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Peru

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Perú

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The Littler International Guide provides an overview of workplace laws and regulations of over 45 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 14 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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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, 2023** are generally not covered.

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§ 1 OVERVIEW OF EMPLOYMENT & LABOR LAWS IN PERU

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

Peru's proclamation of independence occurred on July 28, 1821, by General Jose de San Martin, who led the expedition that succeeded in liberating the country from the Spanish conquest.

However, the first Constitution was not issued until 1823 and it made no specific or firm reference regarding the workplace, but abolition of slavery was understood, and it reflected the people's recognition that people should be compensated for working.

While this was intended to be the start of a new future for Peru, the Constitutions that followed (1826 and 1828) did not further develop the right to freedom of labor. The Constitution of 1826 omitted any reference to slavery, while the Constitution of 1828 only included a general nondiscrimination provision regarding access to public employment.

Thus, the first Constitution of Peru that effectively recognized the right to freedom of labor was enacted in 1834, when in its Article 162 it provided that: "Peruvians are free for all kinds of work, industry or business, unless it opposes good morals or health and safety of citizens, or required by the national interest, subject to provision of a law." From this moment, the right to work freely, with equal opportunities, emerged as a fundamental right of all Peruvians.

After that, various standards developed around the most fundamental labor issues, and the Constitutions that were later promulgated always considered the right to work as fundamental.

Currently, Peru is governed by the Constitution of Peru of 1993, which contains various provisions related to the workplace, with the most relevant content found in paragraph 15 of Article 2, which states that "every person is entitled to work freely, subject to the law."

Thus, the freedom to work is recognized as a fundamental right of every person; this freedom is expressly guaranteed by the Peruvian State pursuant to Article 59 of the same Constitution that refers to the economic role of the State.

Following this recognition, other rights arise that are also covered by the Constitution of Peru, such as:

1. Protection and promotion of employment (Article 22).
2. Protection of workers' dignity and anti-slavery (Article 23).
3. Right to fair and sufficient compensation (Article 24).
4. Right to a maximum workload of 48 hours per week or eight per day (Article 25).
5. Equal opportunities, non-discrimination, indispensability of labor rights and most favorable interpretation for the worker in the event of an unresolvable doubt (Article 26).
6. Protection against arbitrary dismissal (Article 27).
7. Collective rights: organizing, collective bargaining and strike (Article 28).

8. Participation in the employer's profits (Article 29).

While Peru has not issued a specific Labor Code, there are a number of rules governing the rights and obligations of the employment relationship, with the main labor regulations governing private activity being the Single Text of Legislative Decree No. 728 (Labor Productivity and Competitiveness Act), approved by Supreme Decree No. 003-97-TR, and its Regulation approved by Supreme Decree No. 001-96-TR. An initiative to amend these labor regulations was introduced in October 2019 and is pending review and approval.

§ 1.2 What are the primary mechanisms for enforcement?

In Peru there are different mechanisms of dispute resolution, the most commonly used being the judicial.

Everyone in Peru has a fundamental right to effective judicial protection, which guarantees access to courts in order to resolve conflicts with other parties. In labor matters, a specific process has been designed that is regulated by the New Labor Procedure Act (NLPT), approved by Act No. 29497.

The main feature of this judicial work process is that it is primarily oral; the oral process is established as one of the guiding principles of the labor judicial process, as noted in Article 12 of the NLPT, Act No. 29497:

> **Article 12. Prevalence of oral actions in the processes by hearings**
>
> 12.1 In labor processes for hearings, oral submissions from the parties and their lawyers prevail over written submissions on the basis of which the judge directs the court proceedings and passes the sentence. The hearings are substantially an oral debate of positions presided over by the judge, who may question the parties, their lawyers and third parties at any time. Actions in hearing, except the conciliation stage, are recorded on audio and video using any suitable means which ensure the fidelity, conservation and reproduction of its content. The parties are entitled to obtain the respective electronic copies, at their own cost.
>
> 12.2 The recording is incorporated into the file. In addition, the judge leaves on the record only the following: identification of all persons participating in the hearing, the evidence admitted and acted, the decision suspending the hearing, the extraordinary incidents and finding of the judgment or decision to defer its issuance.
>
> If no means of electronic recording are available, the recording of oral presentations is made stating, for the record, the central ideas exposed.

The ordinary judicial labor process has a conciliation stage in the first instance. This means that after the lawsuit is admitted, the presiding Judge summons the parties to a Conciliation Hearing in which they will seek to resolve the conflict quickly. If an agreement is reached, the court will issue a report with the agreement and it will have precedential effect.

If no agreement is reached at the conciliation stage of the ordinary judicial labor process, then the Judge will require that at that time, the defendant answer the suit, which shall be concluded with the submission of the document in which the defense arguments and the respective evidence are listed. It is important to note that the opposing party should attend the Conciliation Hearing with the demand response and sufficient copies of all documents and annexes for the Judge and the opposing party.

Both the failure to attend the hearing and not attending with the demand response constitute acts of rebellion so they are considered the same as not attending the hearing, resulting in the loss of the opportunity to formulate defense arguments and provide evidence.

Remember that the main feature of the labor process in Peru is its oral nature, so the submission of pleadings or other documents will not replace the obligation of the parties and their lawyers to defend orally the arguments of defense at the appropriate times.

After the Conciliation Hearing, and if no agreement is reached, the Judge will review the response to the suit, notify the other party immediately, and set a date for the Trial Hearing. At this hearing, the evidence will be considered, so that if each party has offered exhibitions of documents or statements of witnesses, they must make sure to attend the Trial Hearing with them. Otherwise, this shall be considered a procedural breach.

It should be noted that if the court considers that there are no more elements to implement, the Trial may be terminated early. This means that the Judge shall be free to end the Trial of the case in the Conciliation Hearing.

The judgment in all cases may be issued at the end of the Trial or, at the Judge's discretion, within five consecutive days afterwards.

The general term for bringing a case in the labor procedure is four years from the date of termination. However, this period is reduced to 30 working days for claims regarding the payment of compensation for unfair dismissal or replacement in employment or invalidation of dismissal.

Prior to engaging in the judicial process, complaining parties have the option of using the administrative procedure prior to trial. This is not a condition for access to judicial protection. However, the administrative procedure is presented as a direct and quick alternative to resolve a labor conflict.

The Ministry of Labor and Employment Promotion and its regional offices are the authority responsible for receiving labor complaints. These are usually channeled through the Superintendency of Labor-Labor Inspectorate, which is responsible for reviewing the plaintiff's request and visiting the employer for the purposes of verifying and enforcing compliance with what has been reported as a violation.

However, it should be noted that the inspection system has no power to enforce a mandate against an employer. Its functions are limited to verifying compliance with the obligation or not, and in the latter case to require compliance immediately. Given the refusal of the inspected to meet the requirements of the Labor Administrative Authority, fines can only be applied to enforce compliance, and as a maximum penalty, the officer can order partial or temporary closure of the inspected company depending on the seriousness of the underlying violations.

The party that has made the complaint and obtained a favorable ruling from the Labor Inspectorate can go to the Judiciary so that a Labor Judge can determine the offender's compliance obligation.

A second form of conflict resolution in the administrative procedure is the request for conciliation. At this stage, both parties are summoned to a confrontation of positions, with the idea of reaching an agreement that satisfies both interests. The conciliation meeting will be led by a public official (conciliator), who shall record what happened in the minutes, but shall have no authority to demand solutions to the problem. The conciliator will be a mere intermediary between the two sides to try to promote an agreement between them, without being able to intervene directly as it is not part of its powers.

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

The first alternative in conflict resolution in the workplace is mutual agreement between the parties; this agreement can be reached after negotiation, either individually or collectively, and should be contained in a document setting out the conditions to be fulfilled for each side.

Failing that, the conflict may be resolved through the administrative procedure before the Labor Administrative Authority, in which a conciliator—public official—shall collect the agreements the parties have reached in the confrontation hearing. It is important to reiterate that the conciliator shall not have powers to formulate solutions to the problem. However, the conciliator will be responsible for promoting an agreement between the parties. The deed that brings together the conciliatory agreements shall be a document that is enforceable before the labor courts if either party violates what is agreed to.

Another way of resolving disputes between employers and employees is the judicial procedure, in which a Specialized Labor Judge will act as the director of the process. In this instance, in addition to a confrontation of positions, evidence will be introduced that will generate enough conviction in the Magistrate for the issuance of a final decision (judgment) with the solution to the problem. If a party does not agree with the terms of the judgment, it may elevate it to a second instance through an appeal. Finally, in a few cases[1] recourse may be had to a third instance before the Supreme Court.

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

The preference of Peruvian law is notably towards the worker. Protection in relation to workers' rights is high, so that compliance by employers is an obligation that must be maintained with constant vigilance

The above is also due to the frequent audits by the Superintendency of Labor Inspection ("*Superintendencia Nacional de Fiscalización Laboral*" or SUNAFIL), the Ministry of Labor and Employment Promotion, which is responsible for verifying that the legal and conventional labor obligations are met. Mainly it verifies that workers should enjoy the rights that the Constitution of Peru of 1993 recognizes and other standards that make up the Peruvian labor law.

It is important to note that case law is an extremely important factor in Peru. The main interpreters of laws are the Constitutional Court and the Supreme Court of the Republic; both issue rulings that continuously review the implementation and interpretation of different legal standards and concepts.

Following the protectionist line of the worker, the most relevant jurisprudential rulings have focused their analyses in favor of the employees. This is the case, for example, in the development of the Constitutional Court in the case filed by Eusebio Llanos Huasco against his former employer, as discussed under File No.

[1] The New Labor Procedure Act, Article 35 provides the admissibility requirements of the appeal, which are as follows:

1. the ruling of the second instance includes an amount greater than 100 Procedural Reference Units;
2. it will be brought before the body that issued the disputed judgment;
3. it is filed within 10 business days after the contested judgment is notified; and
4. the receipt for the payment of the respective judicial fee is attached.

Also, Article 36 provides the procedural requirements of the appeal, which are:

5. whichever party files the appeal had not agreed to the result of first instance, if it files outside of it;
6. the rules or case law that enables filing an appeal is clearly described;
7. the direct effect of the legislation violation on the contested decision is established; and
8. it is indicated whether the appeal request is to annul or revoke.

0976-2001-AA/TC. The ruling issued on March 13, 2003, contains a detailed development on what the Constitutional Court means by "dismissal," the different classes of dismissal and different forms of remedy that may apply.

This ruling is important as it sets the tone for defining dismissal and covers claims for payment of compensation or rehiring. The latter was considered by the Constitutional Court as applicable to cases where after a comprehensive analysis, the Court concludes that it is appropriate to the extent that the dismissal in certain circumstances affects the fundamental rights of worker.

On the other hand, in Peru various labor standards have been issued that have sought to increase worker benefits, but have also helped maintain a reasonable margin of discretion for the employer. The intent of these rules is to reduce informal employment in Peru, thus generating beneficial opportunities for workers and viable opportunities for employers, and reducing the perceived power gap between the worker and the employer.

Act No. 30709: Equal Pay for Equal Work

One of the most recent changes in Peruvian labor laws relates to the determination of equal pay and the prohibition of discrimination in the remuneration on grounds of gender. Indeed, the Act No. 30709, published on December 30, 2017, expressly prohibits the salary discrimination between men and women, which includes categories, remuneration, and work duties.

The purpose of this law adjusts to the legal principle that governs the Peruvian labor legislation, which sets forth that for equal work, equal pay. Accordingly, this law states that the gender of a human being cannot be used as an element to set a difference in the salary conditions of a work position.

This gender-equality mandate applies also to trainees' programs.

New Labor Procedure Act

In response to the long delays in the legal proceedings, which could take about five years, the New Labor Procedure Act was enacted in 2010. Under this Act, the oral nature of hearings was introduced to improve the speed of the judicial proceedings.

Initially, the process model under the Act worked, enabling the completion of legal processes in brief, one-year terms. However, as time passed, due to the ease of filing lawsuits with no addition of courts, the increased case load brought about the collapse of the system. As a result, today a labor process under this law takes two or three years.

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

The most common mistakes made by foreign companies are:

1. Using personnel from other countries without first processing their respective work visas.

   SUGGESTION: Foresee that foreigners may not start working until they have the qualifying immigration status, which will take approximately two months. Therefore, during this time they will not receive income. Otherwise, the foreigner and the company could incur fines.

   It is also important to check if the foreigner belongs to a country that has an agreement with Peru, which can help to reduce the visa process or even eliminate it.

2. Signing open-ended employment contracts at the start of operations when Peruvian laws allow the possibility of signing fixed-term contracts for the first three years of the formation of a new company.

   SUGGESTION: Use fixed-term contracts to start activities for the first three years, in renewable installments of six months, in order to allow time to determine the viability of the business and that the expected and actual performance of the workers is optimal.

3. Unilaterally terminating employment contracts without just cause or without following the dismissal procedure established by law, which leads to various lawsuits.

   SUGGESTION: Identify the commission of serious offenses and follow the dismissal procedure, giving the worker enough time to present a defense. If there is no serious misconduct, negotiate with the worker on the exit through an agreement by mutual consent, in which both parties agree to sign a document terminating the employment relationship. It is advisable to provide an economic incentive to workers to enable them to be more decisive when accepting the deal.

