

IX. Labor Regime

A. Introduction

In Colombia, labor relations are governed by the Constitution, international treaties and agreements, and the Substantive Labor Code. In broad terms, one may speak of two major branches of labor law, which are individual and collective law. The first regulates the relations between the employer and his workers, and the second the relations between the employer and workers associations, whether they are or are not trade unions.

B. Work Contract

It is a contract in which a person commits himself or herself to provide certain personal services to another (a natural person or a legal entity), on the understanding of continual subordination to the former with regard to carrying out orders and instructions, and in exchange for a remuneration or salary (wage). This contract is signed between the worker and his or her employer.

To be able to sign a work contract, one must be older than eighteen (18) years. Minors require the authorization of the Ministry of Social Protection and of their legal guardians.

1. Types of Work Contract

In accordance with their *duration*, work contracts may be classified in the manner which is shown in table 9.1

Table 9.1. Duration of Work Contracts

Type of Contract	Duration
Fixed term contract	No longer than three (3) years. It may be extended indefinitely if the parties wish to.
Contract for the duration of the work or job for which the worker is hired	Its duration is proportional to the duration of the job of work in question.
Casual or transitory work contract.	No longer than one (1) month.
Contract of an indefinite term	Its duration is not defined.

Equally, work contracts may be classified as *verbal* or *written*; the following must always take a written form:

- Fixed term contract

- Contracts signed with foreigners. We remind you that, in accordance with the regulations outlined in the chapter on immigration, foreigners who are going to work in Colombia require a work visa.
- Contracts where more than ten (10) workers travel abroad to provide their services. This kind is called a *collective enlistment contract*

In addition, the following agreements undertaken between the employer and worker must also be confirmed in writing.

Trial period

It must not exceed two (2) months. It corresponds to the initial stage of the work contract where the employer is able to evaluate the worker's capacities and the worker, in turn, is able to evaluate the working conditions.

Integral salary (wage)

It is the method of remunerating the worker in a periodical manner, paying him or her not only for the ordinary work but at the same time paying in advance his or her overtime and social and other benefits.

Exclusions

These are agreements between the parties which specify the exclusion from the wage of a number of extralegal subsidies or benefits, when it comes to the payment of parafiscal contributions and social benefits.

C. Other Aspects of the Labor Relation

1. Apprenticeship Contracts

The apprenticeship contract, also known as “managerial internship” (“práctica empresarial”), is a special form of contracting labor, by means of which a natural person receives technical training in an authorized training establishment, endorsed by a company which sponsors that training and also provides the means by which that person acquires a complete professional training. This contract does not imply subordination, and its duration must not surpass two (2) years. Living expenses may be paid but this does not imply wage remuneration under this contract. It must be confirmed in writing.

2. Contracting of Foreign Workers

In Colombia there is no rule restricting the recruitment of foreign workers.

However, the employer interested in hire foreign workers must to consider that this new employee must to have the temporary worker visa or respective permit. It should be noted that there are regulated professions in Colombia, for which the visa process requires obtaining prior authorization of the professional council or technical council as appropriate. Within the regulated professions are Engineering, Architecture, some management positions, Geology, and some previous assistants and some technical careers. The term of the visa will be the same as that of the permit.

Unregulated professions require graduate degree accreditation by the Colombian Ministry of Education.

All current rules and in particular the labor rules of social security and tax will be applicable to foreign workers.

For further information go to:

- Ministerio de Relaciones Exteriores de Colombia: www.cancilleria.gov.co
- Ministerio de Educación Nacional de Colombia: www.mineducacion.gov.co
- Consejo Profesional Nacional de Ingeniería: www.copnia.gov.co
- Consejo Profesional de Geología: www.cpgcolombia.org
- Consejo Profesional de Ingenieros de Petróleos: www.cpip.org.co
- Consejo Profesional de Ingeniería de Transporte y Vías de Colombia: www.cpitvc.org
- Consejo Profesional Nacional de Arquitectura y sus Profesiones Auxiliares de Colombia: www.cpnaa.gov.co/cpnaa

3. Working Day

The working day is that which is agreed to by the parties, which in no case may exceed the legal maximum of forty-eight (48) weekly hours, (which may be spread from Monday to Friday or from Monday to Saturday). The working day covers the period between 6 a.m. and 10 p.m. The rest is understood to be night work.

