Argentina

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Legislation and agencies

1 What are the main statutes and regulations relating to employment?

Constitutional provisions
The National Constitution (NC) grants the right to work and protects work in all its forms and guarantees to employees the following rights:
- decent and equitable labour conditions,
- limited workday,
- fair compensation,
- minimum wage,
- 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 organisation.

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 NC guarantees freedom of association and the rights to:
- enter into collective bargaining agreements (CBAs);
- initiate conciliation or arbitration procedures;
- go on strike; and
- the stability of any union representative's job position (NC, section 14-bis).

In addition, the NC establishes the prohibition to discriminate, and employees' right to privacy and freedom of expression (NC, sections 14, 16 and 19).

International treaties
Argentina is part of several international treaties that apply on employment matters; some of them have constitutional status, such as the:
- Universal Declaration of Human Rights;
- Inter-American Convention of Human Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Rights of the Child;
- 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).

The above-mentioned treaties have constitutional status and thus prevail over national laws.

Argentina has also ratified the main conventions of the International Labour Organization (ILO) such as the:
- Forced Labour Convention (C29);
- Freedom of Association and Protection of the Rights to Organize Convention (C87);
- Protection of Wages Convention (C95);
- Right to Organize and Negotiate Collective Bargaining Convention (C98);
- Equal Compensation Convention (C100);
- Abolition of Forced Labour Convention (C105);
- Discrimination (Employment and Occupation) Convention (C111);
- Minimum Age Convention (C138);
- Collective Bargaining Agreement (c154); and
- Worst Forms of Child Labour Convention (C182).

Main statutes and regulations
Labour relationships are mainly ruled by the National Employment Law No. 20,744 (NEL) and its amendments. It covers the majority of labour relationships in their different modalities and the consequences thereof, such as:
- employers' and employees' rights and obligations;
- the main mandatory principles that govern labour relationships;
- compensation;
- annual vacation and special leave of absence provisions;
- holidays and non-working days;
- daily and weekly working and resting hours;
- special provisions for women and child workers;
- illness;
- assignment of the employment contract;
- its termination; and

- employees' privileges.

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 labour public order provisions, which may not be waived by agreement of the parties, and govern the individual's employment relationship. It also sets out the principles that will apply in case of a conflict.

- Law No. 24,013 regulates, inter alia:
  - temporary personnel service companies;
  - the protection of unemployed workers; and
  - applicable fines and penalties for non-registration and incorrect registration of labour relationships.

- Law No. 25,877 amended the NEL, including changes on:
  - trial period applicable to indefinite employment contracts;
  - prior notice;
  - calculation of severance payments due to dismissal with no cause; and
  - 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, less restrictive 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:
  - the requirements to be met in order to apply for retirement;
  - rules governing pension funds; and
  - employers' and employees' obligations regarding social security issues.
- Labour Risks Law No. 24,557, 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 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 labour 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 trade union representatives.
- Collective Bargaining Agreement Law No. 14,250.
- Health and Safety Law No. 19,587.

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2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The NC establishes the principle of equality before the law (NC, section 16) which extends to salaries when stating 'equal compensation for equal tasks' (NC, section 14-bis).

Under the Anti-Discrimination Law No. 23,592 (section 1) and the NEL (section 17), 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.

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3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Production and Labour and Social Security (MPL) is the national authority in charge of establishing and executing public policies regarding employment and accomplishment of labour laws and, together with the National Tax Authority, monitoring social security matters.

Worker representation

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4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The constitutional right of freedom of association allows the existence of employees' representatives in the workplace. The specific legislation of employees' representatives is the Trade Unions Law No. 23,551, which states the rights and duties of union representatives.

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5 What are their powers?

The main tasks of the union representative in the workplace are:
- representing employees before the employer and the trade union;
- monitoring the application of the legal or conventional rules and participation in the inspections performed by the different labour administrative authorities;
- meeting with employers;
- submitting any claims of employees on whose behalf they act before the employers or their representatives;
- publicising union communications; and
- giving advice and information to union representatives or leaders.

Background information on applicants

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6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Employees' personal information is protected by the Habeas Data Law No. 23,326. 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;
- it is reasonably used; and
- it does not include criminal records.

Criminal records can only be required by a judge or, personally, by the prospective employee. The information cannot be required by employers or prospective employers.