4. Granting records of work to independent contractors or giving them work tools such as business cards, email addresses with the company domain, cell phones, computers, etc. This situation creates the presumption of existence of an employment relationship with the independent worker.

   SUGGESTION: Clearly identify workers placed by third parties and require their employers to provide all the tools necessary for the execution of the service. If it is essential for the user company to assign an email address, it is suggested to do it generically (*e.g.*, personaltercero@abcd.com).

5. Confusing temporarily placed staff from outsourcing companies with its own staff, which is a cause of distortion of outsourcing and understanding of a direct employment relationship with placed workers.

   SUGGESTION: Require that temporarily placed personnel use uniforms with clear identification that they belong to another company. In addition, each coordination that needs to be done with this group of people should be channeled through a supervisor appointed by the outsourcing company.

§ 2 HIRING

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

As there is no Labor Code in Peru, there are no general definitions on labor matters. However, Supreme Decree No. 018-2007-TR established standard provisions regarding the use of the document entitled "Spreadsheet" that contains definitions that are useful to understanding how the concepts of labor issues are handled. In addition, by conducting a comprehensive review of the legal system, it is possible to match some definitions about the type of worker, employer, third-party staff, and others.

Thus, in Peru the following definitions are applicable:

1. **Worker**: An individual who provides services to an employer in a subordinate relationship, subject to any labor regime, regardless of the form of the employment contract. In the public sector, it covers every worker, servant, or public official, under any labor regime.

   The working partner of a worker cooperative is also covered by this definition.

   Further, pursuant to Articles 4, 5, and 9 of the Labor Productivity and Competitiveness Act, a worker is any individual that makes available to a third party its work in a personal, direct, and subordinate manner, in exchange for consideration.

2. **Employer**: Any individual, sole proprietorship, corporation, irregular or de facto company, worker cooperative, private institution, State company, entity of national public sector including those referred to in the Updated Single Text of the Standards governing the obligation of certain public sector entities to provide information on their purchases, approved by Supreme Decree No.027-2001-PCM and amending standards, or any other collective entity, which pays in exchange for a service provided under a subordinate relationship.

   Additionally, for purposes of the "Spreadsheet" (as noted above), *employers* are those who:

   a. Pay pensions for retirement, unemployment, disability and survival or another pension, whatever the legal regime to which it is subject.

   b. Hire a service provider, in the terms set forth in this Supreme Decree.

   c. Hire a trainee – in the job training condition and other, in the terms set forth in this Supreme Decree.

   d. Make health care contributions for the individuals incorporated as regular insured parties to the Contributory Regime of Social Security in Health, as mandated by a special law.

   e. Receive, for temporary reasons or displacement, third-party personnel services.

   f. Are obligated by Supreme Decree No. 001-2010-ED or other special standards, to pay remuneration, compensation for service time, bonuses and other benefits for the Public Service personnel assigned to it.

   Also, pursuant to Article 9 of the Labor Productivity and Competitiveness Act, the employer shall be any individual or legal entity who has the powers to statutorily regulate work, making the orders necessary for the execution of such work, and to impose disciplinary sanctions, within the limits of reasonableness, for any violation or breach of the worker's obligations. In addition, it may make changes or modify shifts, days, or hours of work, as well as the form and method of delivery of the work, within reasonable criteria taking into account the needs of the workplace.

3. **Independent Contractor**: Pursuant to the provisions of Article 1764 of the Civil Code of Peru, the service provider (or independent contractor) shall be the one who undertakes to provide services for a third party, without being subordinate to it, in exchange for financial consideration.

4. **Occasional or third-party worker (intermediary or outsourcing services)**: This worker is an individual who is hired to work by a company that is responsible for providing job placement

services or outsourcing. As such, the employer hires out its workers to other companies, for the purpose of providing services for them. However, subordination remains with the employer who has directly engaged the worker's services.

It is important to note that the hiring of third parties responsible for hiring out workers to perform a particular service proves to be a controversial issue in Peru. Several legal requirements must be met, and certain actions in the execution of the service must be completed to clearly establish the difference between workers of the user company and those that have been hired out. The distortion of contractual relationships through which these workers are assigned to other companies implies the recognition of a direct employment relationship between the user company and the worker who is hired out.

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

The immediate consequence for incorrectly hiring an independent contractor, or receiving a contingent worker or temporary worker, is that the company directly assumes an employment relationship with the individual, from the first day the individual starts providing services in the company's favor.

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

Peruvian legislation allows outsourcing in different ways (intermediation, outsourcing with displacement of employees, etc.).[2] It will depend on each particular case to determine which law applies, and to know what exact responsibilities the main company (*i.e.*, the company that receives the outsourcing workers) has.

However, in any case, the main company shall incorporate the outsourcing workers into its own organization but shall neither provide them direct instructions nor supervise their work. If the main company has something to say about the outsourcing workers, it should be communicated through the outsourcer company, so the posted workers do not confuse the relationship that links them to the main company.

Also, it will be important to verify that the outsourced activities are not part of the "core business" of the main company.

§ 2.4 What rules apply to background checks?

In Peru, there is no specific regulation for validation of workers' or applicants' background. However, it should be noted that any investigation process must ensure that an individual's right to privacy and the right to dignity are not affected.

Hence, during job interviews it is suggested not to ask questions that are linked to the worker's private life. Also, if there is no express authorization from the applicant, related aspects of the applicant's life may not be investigated.

[2] Note that the Regulation for the Law of Outsourcing of Services has been recently modified through the Supreme Decree 001-2022-TR, introducing among other important points to consider, the definition of "core business activities", establishing that these cannot be outsourced with the displacement of employees.

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

The Occupational Health and Safety Act requires employers to hire medical evaluation services to conduct occupational exams of workers during their employment; the exams must be done every two years. Occupational exams at the end of the employment relationship are optional and can be conducted upon the worker's or employer's request. For workers that perform activities of high risk, the employer is obligated to conduct occupational exams before, during, and after the employment relationship. During the current Sanitary Emergency, there have been temporary suspensions of the obligation to conduct these exams.

The results of these tests may only be disclosed to the workers personally or to the person they specifically authorize. The employer may only have access to a general medical report.

In Peru, it is not permitted to subject workers to mandatory medical tests that are not mandated by law. Under precedent of the Supreme Decree No. 007-2020-SA, mental health evaluations, even if voluntary, are considered medical evaluations. Any evaluation not required by law, but of interest to the employer, can be performed only if the worker gives his or her full consent.

§ 2.6 May an employer require drug and alcohol testing?

As noted above, it is not possible to force workers to undergo medical tests that the law does not set as mandatory.

However, under certain circumstances, the employer may require the worker to undergo drug or alcohol tests if the employer has a reasonable basis for conducting the tests.

This is the case, for example, when there is a suspicion that the worker has come to work under the influence of alcohol and/or drugs. Since it is considered a serious offense in labor matters by, paragraph (e) of the Labor Productivity and Competitiveness Act, the employer may request an alcohol and/or drug test, with the assistance of the National Police. Refusal to take such tests shall be a tacit acceptance by the worker to be under the alleged effects and thus of committing a serious labor offense.

Another case where the requirement for an alcohol and/or drug test may be accepted is when the position involves a specific risk, requiring zero tolerance of drugs or alcohol where the consumption of these substances can pose a serious risk to that worker's life or to the lives of other workers and even company assets.

§ 2.7 Are there mandated preferences in hiring?

The preference in hiring in Peru is nationals. It is for this reason that the Foreign Hiring Act contains limitations on the number of foreigners who can be hired.

In addition, restrictions have been imposed for fixed-term hiring, with the preference of Peruvian law being that labor relations are of an open-ended nature. Indeed, there is a presumption in favor of job security and workers can only be fired for just cause. Further, labor training arrangements or hiring through third parties also presumes the recognition of an employment relationship for an indefinite period.

Finally, the Disabled Persons Act provides that a private company with 50 or more workers must reserve 3% of its payroll for the employment of persons with disabilities. The SUNAFIL regularly conducts inspections to verify compliance with this obligation. Companies that fail to maintain the employment quota must prove that people with disabilities did not apply or did not meet the requirements listed on the job posting.

§ 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?

Peru has no rules about inquiring into an applicant's salary history, which means this information can be disclosed or not, at the election of the worker.

Employers must have a category and salary chart in which it has to identify every position in the organization and the criteria to be applied to assign a salary. The applicable law does not require employers to include in this chart a range of salary amounts for each position, however, it is set forth in a regulatory norm. In that sense, it is strongly advisable to include a range of remunerations per position in the category chart. See **§ 5.6** for further discussion of these requirements.

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

In Peru there are two types of subcontracting involving temporary personnel of third parties on the premises of the user or parent company: (1) outsourcing of services, which is legally regulated only in the condition that involves permanent transfer of workers; and (2) labor intermediation.

Regarding outsourcing, it is understood that this is when a main company hires a third party to execute part of the production process. In this condition, the user company must not have an interest in the temporary staff, but in the result that the execution of the service will produce. Therefore, the user company will not have any control, direction, or inspection on the personnel that the outsourcing company places in its facilities.

The purpose of labor intermediation is that a main company hires a third party so that the latter places in the former workers to perform temporary, complementary, or specialized tasks. However, jobs at the core of the user's company may not be filled by these third parties.

Based on the above, the rules governing the outsourcing of services and job placement provide that workers placed by third parties cannot be used to cover:

1. Jobs of workers performing core activities of the company, under intermediation.

2. Jobs of workers performing main activities of the company, under outsourcing services if the user company will keep its own workers performing similar functions. For the placement to be valid, the outsourcing company must take over all aspects of the execution of that specific service.

3. Jobs of workers performing "core business" activities of the main company.

4. Jobs of personnel who are on strike.

5. Jobs of personnel placed by other employment intermediation or outsourcing companies.

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

Even when labor laws do not explicitly require that the employer have legal personality in Peru, it is understood that those who hire a person, regardless of their nationality, to provide services in Peru, will need to follow the obligations of every employer under Peruvian law.

A company acting as an employer in Peru must faithfully comply with the foregoing, and have a tax registration number (RUC-Taxpayer Registration) which will allow it to make the payment of contributions to Social Security and other related taxes. To this end, the National Tax Authority (SUNAT) requires that any applicant for an RUC have a valid registration in Peru, which will be essential for a company to be formally recognized, either as a new entity or as a branch from a foreign company.

A foreign company may hire an outsourcing company in Peru to fulfill specific service needs in Peru with Peruvian personnel. In this scenario, the foreign company will not be the actual employer of the workers who execute the service but will maintain a contractual relationship with the outsourcing company.

Finally, there is the possibility that a foreign company wishing to conduct operations in Peru may send one of its own employees (also a foreigner) using a so-called "Designated Worker" visa. This immigration status will allow the foreigner to work in Peru, but the compensation must be paid abroad with the understanding that the real employer is outside of Peru.

§ 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?

In order to hire a foreigner as a worker, certain requirements and formalities must be followed.

First, it is necessary to identify whether the nationality of the foreigner enables any immigration benefit. For example, nationals of the member countries of the Andean Community (Bolivia, Colombia, Ecuador, and Peru) are covered by Decision No. 545, Andean Instrument of Labor Migration, which sets out the equal treatment in the workplace in each of those countries. In other words, nationals of the member countries of the Andean Community will be considered as nationals in Bolivia, Colombia, Ecuador, and Peru, with respect to employment.

Another example is that nationals of member countries of MERCOSUR (Argentina, Brazil, Paraguay, and Uruguay), as well as the associated countries (Bolivia, Chile, Peru, Colombia, Ecuador and Suriname) can access immigration benefits that allow them to work freely in each one of those countries.

Similarly, Peru has a Dual Nationality Treaty with Spain. By virtue of this treaty and the provisions of Legislative Decree No. 689, Foreign Hiring Act, Spaniards will be considered as Peruvians in labor matters.

In this regard, the Foreign Hiring Act states that the following will be considered as Peruvians:

1. foreigner with Peruvian spouse, parents, children, or siblings;

2. foreigner with immigrant visa;

3. foreigner with whose home country there is a labor reciprocity or dual nationality agreement;

4. staff of foreign companies providing international transport, via land, air or water with flag and foreign registration;

5. foreign personnel working in multinational service companies or multinational banks, subject to the legal regulations governing these specific cases;

6. foreign individuals who, by virtue of bilateral or multilateral agreements entered into by the Government of Peru, provide services in the country;

7. foreign investors, whether or not they have renounced the export of capital and profits from their investment, provided that it has a fixed amount during the term of the contract not less than five Tax Units (UIT); and

8. artists, athletes, and generally those acting in public performances in the Republic, for a maximum period of three months per year.

The foregoing means that those who qualify in any of those categories shall not require authorization for employment from the Ministry of Labor and Employment Promotion. Any other foreigner shall submit to the rules of hiring that this law provides.

It is important to note that although the indeterminate hiring of foreigners who are considered as Peruvians for the purposes of employment is possible, a written employment contract must be sent to the Ministry of Labor and Employment Promotion. The agreement is a formality and will be used to support the issuance of the respective work visa.

In this sense, any foreigner who enters Peru shall have a "Special Permit to Sign Contracts,"[3] which is processed within hours in the Superintendency of Immigration of Peru.

Thus, to hire a foreigner in Peru who does not have the benefits listed above, the following should be taken into consideration:

1. The employment contract shall not have a validity of more than three years, and it can be renewed for similar periods of time.