There are some workers to whom the legal maximum does not apply, namely, those (a) who work in an executive or managerial position or have positions of special trust; (b) who engage in discontinuous or intermittent activities; (c) watchmen, when they reside in the work place and (d) who engage in domestic service.

Work done outside of the normal working day must be paid for as supplementary work or extra hours.

Flexible working day or timetable: the flexible working day has to do with an agreement between the worker and employee to organize successive work shifts every day of the week, which do not surpass six (6) daily hours and 36 weekly hours, without the payment of a bonus for working at night, or on Sundays or holidays.

Likewise, there may be an agreement that the daily shift be flexible in such a way that forty-eight (48) hours are completed weekly, where the number of daily hours worked must fall within a range of four (4) to ten (10), without overtime for extra hours, taking into account that the hours worked must not surpass forty-eight (48) hours per week and these are done in the daytime.

4. Payments Arising from a Labor Relation

The salary (or wage) is the compensation which the worker receives in exchange for providing his or her personal services to the employee

The salary is made up of two kinds of remuneration

- The ordinary remuneration, which may be fixed or variable.
- The extraordinary remuneration, which is made up of extra pay, the value of supplementary work or extra hours, the value of work on obligatory holidays, percentages of sales and commissions, habitual travel expenses meant for the food and lodging of the employee and in general any occasional or habitual payment made as a direct consideration for the employee's work.

Certain amounts which will not form part of the salary may be agreed on (exclusions)

Table 9.2. Types of Salary

Type of Salary	Description
Ordinary	Remunerates ordinary work. There is a minimum monthly legal wage in force (SMLMV) which is defined by the government at the end of each year. For 2011 it is COP\$ 535.600 or some US\$ 267.8.
Integral	Remunerates not only ordinary work but compensates in advance for the value of social benefits, overtime and additional benefits like night work, extraordinary work and work on Sundays and holidays, among others; in general those benefits which are included in this wage, except

	vacations. Must be formalized in writing and not be less than 13 SMLMV, that is, COP\$ 6.962.800 or US\$ 3,481.
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5. Social Benefits

The social benefits outlined in table 9.3 must be paid by the employer to all of his or her workers who earn an ordinary salary or wage.

Table 9.3 Social Benefits

Concept	Frequency of Payment	Description
Severance subsidy	Annual	A monthly salary for each year of service or proportionally for the fraction of a year. It must be paid into a severance fund no later than the 14 th of February of the following year, or if not, paid directly to the employee when the contract terminates
Severance interests	Annual	12% of the value of the annual severance payment or proportional to the fraction of the year
Services bonus	Half-yearly	15 days' wages for each half-year of employment or proportional to the fraction of the year, paid in June and December
Transport subsidy	Monthly	COP\$ 63.600 for the year 2011 (US\$ 31.8), payable to all employees who earn up to two (2) SMLMV.
Work clothes and footwear	Every four months	Payable to workers who earn up to two (2) SMLMV, that is, COP\$1.071.200 or US\$ 535.6, approximately.

Source: Doing Business (2009). Proexport

6. Obligatory Days of Rest

a. Paid Sunday and Holiday Rest Periods

Sundays and holidays are regarded as obligatory paid days of rest. That is, as a general rule, the worker does not have to provide his or her services on those days, and in any case, has the right to receive the ordinary salary corresponding to them. If the worker works on Sundays in an occasional way, he must be paid the salary with an additional bonus of 75% of the hourly rate. If the worker does it in a periodical way, he or she must also be granted a remunerated rest day per week.

b. Annual Paid Vacations

Every worker, without exception, has the right to enjoy fifteen (15) working days of paid vacations per year of work. As a minimum, the worker should have six (6) days of vacations for each year of service. The additional days may be accumulated for up to two (2) years. However, in cases when the worker exercises his functions in a place different to the residence of his family members, the worker may accumulate them for a maximum period of four (4) years.

7. Indemnizations

These payments arise from any non-compliance on the part of the employer with regard to the legal or conventional obligations the employer is responsible for, or for any lack of knowledge of the duties imposed by the Labor Law. Table 9.4 shows the most usual kinds of indemnization.