Background checks may be conducted by the employer or a third party, and must comply with data protection obligations.

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Pre-employment medical examinations are mandatory. Employers must carry out these exams to determine whether the applicant has the ability to carry out the activities related to his job position and to accurately determine pre-existing disabilities at the time of hiring the employee. To avoid discrimination issues, certain tests are excluded, such as HIV and Chagas disease. Additionally, in the public sector, pregnancy tests are not allowed.

It is common practice for pre-employment examinations to be made by the employer's labour risks insurer. The employer may refuse to hire an applicant that does not submit to a pre-employment examination.

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

- periodic examinations;
- examinations prior to a transfer of activity; and
- examinations prior to the termination of the employment relationship.

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Based on the constitutional right to privacy and the constitutional anti-discrimination principle and laws, conducting drug and alcohol tests may be considered a violation of the employees' privacy, unless express consent is obtained. Also, non-hiring or termination based on the results of a drug and alcohol test may be considered discriminatory and, therefore, the candidate or employee may file a claim against the employer.

Hiring of employees

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

As stated above, 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 NC establishes the principle of equality before the law, which extends to salaries when stating 'equal compensation for equal tasks'.

In addition, provisions against discriminations may be found in:

- international treaties with constitutional status, such as the CEDAW and ICERD;
- ILO conventions, such as the Equal Compensation Convention (C100) and the Discrimination (Employment and Occupation) Convention (C111);
- NEL sections 17, 73, 81, 172 and 187;
- Anti-Discrimination Law No. 23,592; and
- Trade Unions Law No. 23,551 sections 7 and 53, subsection j.

Arbitrary discrimination, 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. As an integration tool, the MPL and the Ministry of Labour of the City of Buenos Aires developed special programmes, fiscal benefits and free advice for potential employers interested in hiring disabled employees to its staff.

In addition, 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 per cent of employees with disability and 1 per cent trans-persons over the total of their personnel (Law No. 22,341 section 8, amended by Law No. 25,689).

10 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

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 (NEL section 48). Because of 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 an indefinite term, they must be in writing and comply with certain formal requirements, depending on the kind of employment agreement (for example, in the case of fixed-term workers, the employment contract must be in writing).

Notwithstanding the above, in regard to indefinite-term labour relationships, it is advisable to enter into written employment agreements in order to minimise the possible risks of misinterpretation.

11 To what extent are fixed-term employment contracts permissible?

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; and
- employers must justify, in writing, the objective cause for this type of agreement.

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

12 What is the maximum probationary period permitted by law?

A probationary period of three months applies to all employment agreements for an indefinite period of time (NEL, section 92-bis). The probationary period is not applicable to fixed-term or temporary employment agreements. In addition, the probationary period may not be extended at the discretion of the employer, since this is to the detriment of the worker and would thus be considered as a violation of public order provisions. However, the probationary period may be waived by the parties in writing.

13 What are the primary factors that distinguish an independent contractor from an employee?

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

There is no specific definition for an independent contractor. However, this type of relationship is characterised by the lack of any kind of subordination to the company, this being the main characteristic to distinguish them.

There is a legal presumption that the rendering of services implies the existence of a labour relationship, and the employer has to prove otherwise.

14 Is there any legislation governing temporary staffing through recruitment agencies?

The legislation that regulates temporary staffing through recruitment agencies is the NEL, sections 29, 29-bis and 99 and Decree No. 1,694/2006.

Foreign workers

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

No, there are no numerical limitations on short-term visas. The period for which such a short-term visa is granted and renewed depends on the type of visa requested.

The key types of Argentine work permissions when transferring an employee from one corporate entity in one jurisdiction to a related entity in another jurisdiction are as follows:

- a transitory permit as a seasonal migrant worker, for those entering the country in order to provide seasonal services for up to six months; and
- a temporary residence permit as a migrant worker, for those entering Argentina to carry out a paid permitted activity in an employment relationship for no longer than three extendable years on a multiple-entry basis.

The applicable procedure and required documentation depends on the applicant's nationality, ie, whether the applicant is a national of a member country of Mercosur (Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela - currently suspended-, Guayana and Surinam) or not.