2. Foreigners cannot be hired so that they exceed 20% of the total number of employees of the employer, or whose compensation exceeds 30% of the total payroll.[4]

[3] It shall not be necessary to process this permit if the foreigner has a business, work, or family member visa.

[4] By way of exception, exemptions may apply to these limiting percentages:

- in the case of specialized professional or technical personnel;
- in the case of management and/or executive personnel of a new business or in case of corporate restructuring;
- in the case of teachers hired for higher education, or basic or secondary education in foreign private schools, or language teaching in domestic schools, or in specialized language schools;
- in the case of personnel of public sector companies or private companies who have entered into contracts with public sector organizations, institutions, or companies; or
- any other case as set forth by Supreme Decree, following the criteria of specialization, qualification, or experience.

3. The employment contract must be submitted to the Ministry of Labor and Employment Promotion along with the affidavit of the employer stating that the foreigner has the experience or training required for the specific position.

The approval of employment contracts of foreign personnel is automatic and done through "SIVICE", an online platform from the Ministry of Labor and Employment Promotion. SIVICE, which stands for "virtual system of foreign personnel contracts" ("*Sistema Virtual de Contratos de Extranjeros*") is used to register these types of contracts, their extensions and modifications, among other related information.

Only after uploading the work contract into the Labor Administrative Authority system, can the work visa processing begin. In the same sense, only after the Competent Authority grants the qualifying immigration status to the foreigner will it be possible to initiate the employment relationship.

If the employment contract has been signed for less than 12 months, the visa granted to the foreigner will be that of Temporary Worker and this will not entitle the worker to an Alien Card. The record of the visa shall be entered through a stamp in the passport.

However, if the employment contract has been signed for one year or more, then the foreigner will be granted a resident work visa, which gives rise to the issuance of a Foreigner Card. The residence may be renewed annually and remain valid for the time specified in the contract.

After the visa application (or change of immigration status) is submitted to the Superintendency of Immigration, the procedure is as follows:

1. Only those who apply for a resident visa (over 12 months) must apply for an International Exchange Card with the International Police (INTERPOL). This document shall be sent directly to the Superintendency of Immigration.

2. Request an appointment online for the foreigner, or the foreigner's representative, to submit the required documents.

3. After evaluating the file, the General Director of Immigration shall order the change to or rejection of the immigration status.

4. Once the work visa is authorized, a new appointment must be scheduled to take a picture of the foreigner and to issue the Foreigner Card (for those who applied for resident visa) or to stamp the Passport (for those who applied for a temporary visa).

The total for the entire process to issue a work visa is approximately two months.

It is important to note that this procedure can also be carried out outside of Peru, in any Peruvian consulate.

§ 3 EMPLOYMENT CONTRACTS

§ 3.1 Are written employment contracts required for certain employees?

Under Article 4 of the Labor Productivity and Competitiveness Act, an employment contract is required when there is: (1) the personal provision of services; (2) subordination; and (3) payment of compensation. Thus, if such elements are present concurrently, then the existence of an employment relationship is assumed immediately.

For open-ended employment relationships, no written contract needs to be signed. However, when the relationship is temporary, fixed-term or part-time, then a contract must be signed.

On the other hand, employment contracts with foreign workers must be written and registered with the Ministry of Labor and Employment Promotion. The purpose of this requirement is to have the authorization of the National Labor Authority for the purposes of processing the respective work visas and permits.

Likewise, even if there is no employment relationship, it should be noted that it is mandatory to sign and register written agreements with professional and pre-professional trainees; for the latter, the Vocational Training Center is one of the parties that must sign the document.

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

Initial employment contracts should always contain an express clause that determines the probationary period. If this provision is not included, the general rule shall apply, which determines that the probationary period is three months. However, if the worker is qualified as a trusted or qualified worker, it may be extended in writing up to six months, and if the worker is a management worker, it may be extended up to 12 months. It bears repeating that the extensions will only be valid while they are included in writing in the first employment contract.

In contracts subject to a special condition (*i.e.*, fixed-term), the law requires that the specific grounds that justify the hiring for the temporary time frame must be included.

Employment contracts signed with foreigners shall include all foreign identification data, including marital status, city of birth, nationality, and profession or occupation. In addition, the address where the worker will be based in Peru shall also be defined, as well as a clause in which the worker agrees to train Peruvian personnel.

In employment contracts to be entered into with foreign nationals of any member of the Andean Community (Bolivia, Colombia, Ecuador, and Peru), an explicit reference to the condition by which the worker is hired shall be included, as per Decision No. 545.

When the worker's compensation is agreed to be paid under the "integral remuneration" scheme, this agreement shall be made in writing, either in the employment contract or in a separate document. The document should also note that social benefits are included in the total compensation.

Written work contracts must include specific clauses stating that the employer has informed the worker about the risks of the position, according to the Occupational Health and Safety Act, as well as the scope of the data protection.

For the rest, when signing an employment contract, all references that identify the signatories must be given, as well as the main employment conditions, such as schedule, workday, qualification of the position, and compensation, among others.

Even when employment contracts provide for causes that could lead to the termination of employment, they have to be consistent with the provisions of the Labor Productivity and Competitiveness Act. It is common for the employment contract to omit specific grounds on which the worker may be dismissed. However, if so, it is necessary to specify what conditions must occur for the violation to take place and refer the legal classification that would cover the case.

Per the Ministry of Labour and Promotion of the Employment, employment-related documents, including employment contracts, can be signed electronically. The burden is on employers to implement security measures to guarantee the integrity of the document and verify the identity of the signatories.

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

Every document signed in Peru shall be made in the official language—Spanish. If any document is made in a different language, it must have an official translation in Spanish, so that it may be validated by the respective authorities at any time.

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

Employment contracts with foreigners who do not have a special condition to be treated as Peruvians may have a maximum duration of three years with the possibility of being renewed for equal periods.

Contracts subject to special conditions are those known as "Fixed-Term" and pursuant to the provisions of Labor Productivity and Competitiveness Act, each of the causes that enable this type of hiring has a specific duration, as explained in the following table:

Type of Contract	Circumstances in Which the Contract Can Be Signed
For the start or launch of a new activity	The justification for the temporary nature of the contract is in the uncertainty about the viability of the new activity, allowing signing temporary contracts to grant the employer a deadline for assessing the appropriateness of performing that activity on the market. It is understood as a new activity, both at the start of the productive activity, and the subsequent installation or opening of new establishments or markets, as well as the initiation of new activities or the expansion of existing activities. **The maximum term for these contracts is three years**.
Due to market needs	This condition allows addressing short-term increases in production caused by substantial changes in market demand. However, it should not be due to expected increases in demand, but a temporary and unpredictable increase. This type of contract cannot be signed for changes that are cyclical or seasonal. **The maximum term for these contracts is five years.**
Corporate restructuring	It meets the need for adaptation that the company has for replacement, expansion, or modification of the company's activities, and in general any change of a technological nature in machinery, equipment, facilities, means of production, systems, methods, and productive and administrative procedures. **The maximum term for these contracts is two years.**
Occasional	This is used to address temporary needs different from the normal activity of the workplace, such as maintenance. **The maximum term is six months.**
Replacement	It is used to temporarily fill the position of a stable worker whose employment relationship is suspended (due to vacation, leave, or any similar circumstances). It also includes coverage of stable jobs, when the normal worker must temporarily perform other tasks at the same workplace (assignment).

Type of Contract	Circumstances in Which the Contract Can Be Signed
	The term of the replacement contract is whatever is necessary according to the circumstances.
Emergency	It is signed to cover temporary needs resulting from *force majeure* events that directly affect the company. **Its term shall coincide with the period of the emergency**.
Contract for a Specific Work or Service	It is used to perform work on a temporary object previously established, other than those corresponding to the organizational structure of the company, as in the case of project implementation. **Its term shall be the one that is necessary for the completion of the work or service**.
Intermittent Contract	It is signed for the execution of tasks which by their nature are permanent but not continuous. It is understood to be a permanent contract but with execution at different times, so **no specific limit is imposed**.
Seasonal Contracts	Signed in order to meet specific needs of the company's or establishment's business that are required only at certain times of the year and are repeated in equivalent periods in each cycle according to the nature of the productive activity. **The term shall depend on the season.** However, if the same worker is hired for two consecutive seasons, the worker shall then have the preferential right to be hired in subsequent seasons.

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

The general probationary period in the Private Activity Labor Regimen is three months. However, this period may be extended for workers in a position of trust or skilled workers up to six months, and for management workers, up to 12 months.

For the extensions to be valid, they must be contained in the initial employment contract or, if there is no such contract, in a document signed by the employer and the employee prior to the start of the employment relationship. Any agreement after this will be considered invalid.

§ 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?

It is quite common for employment contracts to include noncompete, confidentiality, reserve, and transfer of intellectual property clauses, among others.

However, it is also common in employment relationships in which a written contract is not signed that the parties sign specific confidentiality, noncompete, etc., agreements.

It is important to note that in the absence of a regulation that exists for these agreements, the parties are free to establish the conditions deemed necessary for the proper implementation of the commitments. However, even if it is agreed that, for example, the duty not to compete will be extended after the end of the employment relationship, the ability to enforce the same by the employer is almost negligible, considering

that preventing a person from working for another necessarily involves restricting the fundamental right to work.

The case is different for the transfer of intellectual property rights, since if it is agreed between the employer and the worker that the latter shall assign to the former all rights to inventions the worker generates throughout the life of the employment relationship, it shall continue in the future, even if the employment relationship is terminated.

Therefore, in Peru it is possible to sign agreements to be included in the employment contract related to the transfer of intellectual property, noncompetition, confidentiality, exclusivity, etc., but their extension beyond the employment relationship will have to be analyzed on a case-by-case basis, taking into account the effects that it could cause to the rights of workers.

§ 4 DISCRIMINATION, HARASSMENT & RETALIATION

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

The Constitution of Peru expressly states that every person is entitled to not be discriminated against for reasons of origin, race, sex, language, religion, opinion, economic status or any other reason, which is consistent with the fundamental right to equality, also recognized by the Constitution.

The concept of "other nature" should be understood in the most general way possible, including any involvement of the person (worker) that is not objective and reasonable, and would be considered a hostile act.

In this regard, Act No. 28983, Equal Opportunities between Men and Women Act was issued, defining discrimination as:

> (…) discrimination is defined as any type of distinction, exclusion or restriction based on sex, with the purpose or result of impairing or nullifying the recognition, enjoyment or exercise of the rights of individuals, regardless of their marital status, on the basis of equality between women and men, human rights and fundamental freedoms in the political, economic, social, cultural or any other sphere, in accordance with the provisions of the Constitution of Peru and the international instruments ratified by the State.

Under this concept, situations have been defined in which differentiation is not reasonable. In the workplace equal pay for work of equal value has been recognized; which is one of the guidelines of the abovementioned Act.

In relation to the foregoing, on December 30, 2017, Act No. 30709 was published approving the law prohibiting salary discrimination between men and women. The purpose of this law adjusts to the legal principle that governs the Peruvian labor legislation, which sets forth that for equal work, equal pay. Accordingly, this law states that the gender of a human being cannot be used as an element to set a difference in the salary conditions of a work position.

This gender-equality mandate applies also to trainees' programs.

On this, the Constitutional Court has ruled that wage differences can only be valid if objectives and reasonable elements the distinction.

However, acts of discrimination detected during an inspection, including wage or pay discrimination, are considered serious violations of labor relations, which result in fines ranging from PEN 1,138.50 to PEN 260,023.50[5] (approximately USD 300 to USD 68,427.24), depending on the size of the company (micro, small, or regular) and the number of workers affected.

On the other hand, it has been suggested that a dismissal that may be motivated for alleged discriminatory reasons shall be null and void. There are also cases of discrimination that have been classified as hostile acts by the Labor Productivity and Competitiveness Act. A *hostile act* is defined as one that the employer makes against one or more workers in an attempt to exert undue pressure on them to achieve a different purpose, such as resigning. In these situations, the worker will have the opportunity to denounce the hostile act, so that the employer ceases it immediately. If the intentions of the worker are not met, the worker may be fired, which is comparable to an arbitrary dismissal with subsequent payment of the respective compensation. Failing that, the worker can initiate legal proceedings so that a Judge orders the cessation of the hostile act.

Discrimination on the basis of any reason set out in the Constitution of Peru is considered a hostile act.[6]

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 and equitably to all employees and job applicants.

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

Paragraph 3 of Article 2 of the Constitution of Peru expressly states that:

> **Article 2. Every person is entitled:**
>
> (…)
>
> 3. To freedom of conscience and religion, individually or collectively. There is no persecution for ideas or beliefs. There is no crime of opinion. The public exercise of all faiths is free, provided they do not offend morals or disturb public order
>
> (…).

The Constitutional Court, following the provisions of the Universal Declaration of Human Rights, in its Article 18, interpreted that freedom of religion or religious freedom, which is the main subject around which this dispute revolves, involves the ability of all people to determine for themselves their religious faith in accordance with their convictions and beliefs, and for the practice of religion in all its forms, individual or collective, public and private, with freedom to teach, worship, observe and change religion.[7]

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[5] The currency in Peru is the Peruvian Sol or PEN.