Table 9.4 Indemnization for Terminating the Contract without a Just Cause

Type of Contract	Indemnization
Fixed term	Equivalent to the remaining time of the term agreed on
For the duration of a given job or piece of work	Equivalent to the period remaining until the termination of the said job or piece of work, with a minimum of fifteen (15) days.
Indefinite term	<p>a. Workers with a wage of less than ten (10) SMLMV. If the worker has less than one (1) year of continuous services, he or she will be paid thirty (30) days of wages. If the worker has one (1) or more years of continuous service, he or she will be paid twenty (20) days of wages, in addition to the thirty (30) basic days, for each of the years of services following the first one and proportional to the fraction of the year.</p> <p>b. Workers with a wage equal to or greater than ten (10) SMLMV. If the worker has less than one (1) year of continuous service, he or she will be paid twenty (20) days of wages. If the worker has one (1) or more years of continuous service, he or she will be paid fifteen (15) days of wages, in addition to the twenty (20) basic days, for each year of service following the first one and proportional to the fraction of the year.</p>

If the worker has not been paid the amounts corresponding to the wage or the social benefits in the due manner and time on the date when the labor contract terminates, this worker will have the right to be indemnified with one (1) day of wages for each day of non-compliance for the first twenty-four (24) months.

8. Contributions to the Social Security System

All employers must affiliate their workers to the General Social Security System, discount the amounts established by law from their wages and contribute a

percentage calculated on the basis of the worker's wage in order to complete the payments required by law (see table 9.5).

Table 9.5. Contributions to the Social Security System

Type of Obligation	Frequency of Payment	Percentage
Contributions to the General Pension System (maximum base of estimate is twenty-five (25) SMLMV), with a value of COP\$ 13.390.000, approximately US\$ 6,695.	Monthly	<p>16% of the monthly wage of the worker, of which the employee pays 12% and the worker the remaining 4%.</p> <p>The employees who earn more than four (4) SMLMV must pay an additional 1%, destined for the solidarity fund.</p> <p>Workers with incomes equal to or higher than sixteen (16) SMLMV have an additional contribution, a percentage of their income which is the base of the estimate, as follows:</p> <p>16-17 SMLMV – 0.2% 17-18 SMLMV – 0.4% 18-19 SMLMV – 0.6% 19-20 SMLMV – 0.8% 20-25 SMLMV – 1.0%</p> <p>Foreigners who continue to make payments to the Pension Systems of their country of origin are not obliged to do so to the Colombian one.</p>
Contribution to the Social Security System for health (maximum base of estimate is twenty-five (25) SMLMV).	Monthly	12.5% of the monthly wage of the worker, of which the employees pays 8.5% and the worker the remaining 4%.
Contribution to the System of Professional Risks (Maximum base of the estimate is twenty (20) SMLMV).	Monthly	The percentage is between 0.348% and 8.7% in accordance with the company's level of risk. The employer covers the whole of the cost.

Colombia has bilateral agreements with a number of countries (Chile, Argentina and Spain) to validate the time recognized by the Pensions System, so that the worker may benefit from the respective legislation when working away from his home country. (Doing Business (2009); Proexport).

9. Parafiscal Contributions

These are payments which the employers who are responsible for more than one worker must pay to certain Colombian institutions. Table 9.6 indicates the percentages.

Table 9.6. Parafiscal Contributions

Institution	Percentage
Instituto Colombiano de Bienestar Familiar (Colombian Family Welfare Institute "ICBF")	3% of the monthly payroll of wages
Servicio Nacional de Aprendizaje (National Training Service "SENA")	2% of the monthly payroll of wages
Cajas de Compensación Familiar (Family Compensation Funds)	4% of the monthly payroll of wages

10. Leaves

Table 9.7 shows the leaves to which the workers are entitled.