Non-Mercosur applicants must be sponsored by a local employer which must be registered with the Foreign Petitioners National Registration Office (RENURE). Mercosur applicants may apply for permission to work independently and do not require a local employer to act as sponsor.

16 Are spouses of authorised workers entitled to work?

No, spouses must process their own permission to work.

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

If an employer based outside the country wants to transfer a foreign employee to work in Argentina, it must first establish an Argentine branch or subsidiary. In addition, if the employee to be transferred is from a non-Mercosur country, the Argentine branch or subsidiary must be registered with the RENURE.

An employer who hires foreign workers without migratory permission to work in Argentina may be sanctioned with a fine equal to 50 minimum wages for each foreigner employed. Currently the minimum wage is equal to 12,500 Argentine pesos.

18 Is a labour market test required as a precursor to a short- or long-term visa?

In order to hire a foreign worker it is not necessary to conduct a labour market test to demonstrate that there are no local workers willing and qualified to undertake the position.

Terms of employment

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

According to the working day regulation (Law No. 11,544, section 1), the normal working hours for employees are limited to eight hours per day or 48 hours per week. 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 a day and employees do not work after 1pm on Saturday, and the employer cannot opt out of such limitations.

20 What categories of workers are entitled to overtime pay and how is it calculated?

All workers, except directors and managers, are entitled to overtime pay. The salary for these supplementary hours will be calculated as follows:

- on normal working days (ie, Monday to Saturday up to 1pm), workers are entitled to their regular salary and an additional 50 per cent on top of their regular salary; and
- on Sundays, public holidays or after 1pm on Saturdays, workers are entitled to their regular salary and an additional 100 per cent on top of their regular salary.

It is forbidden for employees to work between 1pm on Saturday and midnight on Sunday. But if for some reason the employer provides exceptional work 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 or her regular salary for the exceptional work. If not, the employee is entitled to receive the corresponding additional payment on top of his or her regular salary.

21 Can employees contractually waive the right to overtime pay?

Employees cannot waive their right to overtime pay since the provisions of this law are considered of public order.

22 Is there any legislation establishing the right to annual vacation and holidays?

Employees are entitled to an annual vacation period when they have been employed with their employer for over six months. If 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 (NEL, sections 151 and 153).

Vacations are compulsory and the employer must grant them between 1 October and 30 April. The duration varies according to the employee's seniority:

- less than five years of service: 14 consecutive days;
- more than five and less than 10 years of service: 21 consecutive days;
- more than 10 and less than 20 years of service: 28 consecutive days; and
- more than 20 years of service: 35 consecutive days.

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

23 Is there any legislation establishing the right to sick leave or sick pay?

According to the NEL, section 208, if the employee has an accident or suffers an illness, he must be paid a compensation that cannot be less than the one that he would have been paid if he or she continued working, if the accident or illness:

- is not related to the job and is not a consequence of an employee's intentional act;
- prevents the employee from rendering services; and
- 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:

- less than five years of service and no family allowances: three months of paid leave; and
- five years of service 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 job, the employee has the right to keep his work position for 12 months, but the employer does not have to pay the employee's salary during this period.

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24 In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

According to the NEL, section 158, the employee can take a paid leave of absence in the flowing circumstances:

- for the birth of the employee's child: two consecutive days;
- for the employee's marriage: 10 consecutive days;
- for the death of the employee's spouse, common-law husband or wife, child or parent: three consecutive days;
- for the death of a brother or sister: one day; and
- for secondary or university exams: two consecutive days for each, with a maximum of 10 days per calendar year.

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

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25 What employee benefits are prescribed by law?

Employers and employees must contribute to the Social Security Administration for:

- mandatory retirement and pension;
- healthcare insurance:
- family allowances system;
- health and medical services for retired people;
- labour risk insurance; and
- unemployment fund.

In addition, employees must be paid for vacations, as well as a supplementary annual salary in two periods during the year. The employer must pay an annual bonus in two instalments (30 June and 18 December) equivalent to 50 per cent of the best monthly salary earned in the prior six-month term.

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26 Are there any special rules relating to part-time or fixed-term employees?