[6] Paragraph (g) of Article 30 of the Labor Productivity and Competitiveness Act prohibits any type of act of discrimination due to sex, race, religion, opinion, language, disability, or any other reason. However, Article 2 of the Constitution of Peru is much broader, so it is understood that even if the Labor Productivity and Competitiveness Act does not provide certain protections, the constitutional protection shall prevail.

[7] Grounds 11 of the judgment in File No. 06111-2009-AA/TC.

On this matter, Act No. 29635 (Religious Freedom Act) was issued, through which the guarantee by the State to protect people's freedom of religion is reiterated, as well as to protect individuals from discrimination due to their religious choice.

Based on the foregoing, the Regulation of the abovementioned Act, approved by Supreme Decree No. 006-2016-MINJUS, considers that:

> **Article 7. Sacred days, days of rest and religious rest days.**
>
> Employers and the Principals from Education Centers, of the public and private sectors, shall guarantee the compliance of the sacred days, rest days and religious rest days, trying to harmonize them with the work and educational times, in reasonable ways. This will not interfere with management powers of the employer and Principals of Education Institutions.
>
> The belonging to a specific religion must be proven by a certificate issued by the Religious Authority.

The text cited above also includes the Peruvian legal provision that religious freedom of workers must be respected in the workplace, provided they do not represent incompatibilities. Incompatibilities can be understood as religious practices that are contrary to the company's line of business.

Specifically, the Constitutional Court ruled in a landmark case involving a worker who followed the Adventist religion. The worker's religious beliefs prevented him from working on Saturdays, however, his employer forced him to work on a rotating basis which included Saturdays.[8] The Constitutional Court issued a ruling on August 19, 2002, stating that the worker had communicated his religious preferences in advance and these had been respected by the employer for a while until it decided to change the rules of rotation. However, the employer gave no objective reasons for the change. The Constitutional Court also found that because of the worker's special religious considerations, the employer could have changed the allocation of the mandatory rest day, and included Sundays as part of its normal work schedule.

There are legal precedents and provisions guaranteeing people's freedom of religion and extending that protection to the workplace, making it possible to limit them only when objective and reasonable reasons support it.

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

Act No. 29973, Disabled Persons Act, expressly states, among other things, that:

1. The State guarantees a favorable, accessible, and equitable environment for the full enjoyment of the disabled without discrimination (Article 3.1).

2. The nondiscrimination of the disabled is a guiding principle of the State's policies and programs (Article 4.1(b)).

3. Disabled people are entitled to equality and to not be discriminated against as a result of that condition (Article 8.1).

[8] File No. 0895-2001-AA/TC.

4. Any discriminatory act against a disabled person is invalid (Article 8.2).

Any act made by an employer against a worker based on the worker's disability will be considered a hostile act. As an exception, some recognize that if the employer supports the denounced act with motives that objectively and reasonably justify the measure, then it will not be a hostile act.

In addition to the above, the Disabled Persons Act and its Regulations provide that private employers must reserve 3% of the total payroll to be occupied by persons with disabilities ("employment rate"). For this, a number of responsibilities are assigned to the employer that will allow access of disabled people to the workplace. In this regard, Article 50 of Act No. 29973, as modified in 2018 by Article 2 of the Legislative Decree No. 1417, states that:

> **Article 50. Reasonable accommodations for people with disabilities**
>
> 50.1 Disabled people have the right to reasonable adjustments in the selection process and in the workplace.
>
> 50.2 Reasonable adjustments in the selection process include the adequacy of methodologies, procedures, evaluation instruments, and interview methods. In the workplace of persons with disabilities, reasonable adjustments include the adaptation of work tools, machinery, and the work environment, including the provision of technical aids and support services; as well as the introduction of adjustments in the organization of work and schedules, depending on the needs of the disabled worker.
>
> 50.3 The Ministry of Labor and Employment Promotion and regional governments provide advice and guidance to employers for reasonable accommodation for disabled people in the workplace. Public employers and private income generators of the third category have an additional deduction in the payment of income tax on expenses for reasonable accommodation for disabled people, and this percentage is set by supreme decree of the Ministry of Economy and Finance.
>
> 50.4 Employers in the public and private sectors are required to make reasonable adjustments, except when they demonstrate that they are disproportionate or improperly charged, in accordance with the criteria set by the Ministry of Labor and Employment Promotion, which are applied in the public sector and in private.

Moreover, in Ministerial Resolution N° 171-2019-TR, the Ministry of Labour and Promotion of the Employment set forth specific regulations to provide reasonable accommodations for disabled people during the recruitment process and the employment relationship.

As noted, it is important to mention that to encourage the hiring of disabled people, the Peruvian government has provided tax incentives for employers who hire this group of workers.

§ 4.4 What prohibitions are there against harassment?

In Peru, sexual harassment is duly regulated by Act No. 27942, Sexual Harassment Prevention and Punishment Act, and its Regulation approved by Supreme Decree No. 014-2019-MIMP.

Sexual harassment has been defined as a way of violence that is configured by a conduct of sexual connotation or sexual nature, or a sexist conduct; unwelcomed by the person that receives that conduct; that can create an intimidating, hostile, or humiliating environment; and that can affect the activity, employment or formative situation, teaching experience or any other kind of situation.

Sexual harassment is considered a serious offense, which means that the employer can impose penalties on the harasser, with the most severe being dismissal.

The employer is obligated to establish measures designed to prevent and punish sexual harassment conduct in the workplace. To do this, it must provide an environment to all workers so that they feel free to report situations that may qualify as an act of harassment, as well as a reservation of confidentiality.[9]

Furthermore, it is the responsibility of the company to provide training and to make workers aware of conduct that is punishable as sexual harassment in accordance with law and Regulation.

Similarly, the employer must implement an internal procedure for the investigation of complaints, as well as ensuring the appropriate penalty is determined in the event a complaint of harassment is substantiated.

Employers must include in their Working Rules a specific reference where unlawful sexual harassment is outlined, and that the company will punish violators of the policy. In the same sense, every employer with more than 20 workers must have specific internal rules or policies about how sexual harassment is treated at work, and that specifies the procedure to investigate and punish it. In said internal policy, guideline or document, employers must include the complaint formats set forth by the Ministerial Resolution No. 115-2020-MIMP.

Any person that is aware of a situation of sexual harassment must report it, verbally or in writing. There is no need to provide any evidence. The employer is obligated to start an investigation. If it does not, the alleged victim can choose to terminate the employment relationship, assimilating it as an unfair dismissal, or request a Judge to order the cessation of the hostile act.

The employer is obliged to keep the complainant's representations confidential and afford the complainant with due process.

The employer must provide protection measures to the alleged victim, within the three business days after receiving the complaint, which can be:

1. Rotation of the alleged harasser.

2. Temporary suspension of the alleged harasser.

3. Rotation of the victim, only if requested by the alleged victim.

4. Preventing the alleged harasser from approaching the victim and/or the victim's family.

Finally, the worker is entitled to report the alleged harassment conduct to other Authorities, while the investigation process is taking place in the workplace.

In addition to the above, it should be noted that Peruvian law also provides a guarantee for the alleged harasser, whereby if it is determined that the complaint brought is manifestly false, the accused worker has the right to initiate the appropriate legal action (such as a claim for damages), and the employer may terminate the employment contract of the complainant with just cause.

[9] Note: The law does not describe specific measures, but the obligation exists (implicitly).

§ 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 only exceptions allowed to differentiate between people are those that are objective and reasonable. Thus, it must be proven irrefutably that there are factors that necessitate a distinction between two individuals.

The Constitutional Court, in abundant case law has determined that the principles of reasonableness and proportionality are useful benchmarks to examine differential treatment.[10]

This is the case, for example, where an employer fails to appoint a person with a physical disability who cannot access a job in an open pit mine. The duty to avoid the imminent risk to the person's life would justify the employer's action.

§ 4.6 What prohibitions exist regarding retaliation/reprisal?

The Labor Productivity and Competitiveness Act considers that a dismissal is void if it has at its basis that the worker has filed a complaint or participated in proceedings against the employer before the competent authorities.

The Sexual Harassment Prevention and Punishment Act also provides that it is the employer's responsibility to adopt the measures necessary to stop the threats or reprisals of a harasser.

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

It is possible to punish individuals as liable for discrimination, sexual harassment, threats, or reprisal.

In the workplace, the employer may initiate dismissal proceedings against those found liable for discrimination or harassment. The victim of the discriminatory attitude, harassment, threat, or reprisal shall have a right to attend criminal and/or civil court purposes to report or sue the harasser.

The accused person shall be declared guilty if the allegations are proven and the applicable forms of reparation (imprisonment, fines, civil damage payments, etc.) may be demanded.

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

Yes. If the employer receives an allegation of a sexual harassment situation, it must be investigated. If the employer does not take action about it, the alleged victim can terminate the employment relationship assimilating it to an unfair dismissal, or request a Judge to order the cessation of the hostile conduct.

[10] Grounds 22 of the sentence in File No. 00045-2004-AI/TC.

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

Yes, employers must provide periodic training to their employees about how to prevent sexual harassment. It is also a mandatory responsibility to provide an initial training to every new worker about how sexual harassment is treated in the workplace (investigation process, protections, ways to avoid it, etc.).

The employer must provide a special training, at least once a year, to the workers that are part of the Sexual Harassment Intervention Commission (who are in charge of investigating any complaints in this regard), Human Resources, and any other worker that is involved in the investigation process. This training must include a specific part regarding how to treat all the people involved in the investigation.

§ 5 COMPENSATION

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

The maximum workload in Peru is eight hours a day or 48 per week. This is set forth in the Constitution of Peru, and governed by various legal provisions of Peruvian law.

However, exceptions are admitted that allow extending the working hours. This is the case for overtime, which must be accepted voluntarily by the worker and compensated at a rate higher than normal.

Another exception is known as *cumulative* or *atypical* days. These relate to when the employer may set, depending on the need of the company's operations, workloads that accumulate over 48 hours a week or over eight hours a day. However, the Workload, Working Hours and Overtime Work Act and its implementing regulations provide that even if this extension of daily or weekly working hours is possible, a period should be established on which an operation is performed that results in the worker on average not providing services for over 48 hours a week or eight daily.

In light of the lack of precision in the rules referred to above in relation to the establishment of the average, the Constitutional Court issued a precedential ruling that is binding precedent against a mining company, in which it stated that "atypical workloads, in any type of employment activities, may not exceed the average of eight hours a day or forty-eight hours a week, whether for a period of three weeks or a shorter period, as provided for in the Constitution and ILO Convention No. 1."[11]

In other words, workdays longer than eight hours a day or 48 hours a week may be implemented, provided that in a three-week period, the average of time worked does not exceed these limits.

On the other hand, it has been determined that the night shift will take place between 10:00 P.M. and 6:00 A.M. The importance of considering this timeframe is that minimum wages have been set for workers who work at night. Similarly, restrictions apply around certain groups of people (*i.e.*, teenagers between ages 14 and 18) who can perform no work in that timeframe.

§ 5.2 What minimum wage requirements exist?

The Labor Regime for Private Activity sets an amount called the "Minimum Living Wage" (MLW), which is the basic salary that any worker who works the normal working hours should receive.

[11] Grounds 29 of the sentence in File No. 04635-2004-AA, which is qualified as a precedent of mandatory compliance.

Currently, the MLW is set at PEN 1,025 per month, with the last increase made with an effective date of May 1, 2022.

On the other hand, Supreme Decree No. 007-2002-TR, Sole Text Ordered of the Workload, Working Hours and Overtime Work Act sets a different basic compensation for workers who provide night shift services between 10:00 P.M. and 6:00 A.M. shall be entitled to receive as their basic salary the amount of the MLW plus 35%. In this sense, the MLW for a night shift worker shall be PEN 1,383.75 (approximately USD 364.14).

It is important to note that pursuant to Article 17 of the Regulation of the Workload, Working Hours and Overtime Work Act (approved by Supreme Decree No. 008-2002-TR), if a worker's workday uses a mixed schedule (*i.e.*, day and night), the worker's compensation should be calculated taking into account the additional surcharge that applies to night work only for the hours worked during the hours of 10:00 P.M. and 6:00 A.M.

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

The forms, frequency, and currency of payment for compensation are aspects that can be freely agreed upon between the employer and the worker.

Regarding the form of payment of wages, it should be noted that if the employer decides to make payment through bank deposits, Article 18 of Supreme Decree No. 001-98-TR (the standard establishing the regulatory provisions on the obligation of employers to keep payroll sheets, which was amended by Article 1 of Supreme Decree No. 003-2010-TR) provides that the worker has the right to freely choose in which bank to deposit the wages.

The applicable laws state that workers must notify their employer of their choice within the first 10 days of starting employment. Failing that, it will be the employer who shall freely decide where to pay the wages.

The worker also has the right to change financial institutions. The worker must notify the employer within 10 days of the need for a change in direct deposit.

The employer is prohibited from coercing workers to choose a particular bank, which is regarded as an infringement on employment relations and is subject to punishment with fines.

Regarding the frequency, it can be freely agreed between the worker and the employer, and it may be weekly, biweekly, or monthly.

Finally, if compensation is paid in a currency other than the official national currency (Peruvian Soles or PEN), then care must be taken so the variation in the exchange rate does not affect the worker's income. It is understood that the compensation is the main source of funds for the workers and any unmotivated reduction will be assumed as a hostile act against the workers.

