking, as described above, employees' sellers are transferred to the buyer by operation of Law.

Please see answer No. 14.1.

[159] Section No. 66 of the NEL

§ 14.4 Where a seller of business *assets* does not intend to employ its staff after closing the asset sale, does the law allow the parties to the asset sale to structure an "employer substitution" or mandatory transfer—so as to avoid triggering severance pay obligations for the asset seller?

No, if the seller of business *assets* does not intend to employ its staff after closing the asset sale, the seller must dismiss the employees without cause and pay the corresponding accrued salaries and severance compensation –which is currently double until December 31, 2021[160]-. However, dismissals without cause is currently forbidden until the end of April, 2021.[161]

§ 14.5 How do parties best structure those employer substitutions/transfers? Can they be structured without employee consent?

In case of a transfer of the establishment or undertaking the employee's consent is not required. However, in the case of assignment of employees, the consent is required.

[160] Decree No. 39/2020.
[161] Decree No. 39/2020.