The special rules relating to fixed-term employees are the following:

- An essential condition is that the parties must execute a written contract in which the fixed term is agreed.
- An extraordinary cause is also required by law in order to duly justify a fixed-term contract (NEL, section 90).
- Making continuous use of such fixed-term contracts or in violation of legal requirements will automatically convert the contract into an employment contract for an indefinite period of time.
- There is a maximum five-year term (NEL, section 93).
- Advanced prior notice of termination is required. An omission in giving such prior notice cannot be replaced by any compensation and will convert the contract into one for an indefinite period of time. Prior 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 (NEL, section 94).
- 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 calculated as explained in question 39 on seniority compensation), plus a special compensation for damages, which is usually determined by calculating the wages due up to the agreed date of termination (NEL, section 95).
- At the end of the fixed term, the 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 per cent of regular severance compensation (NEL, sections 95 and 250).
- The trial period does not apply to fixed-term employment contracts.

Part- time employees are ruled, mainly, by the following regulations:

- Under a part-time job scheme, the employee commits to render services for a certain number of hours during the day, week or month, provided that such number of hours is less than one-third of the customary working hours within the corresponding activity.
- Compensation cannot be lower than the pro rata compensation for an employee performing services on a full-time basis.
- There is no cap on the number of part-time employees an employer may hire.
- Although it is not mandatory to execute a contract in writing, it is advisable to do so for any part-time employment.

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27 Must employers publish information on pay or other details about employees or the general workforce?

There are no specific rules that require employers to collect or disclose employee pay information publicly (to other employees, to the government or to third parties such as unions).

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

Post-employment restrictive covenants

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-employment non-competition or non-solicitation agreements are not regulated by law. However, labour courts have admitted these agreements under certain circumstances. Therefore, to be enforceable, post-employment agreements have 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 two years.
- The employee's compliance with these covenants should not affect or limit the employee's constitutional right to work (NC, section 14).
- In the event the post-employment compliance of these covenants affects the employee's right to work, a payment of an amount approximate to 70–100 per cent (depending on negotiation and the extent 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, they are not regulated. However, for them to be valid, there must be a balance between these covenants, trade secret protection and the employee's constitutionally granted right to work. Otherwise, they will be null and void and thus not enforceable in Argentina.

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

As stated above, in the event that a restrictive agreement affects the employee's right to work, a payment of an amount similar to approximately 70–100 per cent (depending on negotiation and the extent 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.

Liability for acts of employees

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

The employer may be held liable for the acts or conduct of its employees when damage is caused during the rendering of his or her services (National Civil and Commercial Code, section 1,753).

For example, in cases of mobbing or moral harassment, companies may be held liable if, knowing the existence of the hostile working place, no measures were taken to prevent such a situation (a breach of the employer's safety duty).

Taxation of employees

31 What employment-related taxes are prescribed by law?

The applicable employees' and employers' related withholdings and contributions and payments are as follows.

- Employee's withholdings (total over monthly gross compensation 17 per cent):
  - retirement (11 per cent);
  - health and medical services for retired people (3 per cent); and
  - health and medical services (3 per cent).

  Employees' withholdings are capped at 117.682,47 Argentine pesos.

- Employer's contributions (total over monthly gross compensation 27 or 23 per cent, depending on the type of enterprise):
  - retirement (12.71 or 10.17 per cent);
  - health and medical services for retired people (1.62 or 1.50 per cent);
  - family allowances (5.56 or 4.44 per cent);
  - unemployment fund (1.11 or 0.89 per cent); and
  - health and medical services (6 per cent).

  There is no cap for employer's contributions.

The employer acts as a deduction agent and must withhold the employee's contribution from wages. In addition to the social security contributions, income tax must also be withheld from the employee's wages.

Employee-created IP

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

The Patent Law No. 24,481, section 10 and the NEL, section 82, are the regulations that govern the parties' rights with respect to employee inventions.

33 Is there any legislation protecting trade secrets and other confidential business information?

In Argentina, NEL, sections 85 and 88 state the employee's duty of loyalty and fidelity. Employees must restrain from interfering or competing with the employer's business during the relationship. In addition, Law No. 24,766 on Confidential Information addresses the duty of confidentiality and protection of trade secrets.

Data protection

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

An employee's right to privacy and personnel data is protected by the NC, section 43, and the Habeas Data Law No. 25,326.

Business transfers

35 Is there any legislation to protect employees in the event of a business transfer?

There are two possible situations in Argentina stipulated by the NEL: a transfer of undertaking (section 225) or an assignment of employees (section 229).