§ 5.4 What overtime pay requirements exist?

Under the Peruvian legal definition, overtime work is all work done in excess of the daily or weekly scheduled workload. It is important to note that it is necessary to prove the execution of services while the employee stays on the employer's premises. The mere presence of the employee is not enough evidence of the overtime.

In Peru, overtime work is voluntary. Nobody can be forced to do overtime, except if there if a fortuitous event or force majeure that makes the provision of overtime work essential.

If it is determined that the employer has forced workers to perform overtime work, they may claim compensation equivalent to 100% of overtime hours worked. In addition, the employer will be penalized by the inspections system of the Ministry of Labor and Employment Promotion through the imposition of fines. This administrative penalty also applies if it is determined that the employer does not comply with the payment of overtime to its workers.

In the event that the employee voluntarily agrees to work overtime, then the employer must assume the payment of overtime with the surcharges as follows:

1. For the first two overtime hours, a surcharge of 25% of the regular hourly value shall apply.

2. For the rest, a surcharge of 35% of the regular hourly value shall apply.

It essential to note that in exchange for the payment of overtime, the employer and the employee may agree to compensate overtime work with additional paid breaks. For this to take effect, both parties shall have entered into a written agreement where this option is considered, and should establish a schedule of compensation within one month following the generation of overtime. However, the parties may agree that compensation is carried out on another occasion, for which a written agreement providing as such shall be prepared.

The sums received as overtime will be part of the regular worker's compensation for the calculation of social benefits when they present a regularity of at least being paid for three months in a period of six. The amount to be considered is the average of what is received in that timeframe.

§ 5.5 What bonuses are mandated or customary?

All workers of private employers subject to the labor regime of private activity, regardless of the type of contract and the time of provision of the service, are entitled to two bonuses a year: one on Independence Day and the other at Christmas. For this purpose, the benefit will be paid in the first half of July and December, as applicable. This is regulated by Act No. 27735, the Law governing the awarding of bonuses for workers in the private sector for national holidays and Christmas, and Regulation approved by Supreme Decree No. 005-2002-TR.

To be entitled to the bonus, the workers must be working, (or using their vacation break, on leave with pay, or receiving legal subsidies) at the time they are supposed to receive the benefit.

Each of the bonuses will be equivalent to the basic salary received by the worker at the time the bonus is paid, which shall consist of the fixed and permanent amounts received by the worker.

In the case of workers whose compensation is not fixed, the amount of their bonus is calculated based on the average of the last six months prior to July 15 and December 15, as applicable.

Each bonus consists of six sixths (6/6), equal to one-sixth for each full month of work. Thus, the bonus for Independence Day is formed by six sixths generated between January and June, while the Christmas bonus is for the six months between July and December.

Finally, it should be noted that if a worker does not have the time required to receive the full bonus (*i.e.*, six months of service from January to June/July to December), it will be paid in proportion to the full calendar months worked, through a benefit called "truncated bonus."

Another bonus payment that is mandatory for workers is the one accompanying the payment of the abovementioned bonuses. In this case, the employer must allocate the percentage directed to the payment of Social Security for Health applicable on bonuses to the worker as a special bonus.

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

Every employer must have a Category and Function Chart, and a Salary Policy, in order to avoid gender discrimination related to remuneration.

The Category and Function Chart must have at least the following:

1. The work positions that belongs to each category.
2. The general description of each work position that justify the belonging and pooling to the specific category.
3. The prioritization of the categories.

The Salary Policy must be issued following these guidelines:

1. Define the structure of work positions and remunerations (classification of work positions and salary ranges).
2. Remuneration of each work position.
3. Criteria and guidelines that will be applied to recognize specific benefits to the workers.
4. Identification and explanation of the methodology used to objectively measure and compare the value of each work position.
5. Identification of criteria that justify different payment to equal work positions, if any.
6. Identification of the actions taken by the employer to avoid any kind of affectation in getting salary increments or benefits to workers that are on sick leave.
7. Anticipation of remuneration adjustments situations, individually or collectively.
8. Anticipation of an Equal Pay Plan.
9. Detail of salary statistics of the company differentiated by gender.
10. Indicator that shows the salary structure distributed between male and female workers.
11. Wage gap elimination plan.

§ 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?

Pursuant to Legislative Decree No. 713, all workers are entitled to receive for the nonworking holiday their regular pay corresponding to a working day. The following days have been set as nonworking holidays:

Holiday	Date
New Year's Day	January 1
Maundy (Holy) Thursday	Variable year to year
Good Friday	Variable year to year
Workers' Day	May 1
Feast of Saints Peter and Paul	June 29
Independence Day	July 28 and 29
Battle of Junin	August 6
Saint Rose of Lima's Day	August 30
Battle of Angamos	October 8
All Saints' Day	November 1
Immaculate Conception	December 8
Battle of Ayacucho	December 9
Christmas	December 25

Also, it is important to note that every worker is entitled to at least 24 continuous hours as a Required Weekly Rest Day (RWR), unless a cumulative or atypical day has been agreed. Preferably, the RWR will be on a Sunday. However, at the discretion of the parties, it may be set on any other day and even extended to more than 24 hours.

If workers provide services on the RWR or on various RWRs, without offsetting them with rest during the following week, then they are entitled to payment of a surcharge of 100% on the amount received for work done. This rule applies if workers provide services on days considered non-working holidays.

Finally, by express legal provision, if the holiday on May 1 (Worker's Day) coincides with the RWR, all workers must receive, without exception, double payment. Also, if the worker provides services during that day that also coincides with the RWR, then the payment will be triple, and if the break is not replaced during the week, a fourth surcharge payment for working on a holiday will be paid.

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

Workers are entitled to 20 paid days off for sickness or temporary disability. The payment that the worker receives during those days is considered compensation and is the responsibility of the employer.

Starting on the 21st day of medical leave, a subsidy for temporary incapacity for work is generated. This payment is made by the Social Security in Health of Peru, which is also in charge of "EsSalud" ("*El Seguro Social de Salud del Peru*"). In spite of this, and to facilitate the benefit received by the worker, the payment obligation has been moved to the employer, who at the end of the worker's leave and within six months, may request from EsSalud the reimbursement of the amount paid.

However, if the employer fails to comply with this payment, the worker must file the appropriate complaint with the Ministry of Labor and Employment Promotion, then go directly to EsSalud and request payment of the subsidy.

The maximum term for payment of the subsidy is the duration of the disability and up to 11 months and 10 consecutive days, or 540 nonconsecutive days in a period of 36 months.

However, once 150 days of temporary disability are reached, the worker must undergo an assessment by the respective Medical Commission to determine whether the worker should be kept in a temporary status or changed to permanent. If this special medical examination is not done, then the employer cannot request the reimbursement of the subsidies.

It should be noted that if the disability is found to be permanent, then EsSalud shall only recognize the reimbursement of 180 days of subsidy.

If the worker suffers disability during vacation or during any period of suspension of work (due to disciplinary penalty, unpaid leave, etc.), and provided the employer has complied with the payment of the first 20 days of disability during the calendar year, the employee is entitled to the subsidy from the day following the end of the vacation or the situation that causes the suspension of work.

The amount payable for this type of subsidy is equal to the average daily compensation received in the last 12 months. If the worker had worked for less than 12 months but more than three, then the daily average of the months contributed must be calculated.

The process for the employer to request the reimbursement of the subsidy can be currently done through EsSalud's virtual platform called "VIVA" (Virtual Integrated Counter of the Insured). Its Directive of Operation has been regulated through the Resolution of General Management 999-GG-ESSALUD-2020.

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

All workers who meet a minimum regular working day for four hours daily or 20 hours a week are entitled to 30 calendar days of paid vacation for each full year of service. The right is also subject to working requirements stated below:

1. For workers whose normal work schedule is six days a week, they must have done "effective work" for at least 260 days in that period.

2. For workers whose normal work schedule is five days a week, they must have done "effective work" for at least 210 days in that period.

3. In cases where the work plan is only four or three days a week or the worker suffers temporary shutdowns authorized by the Labor Administrative Authority, workers are entitled to enjoy vacations, provided that their unexcused absences do not exceed 10 days in that period. Unexcused absences cannot be considered as effective working days.

For the purposes of the vacation record, the following are considered "effective working" days:

1. the ordinary minimum workday of four hours;

2. the day worked on a day of rest, regardless of the number of hours worked;

3. overtime hours of four or more in one day;

4. absences due to illness, accident, or occupational disease, in all cases provided that they do not exceed 60 days per year;

5. the leave before and after childbirth;

6. union leave;

7. absences authorized by law, collective or individual agreement or by employer's decision;

8. the vacation period corresponding to the previous year; and

9. days of strike, unless they have been declared improper or illegal.

The vacation compensation must be equivalent to what the worker would have received while working.

Upon the written request of the employee, the employer may authorize the enjoyment of vacation in periods of one day, but only up to 15 days of the total annual leave entitled to the worker. The additional 15 days must be enjoyed continuously or in two different blocks: seven and eight days.

The worker can request to advance vacation (*i.e.*, use vacation time that has not been accrued yet). If the employer accepts, it must be concluded in a written agreement signed by both parties. In case the worker ceases employment before completing the time to generate the advanced vacation time, the employer can reduce those days from the pending vacations, if any. In any case, the employer can discount any amount from the payment made to the worker, unless the worker provides express authorization.

Similarly, employees may agree in writing with their employers to accumulate up to two consecutive leaves, provided that after one year of continuous service they enjoy at least one leave of seven calendar days. Workers hired abroad may agree in writing on the accumulation of vacation periods for two or more years.

Lastly, workers may agree in writing with their employers to reduce the vacation leave of 30 to 15 days, with the respective compensation of 15 days of compensation, which is commonly referred to as a "sale of vacations." The disposal of vacation days can only be attributed to the ones that the worker can enjoy individually.

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

Peruvian law provides special protection for working mothers covering periods prior to and following the birth of a child, and for the father as well. Rest periods have been set for this before and after the birth, the aim of which is to protect the health of the woman and the child.

Regarding the working mother, the right to prenatal leave is 49 days, and the same amount for postnatal rest, giving a total of 98 days of maternity leave. It is important to mention that the postnatal leave will increase by an additional 30 days if it is a multiple birth or if the child is born with disabilities, which shall be verified with a corresponding medical certificate.

In addition to the above, Act No. 26644, an Act that specifies the worker's right of prenatal and postnatal leave, its Regulation, approved by Supreme Decree No. 005-2011-TR and other amending rules, such as Act No. 30367, provide the working mother with the power to jointly enjoy the pre- and postnatal leaves. That is, the transfer of the 49 days of prenatal leave to the postnatal period is permitted provided she has an

authorization from the treating physician certifying that if she does not take her prenatal leave it will not affect the health of the worker or the child.

Also, the expectant mother shall notify the employer of her decision to defer her prenatal leave with no later than two months before the due date.

It should be noted that the employer shall only be obligated to grant the start of pre- and postnatal leave if the worker provides the medical leave certificate issued by the attending physician in a timely manner; this document will be used to validate the need for leave.

Likewise, the mother may take any outstanding vacation she had accrued immediately after the end of postnatal leave. However, the worker must inform the employer in writing of her decision to use the vacation leave at least 15 days before the end of the postnatal leave. The arrangement of the use of vacation in this circumstance is not subject to approval by the employer, and its application is automatic.

However, the applicable law considers special situations in order to validate and account for the pre- and postnatal leaves.

First, it is provided that if childbirth is prolonged beyond the 49 days of prenatal leave, then the time between the last day of leave and delivery should be considered as medical leave due to the inability to work and it must be subsidized as such. However, if the delivery is moved forward, the days that had been pending in the prenatal leave will be accumulated to the corresponding postnatal period.

Second, it is provided that if childbirth occurs between weeks 22 and 30 of gestation, the use of the leave will be subject to the child being born alive and surviving 72 hours. If the birth occurs after the 30th week, the worker shall be able to use the leave even if the newborn does not survive.

During the pre- and postnatal leave, the employer must continue to pay the conventional compensation to the worker, yet this income will be classified as maternity subsidy. Therefore, the employer may request the corresponding reimbursement from Social Security in Health—EsSalud.

Regarding male workers, Act No. 29409 and its Regulation (approved by Supreme Decree No. 014-10-TR), grants them a paid leave of 10 consecutive calendar days when they have a single child. The paid leave will be increased to 20 days in case of a multiple or an early birth, and to 30 days when the mother has had complications or the baby has a severe disability or a terminal congenital disease.

As with women, the parent must notify his employer at least 15 days before the due date and from what point he will decide to use his leave.

It is important to note that the start of paternity leave must be set between the date of delivery and before the mother or baby is discharged from the hospital or clinic.

While it has been determined that paternity leave is a right that the employee cannot waive, the Regulation is explicit in stating that if the worker is on vacation at the time of delivery or is in any situation that determines suspension of the employment contract, then paternity leave will not be granted.

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

Breast Feeding Time

Within the labor regime of private activity, the benefit of breast feeding is regulated by Laws No. 27240 and 27403, the content of which is detailed below.

The content of this benefit has been given by Article 1 of Act No. 27240, according to which, at the end of the postnatal leave, the mother is entitled to one hour per day of break for breast feeding until the child is one year old. If the birth is multiple, then the working mother is entitled to two hours a day for breast feeding.