Table 9.7 Maternity and Paternity Leaves

Type of Leave	Description
Maternity	Women workers who are pregnant have the right to a leave of twelve (12) weeks, which may begin two (2) weeks before the date foreseen for the birth. The leave is paid for by the General Social Security System for Health. A woman worker in these circumstances may not be fired for any reason, except if there is a just case previously certified by a work inspector.
Paternity	The husband or permanent partner has the right to a leave of four (4) working days, when he is affiliated to the Social Security System, and eight (8) working days when both spouses or partners are affiliated. In both cases, the husband or permanent partner must have made payments to the Social Security System for more than one hundred (100) continuous weeks. This leave is paid for by the General System of Social Security for Health.
Mourning	In the case of the death of his or her spouse, or his or her permanent partner, or a relative up to the defined kinship, the worker has the right to a paid mourning leave of five (5) working days, regardless of the kind of labor contract or employment.

Source: Doing Business (2009).

11. Regulations

Employees are obliged to issue the following regulations:

a. Work Regulations

Any company which employs more than five (5) permanent workers in commercial enterprises, or more than ten (10) in industrial enterprises, or more than twenty (20) in agricultural, stock-raising or forestry enterprises, is obliged to adopt a code of work regulations.

b. Regulations on Hygiene and Industrial Safety

Any company which employs more than ten (10) permanent workers must adopt a Special Code of Regulations of Hygiene and Safety.

12. Harassment at the Workplace

Employers must include within their internal work regulations stipulations which protect and warn against any assault on human dignity in relations at the workplace, as laid down by the law.

13. Other Alternatives for Contracting Personnel

Temporary services companies: these “empresas de servicios temporales” (“EST”) are entities which third parties may hire to find them temporary personnel who help them to undertake certain activities. These personnel are directly contracted by the temporary services company, which is responsible for the employer’s fulfillment of his or her obligations to the workers.

This may benefit the third party which contracts the EST, insofar as the third party may exercise its rights to oversee the workers but is not directly responsible for its main obligations as an employer, like the payment of wages, affiliating workers to the General Health System and social security, parafiscal, etc. contributions.

14. Collective Rights: Relations between the Employer and Union Organizations

Another aspect of labor law is that which regulates the relations between the employer and union organizations, as well as matters related to collective hiring, the defense of common interests and collective work conflicts. It seeks to establish mechanisms for guaranteeing the worker’s rights to form associations and hold strikes, as well as the right to form trade unions, and engage in collective hiring and negotiations.

a. Right to Unionize

This law seeks to protect both the creation and development of union organizations and to guarantee their use by the workers to defend their interests.

b. The Union

This refers to the workers' organization which is legally established to guarantee, improve and strengthen their common rights with regard to their employers. It also joins the workers together in the defense of the individual and collective rights of its affiliates. Table 9.8 explains how unions are classified by the law.

Table 9.8. Classification of Unions

Type	Description
Company	Made up of individuals with different professions or skills who provide their services to a single company
Industry	Made up of individuals who have different professions and skills but belong to the same industry or economic activity.
Guild	Made of individuals who have the same profession or skill.

c. Labor agreements, pacts, contracts, collective negotiations and strikes

Table 9.9 describes the characteristics of labor agreements, pacts, collective negotiations and strikes.

Table 9.9. Labor Agreements, Pacts, Contracts, Collective Negotiations and Strikes

Name	Description
Collective work agreement	An agreement made between one or more bosses or bosses' associations or one or several unions or workers federations, to establish the conditions governing the work contracts when they are in force.
Collective pact	A pact signed between the employer and his or her non-unionized workers, to establish the conditions governing their labor relations.
Union contract	A contract entered into by a union or several employees, or several unions with several employees, for the provision of services or the realization of a job of work.
Collective negotiation	An undertaking agreed to between employers and workers to discuss demands found in petitions regarding the improvement of working

	and employment conditions.
Strike	<p>The collective, temporary and peaceful suspension of work carried out by the workers of an establishment or company, for economic and professional purposes, to demand compliance with previously established procedures.</p> <p>Going on strike is only legitimate when these workers are employees of a private-sector employee and do not carry out activities considered to be public by the law.</p>

Source: Doing Business (2009).

Warning

The regulations found in the Colombian Labor Regime are detailed and complex, their main aim being to protect the rights of the worker. Thus, it is recommended that you seek the advice of experts in these matters to avoid confusing these norms with others which govern the hiring of personnel, like the contract for the provision of services, and in this way ensure that you fulfill all of the legal requisites in this field and avoid the imposition of fines or sanctions that may cause significant cost overruns for foreign investment.

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