In a transfer of undertaking, all obligations arising from employment contracts are transferred to the takeover party, transferring even those obligations originated by reason of the transfer. The employment contract continues with the new employer, and the employee maintains the acquired seniority, his or her labour conditions and all the rights arising from it.

However, the employee may consider him or herself constructively dismissed by fault of the employer if, by reason of the transfer, he or she suffers damage serious enough that will imply the impossibility of continuing the labour relationship. These are cases where, by reason of the transfer, the essential employment contract conditions are modified or seniority is not acknowledged.

In an assignment of employees without a transfer of undertaking, the express written agreement of the employee is required, and the same rules that govern the transfer of undertaking apply.

The transferring entity and the takeover party are jointly and severally liable regarding the obligations arising from the employment contracts existing at the time of transaction.

Termination of employment

36 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

The employer may dismiss an employee without cause, paying the compensation established by the NEL, section 245, and other mandatory concepts 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 (NEL, section 242). Dismissal with cause must be the last recourse after having implemented other disciplinary measures, or the offence should be serious enough that it would make the continuity of the relationship impossible.

Legislation imposes certain requirements for dismissal with cause:

- notification of dismissal must be in writing;
- the cause and reasons alleged as the grounds for termination must be clear, accurate and detailed; and
- the alleged cause cannot be changed in successive legal notifications or during the judicial process.

In the case that the cause is challenged before the Court of Law and the requirements were not met, there is a high chance that the judge will rule that an employer has failed to comply with the 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:

- the facts giving rise to the dispute to determine whether there was cause for dismissal; and
- if formal requirements of notification were accomplished.

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

37 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

In Argentina, there is no automatic extinction of the labour relationship. It is essential to notify the employee of his dismissal. Such communication must be made through reliable means of communication to document the exact date and circumstances of the dismissal. Means of notification are:

- legal notification;
- notary deed; or
- 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 certain conflictive cases and in the case of employees in high positions so as to provide a more personal treatment to the termination process.

Prior notice periods have been established by law (NEL, section 231) as follows:

- 15 days' notice when the employee is in a trial period;
- one month's notice when the employee has less than five years at work; and
- 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 (NEL, section 232).

38 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

In all cases that the employer is going to dismiss an employee, he must give proper notice or payment in lieu of notice, unless the exception established for fixed-term employees applies (see question 26).

39 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The NEL recognises the right to severance compensation due in cases of dismissals without cause, which includes:

- Seniority compensation: this compensation is equivalent to a monthly salary multiplied by years of service or a 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 (NEL, section 245). 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 per cent of the best monthly regular salary of the dismissed employee to be constitutional.
- Severance in lieu of notice: the NEL provides that the employer must give prior written notice to the employee in the event of a wrongful termination of employment. Such notice must be given by the employer within 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 more than five years). If the employer does not give such prior notice, it must pay compensation in lieu of notice equivalent to the term of prior notice that applies to the particular case (NEL, section 232).
- Remaining days of the termination month: 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 (NEL, section 233).

- Severance for proportional vacations: disregarding the cause of termination, the employee is entitled to compensation equivalent to the vacation pay in proportion to the days effectively worked (NEL, section 156).
- Semi-annual bonus: the employer must pay an annual bonus (*aguinaldo*) in two instalments (30 June and 18 December) equivalent to 50 per cent 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 (Law No. 23,041.).
- Statutory annual bonus over severance in lieu of notice: court decisions have ruled that the employee is also entitled to one-twelfth 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 and compensation due to an employee.

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

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40 Are there any procedural requirements for dismissing an employee?

As stated above, the requirement for a dismissal is proper notice or payment in lieu of notice.

According to the provisions of the Decree No. 1043/2018 published in the Official Gazette on November 13, 2018, employers must inform terminations without cause to the MPL, with an anticipation not less than 10 business days.

This procedure is applied to employment relationships for indefinite period of time (being excluded fixed-term employees) and will be enforced until March 31, 2019.

Prior to notifying the employee his or her termination without cause, the employer must file a note before the MLP informing about the termination, with an anticipation not less than 10 business days. The note must include the following information concerning the employee: i) complete name, ii) Labor Identification Code number, iii) address, iv) telephone number.