Consequently, the extension of the benefit is not uniform in all cases but depends on two elements:

1. **The number of days during which the worker fulfills her workday:** Thus, for example, if the worker is scheduled for six days a week, the mother shall be entitled to six hours per week of breast feeding and 12 hours in the case of multiple births, whereas if the Schedule is extended to five days a week, the right to breast feeding will only be extended to five or 10 hours a week.

2. **The duration of the postnatal leave:** This is because, to the extent that it is possible to accumulate periods pre- and postnatal leave and even to add them to vacation that was not used, it is possible that the worker uses a leave longer than 45 days after the delivery, whereby the extension of breastfeeding will be reduced, not being a fixed time but depending on the age of the infant.

However, with regard to the time that should be given for breast feeding, Article 1 of Act No. 27240 states that the use of this right should take place within the working day and may be divided into two equal periods.

The rule states that the worker and the employer may agree on the schedule in which the right is exercised. It is not noted which procedure to follow if there is no agreement between both parties. However, if an agreement does not occur, the opportunity of enjoyment may be determined by the employer, as in other cases of paid breaks.

Article 1.3 of Act No. 27240 states the impossibility that the time allocated for breastfeeding be replaced by a different benefit, such as financial compensation or the granting of an additional day of weekly rest.

Pursuant to the provisions of the sole Article of Act No. 27403, the time allowed for breastfeeding is considered as time worked for all legal purposes, including the corresponding payment of compensation.

Lactariums at the Workplace

On the other hand, employers who have at their workplaces 20 or more working women between the ages of 15 and 49 are legally obligated to implement a Lactarium; any other employer has the power to decide to comply with the provision or not.

It is important to emphasize that it is not necessary that women be in a state of gestation or have dependent children or be breast feeding. The only criterion adopted to impose the obligation is that the women be of childbearing age.

Furthermore, it should be noted that it does not require the existence of a direct employment relationship with the company, but simply the presence of 20 or more women of childbearing age, who may have been placed by a third party, for example, in the workplace for the obligation to become effective.

Remote Work

Employers have the obligation to identify working women that are either pregnant or nursing and whose own integrity or their child's integrity are at risk due to the circumstances that caused the National State of Sanitary Emergency. In said cases, employers must implement remote work. When the nature of the job does not allow remote work, and for the duration of the Sanitary Emergency, the employer must assign said workers to other activities compatible with remote work or grant a paid leave subject to later compensation.

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

The same rules apply as for the leave due to temporary incapacity for work.

It is important to reiterate that workers must communicate their inability to go to work to their employers within three days following the absence. In addition, they must submit the Medical Rest Certificate and/or Certificate of Temporary Incapacity for Work (CITT) that the treating physician should have issued with express reference to the total time of leave. This document will be used to support worker absences and to seek reimbursement of subsidies paid by the employer.

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

In addition to rest for temporary incapacity for work and leaves for the birth of a new child, employers must give workers the following permissions:

1. **For serious or terminal illness or accident of a direct family member**: This leave is granted to the worker whose descendant, ascendant, spouse or partner is ill or diagnosed with a serious or terminal condition or suffers an accident that puts the family member's life in serious jeopardy, so that the worker may help the family member.

   The leave shall be granted for a maximum period of seven calendar days, with a right to compensation and more days of leave, if they are needed, will be granted for an additional period of no more than 30 days as part of the vacation leave. In addition, if there is an exceptional situation that makes direct family assistance outside the prescribed period of 30 days unavoidable, the worker can be compensated for the hours used for that purpose with overtime work, subject to an agreement with the employer.

   It is an obligation of the worker to submit a medical certificate attesting to the serious situation of the family member whom the worker must help, to the effect that the employer grants the leave.

   Exceptionally, and for one time only, a paid leave is granted to the worker with a child or adolescent of less than 18 years old that has been diagnosed with cancer by a medical specialist. The leave is for up to one year and the first 21 days must be covered by the employer, whereas the rest of the leave period will be covered under EsSalud.

2. **For taking care of relatives with Alzheimer's:** Workers that have a relative suffering from Alzheimer's disease can request up to one paid working day to help their relative. This time can be enjoyed by hours, not necessarily continuous.

3. **For adoption**: Workers who adopt a child under the age of 12 years are entitled to a paid leave of up to 30 days. To use this leave, the worker must notify the employer at least 15 days in advance of the intention to use the leave.

   If both members of the adopting couple work for the same employer, the leave will be used by the woman. The refusal to grant this leave will be considered a hostile act comparable to arbitrary dismissal.

4. **For judicial processes or civil offices or to fulfill Compulsory Military Service:** If the worker is summoned to a trial or to perform a civic office duty or to fulfill compulsory military service, then the leave shall be granted for the time such orders last.

5. **For union activity:** Workers who are elected as union leaders for their organizations are entitled to 30 calendar days per calendar year as paid union leave. The union and the employer may agree to longer times of union leave, which must be contained in the collective agreement. If no such agreement exists and the union leaders require more time to perform their duties, it shall be understood as a leave but without pay.

6. **For members of the Joint Committee on Occupational Safety and Health:** Joint committee members—representatives of employers and workers—are entitled to 30 calendar days in a calendar year of paid leave to perform their duties.

7. **For training:** When training is available outside the workplace, the employer must grant the respective paid leaves for the time the worker takes to travel to the training, for the duration of training and the time it takes to return to the workplace.

8. **For oncological examinations:** Workers of both the private and public sectors have a right to a compensable leave for up to two working days a year to undergo preventive oncological examinations. This will need to be accredited with the medical order for the examinations and the proof of the medical care received.

9. **For bereavement reasons:** Workers of the private sector whose family members have passed away have a right to a leave of five calendar days. This applies for the passing of the spouse, parents, children, or siblings.

§ 7 BENEFITS

§ 7.1 What benefits must employers furnish to employees?

Workers subject to the labor regime of private activity[12] providing services for more than four hours a day (or 20 hours a week) are entitled to the following benefits:

1. **Family Allowance:** Workers whose compensation is not governed by a collective agreement are entitled to a monthly allowance equivalent to 10% of the minimum living wage if they are responsible for one or more children under 18, or older children up to the age of 24 if they are

[12] Both public and private entities can have employees under the Private Labor Regime.

"coursing superior studies". In the latter case, the benefit will extend until they finish their studies, up to a maximum of six years after turning 18.

The benefit is also applicable to workers that have one or more children, over 18 years old with severe disability, duly certified, unless they receive the noncontributory pension for severe disability.

Workers who regulate their compensation through collective bargaining may agree to receive this benefit under the legal framework and according to the conditions and amounts agreed to between the parties.

2. **Legal Bonuses:** Workers are paid for full payment of the salary in July and in December, for Independence Day and Christmas.

3. **Extraordinary Bonus**: This is the equivalent of the contribution that the employer was supposed to make to Social Security in Health for the bonuses. This bonus is paid at the same time as the legal bonuses.

4. **Compensation for Service Time**: This is the semiannual deposit that the employer must make in May and November for each worker. The amount to deposit is equivalent to 1/12 of the computable compensation for the month worked during the respective semester.

   The computable compensation consists of the amount the worker receives on a regular basis during the semester, including 1/6 of the legal bonus, family allowance, food and other compensation that meets the requirements of regularity (having been received at least three times over a period of six months) or that constitute income of a different but regular and consistent frequency.

   This benefit can only be withdrawn from the bank chosen by the employee when the employment relationship ends. To do so, the employer must issue a letter to the financial institution communicating this fact. As long as the employment relationship continues, the amounts deposited by the employer semiannually, shall generate financial interest.

5. **Life Insurance Act Benefits:** As of February 11, 2020, every employer must obtain a life insurance contract for their employees since the beginning of the employment relationship. Prior to this date, this benefit was mandatory only for workers with four years of service with the same employer. The insurance policy can be maintained by the worker after termination.

   The benefits granted through this insurance are financial benefits in case of permanent disability and death.

6. **Vacations:** For each full year of service, 30 calendar days of paid leave shall be granted. Vacation can be taken when the worker and employer agree, and failing an agreement, the employer shall decide. Vacations can also be taken at different times, but always for periods of not less than seven consecutive days.

7. **Profits:** This is the participation that workers have on the employer's annual profits. For such purposes, it requires that companies with 20 or more workers, which are not civil societies or self-managed companies, distribute a percentage of the profit resulting after declaring the payment of annual taxes.

In this regard, the percentage that companies must allocate is as follows:

a. Fishing Companies 10%

b. Telecommunications Companies 10%

c. Industrial Companies 10%

d. Mining Companies 8%

e. Trade Companies 8%

f. Companies that perform other activities 5%

In order to calculate what each worker should receive, the compensation received and days worked shall be taken into account. Based on this, a sum will be allocated to each worker, which may not exceed 18 monthly salaries.

8. **Compensation for arbitrary dismissal:** Once the probationary period has passed, workers will be protected against arbitrary dismissal, which means that they may not be dismissed except for just cause. The penalty for arbitrary dismissal is the payment of compensation equal to one and a half salary per year of service up to a maximum of 12 salaries.

   Fixed-term workers shall be entitled to the same calculation, but the calculation shall be made on the basis of the pending months to conclude the term agreed in the employment contract.

9. **By agreement:** Any other benefit that is mutually agreed upon between the workers—either individually or collectively—and the employer.

Workers who provide services on a part-time basis (less than four hours a day or 20 a week) shall not be entitled to the following:

1. compensation for time of service;

2. vacation;

3. compensation for vacation not taken; and

4. compensation for arbitrary dismissal or termination of the fixed-term contract.

§ 8 CODES OF CONDUCT/WHISTLEBLOWING

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

As the employment relationship has been designed in Peru, the employer governs it through the power of management, supervision, and punishment. In this regard, the employer is free to impose mandatory internal regulations for workers, provided that they do not transgress law and are reasonable in their content and application.

Thus, if the employer has informed its employees about a certain and specific Code of Conduct, and a worker fails to comply with its implementation, then it is valid for the employer to punish such worker up to dismissal, depending on the extent of the violation, invoking the serious offense codified in Article 25 paragraph (a) of the Labor Productivity and Competitiveness Act concerning the breach of employment obligations involving the breach of good faith in labor.

§ 8.2 What whistleblowing protections exist?

Each employee has the constitutional right to report an employer for alleged wrongful acts, and to seek redress and judicial protection through the Specialized Labor Courts or the National Administrative Authorities.

Likewise, there are specific rules requiring employers to include in their internal work regulations and/or directives and/or internal policies, provisions related to the procedures that each worker must follow to make an internal complaint. This is the case, for example, for sexual harassment, where the complaint procedure must be clearly identified and communicated to workers.

The Labor Productivity and Competitiveness Act protects workers who decide to question or make a claim against their employers, guaranteeing the continuity of the employment relationship if the employer decides to terminate the employment contract as a result of the complaint.

A compliance system, as established in the Regulation of Law 30424 - Law that regulates the Administrative Responsibility of Judicial Persons, must include mechanisms that recognize and promote the communication of any indication of the possible commission of a crime under conditions of confidentiality, security and protection for whistleblowers. This constitutes a general protection so that employees are not dismissed or receive retaliation for their reports or complaints.

§ 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)?

Every person has a fundamental right to the protection of their data as contained in paragraph 6 of Article 2 of the Constitution of Peru, which has been developed by Act No. 29733, Data Protection Act and its Regulation approved by Supreme Decree No. 003-2013-JUS. Both laws went into effect in May 2015.

For the processing of "personal data," the prior express, informed, and unequivocal consent of the "holder" (*i.e.*, the individual who is the subject of the data) is necessary. *Personal data* is defined as any information that identifies or may identify a natural person using reasonable means. For "sensitive data," consent must also be written. *Sensitive data* means any information relating to the physical, moral, or emotional characteristics, facts, or circumstances of their personal or family life, personal habits of their intimate life, information relating to their physical or mental health, or other similar information that affects their privacy.

In turn, the holder may revoke the consent to the processing of personal data. However, consent of the holder shall not be required when:

1. The transfer of the data is done under the exercise of the functions of public entities.

2. The personal data is found in sources accessible to the public.

3. The data relates to creditworthiness and credit.

4. The information is necessary for the execution of a contractual relationship in which the holder is a party.

5. The information results from a scientific and professional relationship of the holder and its use is necessary for the development or implementation of the position.

6. The data is related to health and is necessary due to circumstances of risk, prevention, diagnosis, and medical treatment, provided that the use of this information is done by health professionals.

7. Access to the information is in the public interest.

8. Procedures are followed to ensure the anonymity of the holders or the impossibility to link information with a specific person.

9. It is necessary to protect the holder's interest.

10. The treatment of the data is needed for purposes related to the asset laundering and terrorism financing prevention system, or any other requested by law.

11. According to the rules of the Financial Intelligence Unit, there is a mandatory obligation to inform within a group of companies, about their clients with the purpose of prevention of asset laundering and terrorism financing, safeguarding the confidentiality and usage of the exchanged information.

12. The legitimate exercise of the constitutional and fundamental right to information.

It is important to mention that data collection must express in an explicit and determined manner its purpose, and it may not be used for different purposes, except for historical, statistical or scientific studies and provided that it is done anonymously or it is not possible to identify the holder of the data.

The storage of personal data implies that the same security is guaranteed and only for the time necessary.