In addition, the note must include i) the employer's name, ii) the employer's Tax Identification number, vii) employer´s address, viii) telephone number and e-mail address.

The non-compliance with the procedure established by the Decree will be considered a "serious offense", and will be penalized with a fine that may range from 30% to 200%) of the minimum salary for each employee affected.

The MLP may appoint a hearing to analyze and determine, within that period, the conditions in which the future termination will be carried out and is also entitled to issue explanatory resolutions of the Decree.

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41 In what circumstances are employees protected from dismissal?

There are some employees that have special protection against dismissal:
- pregnant women within seven-and-a-half months before or after the expected date of birth; and
- 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 discriminatory dismissals, the law compels the employer to pay, along with the severance compensation, a full year of compensation.

Union representatives also have special protection by law. They may not be dismissed if there is no prior judicial resolution that removes such protection. If the employer violates this special protection, the union representative may claim the reinstatement in his or her position or the payment of the pending salaries until the expiration of this period, plus severance due on account of the dismissal without cause and an additional severance equivalent to one year's salary.

Moreover, if an employer dismisses an employee on paid sick leave, it shall pay, in addition to severance compensation, the wages for all the time remaining to the expiry date of the licence or to the release date, as appropriate (NEL, section 213).

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42 Are there special rules for mass terminations or collective dismissals?

If collective dismissals pursue payment of reduced severance compensation, the NEL authorises 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 (NEL, section 247). In such cases, dismissals 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 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.

Depending of the percentage of affected workers, a special procedure (Crisis Prevention Procedure (PPC)) must be followed before the dismissals can be notified to employees. The PPC must be followed if:
- more than 15 per cent of the workforce is to be terminated in a company with up to 400 employees;
- 10 per cent of the workforce is to be terminated in a company with between 400 and 1,000 employees; and
- 5 per cent of the workforce is to be terminated in a company with more than 1,000 employees.

The MPL 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 labour 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 labour authority evidence of its financial situation and will also have to explain that the dismissals the company intends to make are reasonable, justified and proportional to its financial situation, in order to save the company.

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43 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

The NC allows class actions in section 43. However, in labour law cases collective actions need to be filed by union representatives.

44 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

In order to retire, employees must comply with the following requirements:

- reach the legally determined age of 65 for men and 60 for women (women have the option to continue working until age 65); and
- 30 years of contributions to the social security system.

However, the recent amendment introduced by Law No. 27,426 modifies the moment from which the employer can request the employee to initiate the procedure of retirement. Before Law No. 27,426 entered into force, the employer could formally demand the employee to initiate the corresponding procedure provided that the employee complied with the requirements stated above. With this recent amendment, although both men and women are entitled to retire at 65 or 60 years old respectively, the employer is unable to request the employee to initiate the retirement proceedings until he or she is 70 years old and employees have 30 years of contributions to the social security system. Thus, the employee may continue working until he or she is 70 years old. Only then will the employer be entitled to notify the employee that he or she must initiate the retirement proceedings and deliver the corresponding working certificates. Once the employee is notified of such circumstances, the employer must maintain the labour relationship until the employee obtains the pension benefit and for the maximum term of one year. Once the pension benefit has been granted or the one-year term has expired, the employment contract will be terminated without any obligation for the employer to pay seniority severance compensation.

Dispute resolution

45 May the parties agree to private arbitration of employment disputes?

Local procedural rules applicable to the resolution of labour claims vary from province to province. For example, in the city of Buenos Aires, the exhaustion of a conciliation process before the MPL is a precondition to filing a complaint before a court of law. In this process, both parties must attend a conciliation stage to try to settle the claim (Mandatory Labour Conciliation Procedure, Law No. 24,635).

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

If the parties do not reach an agreement, the claimant will be entitled to file a judiciary claim to a court of law to resolve the issue.

46 May an employee agree to waive statutory and contractual rights to potential employment claims?

The labour public order provisions establish minimum rights and rules governing labour relationships that cannot be waived by agreement of the parties. Terms of individual labour agreements that establish fewer 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 CBAs. Any modification must always be made to increase an employee's rights and not to reduce them.

47 What are the limitation periods for bringing employment claims?

According with the NEL, section 256, the limitation period for bringing employment claims is two years as from the origin of the labour credit.

UPDATE & TRENDS

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction?