For the international transfer of personal data, protection must be ensured for the data in the place hosting the information that is equal to or greater than that contemplated by Peruvian law or international standards on the subject.

Personal data storage devices can only be opened by legal provision or when authorized by the holder of the information. Data obtained illegally lack any legal effect.

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. 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?

The employer must inform employees about the following, before the employees give their consent:

1. The purpose for which their personal data are required.
2. The identity of the recipient(s).
3. Where their personal data will be stored.
4. The mandatory or optional nature of the questions that are asked in order to collect the information.
5. The consequences of transferring their data and the consequences of not doing so.

If the employer does not comply with this obligation, fines might be imposed by the National Authorities.

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

The transfer of personal data to another country will be made only if the country of destination maintains levels of protection that are consistent with Peruvian law. The need for data protection in the country of destination does not apply when the transmission of information is done under:

1. Specific international treaties of which Peru is a party.
2. International legal cooperation.
3. International cooperation between intelligence agencies to fight terrorism, illicit drug trafficking, money laundering, corruption, human trafficking, and other forms of organized crime.
4. The execution of a contractual relationship in which the data holder is a party.
5. Banking and securities transfers.
6. Protection, prevention, diagnosis or medical or surgical treatment of the holder; or when necessary to perform epidemiological or similar studies.
7. Consent of the holder.

§ 10 REPRESENTATION OF WORKERS, TRADE UNIONS & WORKS COUNCILS

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

In Peru, the Constitution of 1993 recognizes the collective rights of workers, including the right to organize Article 28 of the Constitution states:

> **Article 28. Collective rights of workers. Right to organize, collective bargaining and right to strike**
>
> The State recognizes the right to organize, collective bargaining and strike. It covers their democratic exercise:
>
> 1. Guarantees freedom of association . . . .

The right to organize refers to freedom of association that all workers have recognized and guaranteed by the State. Thus, Article 2 of Supreme Decree No. 010-2003-TR states:

> **Article 2.** The State recognizes for workers the right to organize without prior authorization, for the study, development, protection and defense of their rights and interests and the social, economic and moral improvement of its members.

Membership in a trade union is absolutely free and voluntary, and cannot be restricted by anyone or anything, nor can it be conditioned on circumstances such as the loss or access to employment.

Any worker can join a union, except those holding positions of management or confidence who have been excluded by law. However, as an exception, these workers will be allowed to join a union if the union bylaws expressly state this.

It is important to mention that to enforce the right to organize, it is necessary that a series of preliminary elements be in place to allow the consolidation of a trade union.

In Peru, it is possible to form unions at the following levels:

1. **Company**: formed by workers who provide services at the same employer.

2. **Activity:** formed by workers of two or more employers who are part of the same business sector or branch of activity.

3. **Trade**: formed by workers of different employers but who perform the same trade, profession, or specialty.

4. **Various trades:** formed by different workers of different employers and who perform different activities, but who do not reach the minimum number to form a trade or activity union.

§ 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?

No, every worker is entitled to join only one union and can choose to do so voluntarily. The employers are not required to establish a works council.

§ 10.3 How do workers obtain trade union representation?

In order to form a union and to have it last, it must have at least 20 worker members, when it is for one company, and 50 or more for any other.

When a union affiliates most workers in a field—for example, from the same company—then when negotiating, it shall represent the interests of all workers, even if they are not members.

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

The strike is the third collective right recognized in the Constitution of Peru. Supreme Decree No. 010-2003-TR, defines it as:

> **Article 72.** Strike is the collective suspension of work agreed as a majority and carried out in a voluntary and peaceful manner by workers, with the abandonment of the workplace. (…).

By virtue of the text of that standard, in Peru the only type of strike considered legal is one that includes the work stoppage with the abandonment of the workplace. Therefore, other types of strikes (such as sit-ins, work slowdowns, etc.) are not recognized.

The decision to strike must be adopted in the form expressly set out in the union bylaws. However, it requires at least:

1. that in the assembly, at least 50% of the total number of members are present and vote; and

2. that the decision is approved by at least 50% + 1 of the voting members.

The minutes of the meeting through which the decision to strike is approved must be countersigned by a Notary Public.

Once the strike starts, one-fifth of the workers affected (whether they are unionized or not) can request a new vote to ratify its continuation. The consultation will be subject to the same requirements of majorities as the declaration of strike.

When the union is the majority, the declaration of strike affects all workers of the category (including those who did not vote in favor of the strike or who are not members of the union). The only workers who are excluded are management and confidence employees and those who perform work whose suspension would endanger people, safety, or preservation of property or prevent the immediate resumption of ordinary activity of the company once the strike ends (minimum services).

The employer must not allow entry to the workplace of any of the workers included in the strike. If they enter and perform work, it could be considered that the employer is engaging in behaviors that affect the

right to strike, which is a very serious offense under the Regulations of the General Law on Inspections, and could result in fines up to PEN 225.879 (approximately USD 67,628.44).

As a consequence of the strike, employment contracts are suspended, including the obligation to pay compensation. However, this time is taken into account in calculating Compensation for Service Time. In addition, the employer is prevented from removing from the workplace machinery, raw materials, or other goods, except in exceptional circumstances with prior knowledge of the Labor Administrative Authority.

The decision to strike must be communicated to the employer and Labor Administrative Authority with at least five business days before the date scheduled for the start of the strike, appending a copy of the vote. The Labor Administrative Authority has three business days to rule on the validity of the strike. This decision is appealable within three days of notification.

The strike shall be declared illegal if:

1. It is conducted in spite of being declared improper.
2. During the strike there is violence against people or property.
3. A method other than the stoppage of tasks with abandonment of the workplace is used.
4. Workers do not comply with covering the minimum services.

The resolution declaring the strike illegal shall be issued by the Labor Administrative Authority, *ex officio* or upon request of a party, within two days after the events occur and may be appealed.

Once the strike is declared illegal by a final ruling, workers must return on the day following the collective request made by the employer to the workers. The collective request is made by a posting prominently placed on the front door of the workplace, with a notarial record.

If workers do not resume their work, the employer may proceed to dismissal due to unjustified abandonment of the work, when the period of abandonment exceeds three consecutive days, which is considered a serious offense.

A strike cannot be called when collective bargaining has not been exhausted or when the dispute has been referred to arbitration.

Finally, the law expressly prohibits hiring workers to replace striking workers either directly or through temporary placement or outsourcing. In the same vein, hiring staff to replace the striking workers is a very serious offense in labor relations. Therefore, should this recruitment occur, a fine could be imposed on the company as a penalty.

§ 11 WORKPLACE SAFETY

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

Pursuant to Act No. 29783, every employer must implement a management system in the area of occupational safety and health that is in accordance with existing legislation and international guidelines in this area. A “management system of occupational health and safety” is a set of interrelated elements that aim to establish a policy, objectives, mechanisms, and actions needed to achieve those objectives, in order to raise awareness about offering good working conditions to workers.

Participation in the management system should include everyone involved: employers, workers, and unions.

The employer must, with the help of the workers, improve the working conditions of everyone who works for it, including ensuring workers' health and avoiding the risks that may be generated within the work environment.

Every company with 20 or more employees must draw up its own Internal Occupational Safety and Health Regulations (RISST), whose implementation can be carried out by specialized technical personnel, internal or hired, and must be approved by the company's Safety and Health Committee.

A copy of the RISST must be given to each worker, and to other personnel or workers who provide services within the workplace, so it can be reviewed and complied with strictly.

The Occupational Safety and Health Committee is a collegial and joint body made up of representatives of the employer and the workers. The functions of the Occupational Safety and Health Committee include, but are not limited to:[13]

1. To approve and monitor the company's compliance with the Internal Health and Safety Regulation and the Annual Plan for Safety and Health at Work, prepared by the employer.

2. To know, approve and monitor the compliance with the Annual Occupational Health and Safety Program and the Annual Occupational Health and Safety Trainings Program.

3. To participate in the preparation, approval, implementation and evaluation of policies, plans and programs for the promotion of safety and health at work, the prevention of accidents and occupational diseases.

4. To promote that, at the beginning of the employment relationship, employees receive training on the prevention of occupational hazards present in the workplace.

5. To monitor compliance with legislations, internal standards and technical specifications of work related to safety and health in the workplace.

6. To promote employees' understanding of regulations, instructions, technical work specifications, notices and other written or graphic documents related to the prevention of risks in the workplace.

7. To promote the commitment, collaboration and active participation of all the workers in the promotion of risk prevention in the workplace.

8. To perform periodic inspections of the workplace and its facilities, machinery and equipment, to reinforce preventive management.

9. To consider the circumstances and investigate the causes of all incidents, accidents and occupational diseases that occur in the workplace, issuing the respective recommendations to avoid their repetition.

[13] These functions were recently modified through Supreme Decree 001-2021-TR.

10. To verify the compliance and effectiveness of its recommendations to avoid the repetition of accidents and the occurrence of occupational diseases.

11. To make appropriate recommendations for the improvement of work conditions and work environment.

12. To review, monthly, the statistics of incidents, accidents and occupational diseases that occur in the workplace, whose record and evaluation are constantly updated by the organic unit of occupational health and safety of the employer.

13. To collaborate with medical and first aid services.

14. To supervise the health and safety services at work and the assistance and advice to the employer and the employee.

15. To advise the respective company management on:

    a. reports of any fatal or dangerous accident, immediately;

    b. investigations of any fatal accident and the corrective measures taken within 10 days of the occurrence; and

    c. quarterly activities of the Occupational Safety and Health Committee, with the statistics of accidents, incidents and occupational diseases.

16. Monitor compliance with the agreements recorded in the Minutes Book.

17. Meet monthly in an ordinary meeting to analyze and evaluate the progress of the objectives established in the annual program, and in an extraordinary meeting to analyze accidents that are serious or when circumstances require it.

It is important to add that in every company, in which fewer than 20 workers provide service, the creation of a Safety and Health Committee is not required but its functions shall be performed by an Occupational Safety and Health Supervisor, who shall be appointed by the workers themselves through a secret and direct vote.

As part of the employer's obligations, it must organize occasional occupational medical evaluations, (*i.e.*, at the beginning of the employment relationship, periodically, during the employment relationship, and exit, upon termination). Workers are required to undergo such assessments, but the results shall be confidential, as the employer will only receive a general report on the workers' health.

Occupational medical evaluations shall also be performed in the following cases:

1. **Due to changes of occupation or position:** This evaluation should be performed each time the worker changes occupation and/or job, functions, tasks, or when there is exposure to a new or increased risk factors.

2. **Due to workplace reincorporation:** Evaluation is made after prolonged temporary disability.

3. **Due to short-term employment contracts:** The Occupational Health Service currently assisting the worker may request a copy of the Occupational Medical Tests, with the prior authorization of the worker with three months of seniority in the Occupational Health Service

who assisted the worker the last time. This procedure is only valid for the Pre-Occupational Medical tests made by the Occupational Health Services currently assisting the worker.

Under the Occupational Safety and Health Act, every employer must provide their workers with personal protective equipment as needed according to the work performed and the specific risks associated with the performance of duties when the source of the occupational risks or adverse health effects cannot be removed. Workers are also required to wear full safety equipment, and employers are obligated to ensure that they are doing so. The breach of this obligation is classified as a Serious Violation of Occupation Safety and Health.

Every employer must have an Occupational Safety and Health Service, under the Occupational Safety and Health Act and the Protocols for the Occupational Medical Tests white paper and the Diagnostic Guide of the Compulsory Medical Tests per Activity. The purpose of these health services is to prevent occupational accidents and diseases and ensure the life and health of workers and third parties in the workplace. It must be under the charge of a physician specialized in Occupational Medicine, Workplace Medicine, Internal Medicine or a Surgical Doctor with a Master's in Occupational Health or experience in Occupational Medicine, and another professional specialist in occupational health who may be an Occupational Health and Safety Engineer, an Engineer specializing in Occupational Safety and Health, or with a Bachelor's in Nursing with experience in Occupational Health.

One of the primary duties of the employer within the Occupation Safety and Health Management System is related to the prevention of risks, accidents, and illnesses in the workplace, extending not only to employees of the company but also to all outsourced and temporary personnel and generally all workers in its facilities.

Employers shall also provide for their personnel at least four training sessions per year on Occupational Safety and Health. The sessions must be in-person training (which means that online training sessions are not allowed) and their subject matter must relate to the employees' specific work position.

Another obligation of employers is to implement records and documents related to the occupational health and safety management system applicable in their workplace, which can be held through physical means or by electronic means and must be updated and available to workers and the Ministry of Labor.

Every company must evaluate its compliance with the workplace Health and Safety System implemented at its workplace. At least once a year, the employer must conduct a risk assessment for potentially risky situations to ensure a higher level of protection of workers' safety and health. To fully comply with this, it also is necessary to conduct investigations where there has been damage to the health of workers or when there are indications that prevention measures are insufficient, to identify the causes, and take corrective action on them.

Finally, the inspection system can conduct Health and Safety at the Workplace inspections at the same company more than once per year. In the case of the death of a worker, an inspection must be conducted within 10 business days of the accident.

Amid infectious pandemics, such as the novel coronavirus (COVID-19), employers must consider requirements, guidelines, and recommendations issued by public health officials in order to comply with their legal obligation to provide a healthy and safe environment for employees, which mainly include the implementation of a Biosecurity Plan for the Surveillance, Prevention and Control of Employees' Health. The latest legal provision on the matter is the Ministerial Resolution 031-2023-MINSA. Also, during the Sanitary Emergency, some obligations on Safety and Health at the Workplace remain suspended temporarily.