Labour Reform

After the failure of the initiative presented by the Executive Power in December 2017, in April 2018, a more limited proposal was made. The main aspects of that proposal were: i) the regularization of non-registered employment relationships, ii) internships as job training, iii) the creation of a medical technology assessment agency, and iv) the modification of the calculation base for severance compensation. However, this project did not obtain a commission opinion in Congress nor did it obtain consensus among trade unions and political sectors.

The intention of the Government is to present with the ordinary sessions of 2019, which began on March 1, the least controversial chapters that would have the endorsement of the General Labor Confederation: i) the regularization of non-registered employment relationships; ii) creation of a health technology assessment agency (AGNET); iii) reduction of working hours for industries in crisis, and iv) promotion of a "labor termination fund" in temporary activities.
Below, the details of each reform's aspect:

1. Regularization of Employment Relationships:

a) Fines established by the Criminal Tax Law (according to point c) i.) will not be applied for employers who regularize non-registered -or wrongfully registered- employees' situation.
b) All current labor relationships of the private sector, initiated prior to the date of enforcement of the law, may be incorporated into the "Regularization of employment relationships", except for domestic employment relationships.

c) The registration, as well as the rectification of the employee's real compensation or the real starting date, will produce the following legal effects:

   i. Termination of the criminal action established by the Criminal Tax Law and release of the offenses, fines and sanctions of any nature corresponding to the Fiscal Procedure Law.

   ii. Elimination from the Register of Employers with Labor Sanctions (Registro de Empleadores con Sanciones Laborales -"REPSAL"-), when they regularize all the employees for whom they are registered on the REPSAL, and pay, if applicable, the fine.

   iii. Debt forgiveness for capital and interests, when such debt derives from, the lack of withholdings and contribution payments destined to the Social Security System, according to the following parameters:

      - 100% if the registration of the employee's real starting date or compensation takes place within the first 180 days as of the effective date of the law.

      - 70% if the registration of the employee's real starting date or compensation takes place after 180 days since the effective date of the law.

d) The regularization of labor relationships must be carried out within 360 consecutive days, counted from the effective date of the law.

e) If the existence of unregistered or wrongfully registered personnel is verified after receiving the mentioned benefits, there will be a decline in the benefits granted, and employers must deposit the proportion of the debt forgiven, plus interests and further sanctions will be applied.

2. Creation of the Evaluation of Technologies' Agency (Agencia De Evaluación De Tecnologías -"AGNET"-):

a) Regarding its competence, the AGNET is aimed at collaborating with medicines' studies and evaluations, medical products and instrument, and techniques and clinical or surgical procedures designed to prevent, treat or rehabilitate employees' health. However, the Government did not clarify what the final objective of this Agency would be.

3. Reduction of Working Day for Industries in Crisis

a) The Government wants to reduce the working day from eight (8) to six (6) or four (4) hours for industries in crisis.

4. Promotion of a "Labor Termination Fund" in Temporary Activities

a) The Government proposes a labor termination fund in temporary activities, such as rural employees or taxi drivers. Its objective is to replace the severance compensation.

b) The labor termination fund is already applied in the construction industry and would be an alternative to severance compensation. It should be constituted through a Collective Bargaining Agreement with the endorsement of the business chambers and the trade union sector.

c) The employer should deposit a pension contribution that would represent a percentage of the employee's salary depending on his or her seniority. This contribution will be derived to a fund that must be opened at the end of the employment relationship, regardless of the time that it has lasted.

d) The intention of this fund is that the employer has greater predictability at the time of hiring personnel, since -in advance- he will know how much he will have to pay an employee in case of dismissal without cause.

5. Creation of Sectorial Agreements

a) The intention is to make agreements in sector-based committees to accelerate the reduction of employer contributions, to shrink absenteeism and to introduce companies' agreements.

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GTDT ONLINE EDITION

The online edition of this publication features firm descriptions, author biographies and photos. If you would like to take advantage of these features please provide the following information:

FIRM DESCRIPTION: *a 250-word overview of your firm:*

MBB Balado Bevilacqua Abogados was founded in November 2012 by Mercedes Balado Bevilacqua. Since its commencement the firm has been singled out as one of the leading law firms in providing local and international legal counselling in labour, employment, social security and human resource matters. We have expanded our practice and include corporate and tax counselling with the aim to provide our clients with a global legal service.

The firm has been distinguished between the top ten in its practice area by The Legal 500 Latin America for 2013-2018, Chambers & Partners for 2013-2019 and Who's Who Legal 2015-2019 and awarded "Best Labour Boutique Firm in South America" by "WIB", Women in Business.

We are experts in handling a variety of legal matters and recognized for our expertise in providing preventive counselling aimed to minimize clients' exposure and contingencies, considering our client's particular needs.

We provide tailored - made comprehensive legal advice on a daily basis to general company business queries, significant re-structuring operations due to local and/or international mergers and acquisitions, reducing contingencies in such a way that our services combine efficient results with a cost lessen effect for our clients.

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AUTHOR BIOGRAPHY: *Please supply a short 250-word biography for each author:*

Mercedes Balado Bevilacqua

Mercedes Balado Bevilacqua graduated with honors from the University of Buenos Aires and holds a Master´s Degree in Law (LL.M) from University of Connecticut, School of Law, U.S.A.

She has over 20 years of experience in business consulting focused on employment, social security, corporate management and human resources, both nationally and internationally.

In addition to her specialization in Labour Law, Mercedes has been part of the elite team of lawyers of the National Treasury Prosecutor's Office, representing Argentina against foreign investors' claims before the International Centre of Settlements for Investment Disputes ("ICSID"), an agency of the World Bank.

Mercedes has been featured among the leading lawyers, being the only woman, in her practice area by Chambers & Partners for the years 2010-2019, Legal 500 Latin America for 2012-2018, and Who's Who Legal 2015-2019 in the field of Labour and Employment and among the top four (4) lawyers in the area of Pensions and Benefits.

She has been recently shortlisted by Chambers and Partners Diversity among the top six (6) Argentine female lawyers for the award of "Inspiring Role Model for Furthering Women Lawyers, Lawyer of the Year" due to her active encouraging activity in favour of female lawyers in a male dominated field.

Also, Mercedes has been singled out by Women in Business – WIB Worldwide as the "Most Influential Women in Employment Law – South America" and by Acquisition International Magazine as 2018's "Leading Labour and Employment Lawyer of the Year, Argentina".

Mercedes has been considered by Who's Who Legal 2018 among the top five (5) "Thought Leaders" in the area of Labour and Employment and among the two (2) in Pensions and Benefits.

She has been appointed member of The Global Forum for Cross-Border Human Resources Experts (XBHR) as unique representative of Argentina.

In addition, Mercedes is member of the Committee on Employment and Discrimination and Senior Newsletter Editor of the Labour and Employment Committee of the International Bar Association (IBA), member of the International Labour and Employment Committee of the American Bar Association (ABA), member of the Human Resources Committee of the Argentine-French Chamber of Commerce, member of Marianne Association, an organization created by the French Embassy, Coordinator of the Research and Study Commission for the Master in Employment Law of Universidad Austral. She is also part of the Academic Evaluation Council of the International Commercial Arbitration Competition of the University of Buenos Aires.

Analía Durán

Analía received her law degree from University of Buenos Aires in 1996 and joined MBB Balado Bevilacqua Abogados in March, 2017 as co-head of the labour international practice.

She has 20 years of experience advising on employment matters to local and international companies. She is focused in employment contracts, expatriate benefits, complex labour litigation and labour aspects of M&A transactions together with counseling on human resources matters.

In 1999 she attended the school of English Legal Methods at University of Cambridge, England and in 2002 she received an LL.M. from the University of Sheffield, School of Law, England, with a focus on international, commercial and employment law, obtaining a distinction in her dissertation on international employment aspects of transfer of undertakings.

In 2004, Analía was invited by the University of Bologna in Buenos Aires, Argentina to take part in Jean Monnet Project, course on integration in the European Union legal system and its interaction with Latin America (program sponsored by the European Union).

Prior to joining MBB Balado Bevilacqua Abogados, she worked as associate in Allende & Brea; Marval, O'Farrell & Mairal; and Bulló, Tassi, Estebenet, Lipera, Torassa & Asociados.

Analía is author of articles about her field of specialization and has participated in several local and international labour and employment conferences.
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Analía is a member of the Bar Association of the City of Buenos Aires and the American Bar Association.

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