Currently, there is no longer an obligation to demonstrate being fully vaccinated in order to perform in-person work. Also, there is no longer a requirement to prove full vaccination to enter closed spaces. Therefore, employers do not have a legal obligation to ensure the full vaccination of their employees or general public who enter their workplace or premises. However, the aforementioned Ministerial Resolution does highlight the need to promote full vaccination among employees.

§ 12 TERMINATION OF EMPLOYMENT

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

In order for the employer to dismiss the employee validly, it must invoke a just cause that may be related to the worker's skill or conduct. In this regard, the Labor Productivity and Competitiveness Act states that these causes are:

Article 23. The following are just causes for dismissal related to the worker's skills:

a. The detriment of the physical or mental abilities or supervening ineptitude, which is crucial for the performance of their duties;

b. Poor performance in relation to the worker's skill and the average performance in tasks and under similar conditions;

c. The worker's unjustified refusal to undergo a medical test previously agreed to or established by law, crucial for the employment relationship, or to comply with the preventive or curative measures prescribed by the doctor to prevent illnesses or accidents.

Article 24. The following are just causes for dismissal related to the worker's conduct:

a. The commission of serious misconduct;

b. Criminal conviction for a felony;

c. Disqualification of the worker.

Article 25. A serious violation is the offense by the employee of the essential duties arising from the contract, of such a nature that maintaining the relationship is unreasonable. The following are serious violations:

a. The violation of the employment obligations involving the breach of good faith of labor, repeated resistance to orders related to the tasks, repeated untimely work stoppage and failure to observe the Internal Work Rules or Regulations on Industrial Safety and Hygiene approved or issued, as appropriate, by the competent authority that are serious. Repeated untimely work stoppages shall be verified reliably with the support of the Labor Administrative Authority, or alternatively the Police or the Prosecution as applicable, who are obligated to provide the necessary support for the recording of these facts, and workers who engage in this offense must be identified in the minutes;

b. The deliberate and repeated reduction in performance of duties or the volume or quality of production, verified reliably or with the assistance of the inspective services of the Ministry of Labor and Social Promotion, who may request the support of the company's sector;

c. The completed or frustrated appropriation of the employer's goods or services or goods and services that are under its custody as well as the retention or misuse thereof, for their own benefit or the benefit of third parties, regardless of their value;

d. The use or delivery to third parties of confidential information of the employer; the theft or unauthorized use of company documents; false information to the employer with intent to cause damage or gain an advantage; and unfair competition;

e. Repeated attendance while intoxicated or under the influence of drugs or narcotic substances, and even if it is not repeated when the nature of the work or function is of exceptional seriousness. The police shall lend its assistance in the verification of such facts; the worker's refusal to submit to the appropriate test will be considered as recognition of that status, which shall be recorded in the respective police report;

f. Acts of violence, serious indiscipline, slander and spoken or written disrespect against the employer, its representatives, senior staff or other workers, whether committed in the workplace or outside it when the facts result directly from the employment relationship. Acts of extreme violence such as hostage-taking or the taking of places may additionally be reported to the competent judicial authority;

g. Intentional damage to buildings, facilities, works, machinery, tools, documents, raw materials and other assets owned by the company or in its possession;

h. The abandonment of work for more than three consecutive days, unjustified absences for more than five days in a period of thirty calendar days or more than fifteen days over a period of one hundred eighty calendar days, whether or not penalized disciplinarily in each case, repeated tardiness, if it has been accused by the employer, provided that prior written disciplinary warnings and suspensions have been applied.

i. Sexual harassment committed by representatives of the employer or a person exercising authority over the worker and harassment committed by the worker regardless of the location of the victim of harassment in the hierarchical structure of the workplace.[14]

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

Dismissals that have no just cause and that, in turn, are not accompanied by the payment of compensation for arbitrary dismissal, or those that violate the fundamental rights of workers are prohibited.

The worker may claim the payment of compensation for arbitrary dismissal, or could opt for reinstatement to their job, always proving harm to their fundamental rights or that the dismissal is invalid.

Pursuant to Article 29 of the Labor Productivity and Competitiveness Act, a dismissal based on any of the following grounds is invalid:

a. Membership in a union or participation in union activities;

[14] Paragraph incorporated by the First-A Final and Supplemental Provision of Act No. 27942, published on February 27, 2003, which was added by Article 2 of Act No. 29430, published on November 8, 2009.

b. Being a candidate to represent workers or acting or having acted in that capacity;

c. Filing a complaint or taking part in a process against the employer before the competent authorities, unless it is a serious offense included in paragraph (f) of Article 25;

d. Discrimination due to sex, race, religion, opinion or language;

e. Pregnancy, birth and its consequences or nursing/lactation if the dismissal occurs at any time during pregnancy or within 90 days after delivery. It is presumed that the dismissal is due to pregnancy, birth or its consequences or nursing/lactation if the employer fails to prove the existence of just cause for the dismissal. This provision applies even if the employee is in the trial period of employment (article 10) or works part-time, four or less hours daily (article 4).

Further, this provision applies whenever the employee has provided the employer with written notification of the pregnancy prior to the dismissal. The employer, however, can dismiss the employee with just cause.

The employer must specify that workers who are qualified as trusted cannot be reinstated to their job, unless they have held a previous position for the same employer that was not qualified as trusted.

Amid the COVID-19 public health crisis, authorities have increased their scrutiny of dismissals occurring during the pandemic. Employers should consider working with local counsel to help ensure that dismissals or terminations do not violate local laws or trigger suspicions from authorities on their validity.

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

When it is an issue of the accusation of a specific cause that is related to the worker's conduct or skill, the law requires that a procedure is initiated in which the employer must send a letter to the worker explaining the reasons supporting the offense committed and providing all the evidence it has. The employer shall grant a term not less than six days for the worker to formulate their defense, after which the employer may issue a decision.

The employer may excuse the worker from working during the dismissal procedure, however, it shall guarantee payment of compensation for that time and the social benefits that may be generated.

It should be noted both for the accusation of violation and for the adoption of a final decision, respect must be heeded for the principle of immediacy, which requires the reasonableness of the time since the offense committed is known, until it is accused and finally punished.

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

Beginning 48 hours after the notice of dismissal, which shall be understood as the last day of work, or the consolidation of termination of employment, the employer must pay the worker the outstanding compensation and social benefits generated. The employer must also provide the letter of generated release of the compensation accounting for length of service, employment certificate, and certificate of fifth category income tax withholding.

Payment can also be made through a direct deposit into the worker's salary account, always ensuring that the completion of deposits is reported appropriately, including their totals and the items they cover.

If the worker decides not to go to collect, the employer must ensure that the money and documents are available to the worker, and thus it should proceed to enter the amount owed in a Labor Court, which shall be responsible for notifying the worker and protecting the money and documents.

The benefits to be settled upon termination are:

1. truncated bonus, as many sixths as have been generated by full months of work;
2. unused and truncated vacation; and
3. compensation for truncated service time.

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

A worker who has been dismissed without just cause or by unilateral decision of the employer is entitled to payment of compensation for arbitrary dismissal.

The abovementioned compensation is equivalent to one and a half (1.5) monthly salaries for each full year of service. The Labor Productivity and Competitiveness Act sets a maximum compensation limit equivalent to 12 salaries, which in other terms is eight years of service. In the case of fixed-term workers, compensation shall be calculated as the months remaining for the term of the contract.

Regarding taxation, compensation for arbitrary dismissal does not affect the payment of income tax.

It is important to mention that after a jurisdictional decision, currently it is understood that if a trusted worker is dismissed because of withdrawal of confidence, the employer does not have to pay a severance.

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

The filing of claims against the worker may be directed collectively by the workers affected, or if there is a union, it can represent its members. No minimum number of members is required to initiate a claim against an employer.

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

It is possible that an employment contract includes an arbitration clause. However, by default, every worker has the right to use the labor courts, and if there is no arbitration agreement, then the employer cannot force the worker to submit to that route.

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

Labor rights are inalienable. A waiver to the requests to which the worker is entitled will not be possible before a Labor Judge, who will protect the employee and ensure that the employer fulfills its obligations.

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

In Peru, the worker and employer only need to sign an agreement of mutual consent to validly terminate the employment relationship.

In addition, if a dismissal occurs, the worker may only dispute it within 30 business days following the last day of work, otherwise it shall be deemed to have been agreed.

§ 13 COLLECTIVE DISMISSALS (LAYOFFS) & BUSINESS CESSATION

§ 13.1 What rules apply to collective dismissals?

Collective dismissal involves the termination of employment relationships of a group of workers based on the existence of a general and objective cause. Article 16(h) of the Labor Productivity and Competitiveness Act (LPCL) regulates this form of termination and considers it as a cause of termination of the employment contract.

The objective cause of this decision to terminate is based on contingencies that disrupt the normal functioning of the company, which have a general character and therefore their effects on labor relations are at a collective level, in the sense that they reach a group of workers, if not all of them.

Peruvian law regulates collective dismissal under the framework of an administrative procedure before the Labor Administrative Authority, which shall authorize the collective dismissal requested by the employer after verifying the requirements expressly set forth by law.

The collective termination or dismissal must be based on objective facts or situations. Peru's labor legislation requires the concurrence of causes legally typified so that the termination decision can be carried out. Article 46 of the LPCL describes a series of objective causes for the collective termination of contracts, such as:

1. force majeure;
2. economic, technological, structural, or similar reasons;
3. the dissolution and liquidation of the company, and bankruptcy; and
4. the equity restructuring subject to Legislative Decree No. 845.

It is important to note that regarding termination for objective causes based on economic reasons, it is essential that at least 10% of the total number of the company's employees are involved. Otherwise, this ground shall not apply, nor will the proceedings be before the Labor Administrative Authority.

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

If a company ceases operations, it shall be legally dissolved in order to benefit from the collective termination program covered by paragraph (d) of Article 46 of the Labor Productivity and Competitiveness Act.

To do this, the dissolution process must be followed according to the Corporations Act and the type of the company's business constitution. After the decision to dissolve the company has been consolidated, the workers should be notified with no less than 10 calendar days before the expected date of termination, providing the payment of the respective social benefits.

After that, the Labor Administrative Authority should be notified of the decision, attaching the list of affected workers, copies of notifications sent to workers, and the documents that support the dissolution of the company.

§ 13.3 Are certain employees protected from collective dismissal?

Peruvian laws do not include exceptions among the various possibilities of collective termination.

However, it does recognize the right of preference of collectively dismissed workers to be hired if the cause that supported their dismissal is reversed or if the company needs to hire new personnel to continue operations.

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

In order to comply with all requirements of the law, such as notifying workers to attend conciliation hearings in order to verify alternatives to collective dismissal situations, preparing the file for the Labor Administrative Authority, etc., the process can last approximately two months.

§ 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?

In the sale of a business's stocks there is no previous requirement set forth by law that establishes an obligation to make a consultation or notification to employees, employee representatives, or government labor agencies. Employees will simply continue their employment relationships with the business as a legal person, regardless of who exactly holds the business's stocks.

§ 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?

The law does not impose a mandate on a seller regarding its employees. It is important to consider that there is a labor law principle called the principle of employment continuity, which states that the employment relationship continues regardless of changes in the employer's ownership or even corporate reorganizations. The employment relationship will be considered only one for all legal effects.

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

No. Peruvian Law has not specifically regulated the scenario of an automatic transfer of employees upon the sale of a business's assets. In this sense, most commonly, a sale of a business's assets will mean the sale of the business as a whole, including actives and passives, which would include the seller's employees. However, it is possible that the sale agreement establishes solely the sale of a part of the business's assets, excluding employees.

If it is decided that no transfer of employees will take place, the law does not contemplate this scenario as a just cause that would allow a dismissal. Consequently, the seller would have to continue in charge of its own employees and seek to reach an agreement with them for their termination through a Mutual Termination Agreement.

On the other hand, the most common scenario would entail a transfer of employees, given that the sale implies the change in the ownership of the business, but not necessarily a change in the business itself or its organization.

§ 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. Peruvian Law does not contemplate a scenario of mandatory transfer of personnel. Nonetheless, the possibility to make said transfer exists through the agreement of both parties. If there is no agreement on the transfer, the seller will manage its personnel by agreeing on a form of termination with them. In this situation, the best practice would be a Mutual Termination Agreement. However, if the termination ultimately amounts to an arbitrary dismissal, the employee may later claim by legal means the payment of a legal severance or their replenishment.

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

In the case of employer substitutions, the seller and buyer have a few options upon a sale of assets, which may or may not include the employee's consent:

1. To communicate to all employees affected of the sale and the effects this will have regarding their previous agreements, benefits, and conditions in general. This mechanism does not include employee consent but is rather based on the principle of employment continuity, which has been recognized in case law.

2. To execute a tripartite agreement of assignment of the contractual position, in which the parties would be the seller, the buyer, and the employee. Although there is no obligation to use this method, it generally provides a sense of security to employees and allows them to accept the agreement and its terms. This agreement may include the corresponding provisions in case there are plans to introduce changes to the previously agreed conditions of the employment relationship.

3. To execute terminations between the seller and its employees through Mutual Termination Agreements and the subsequent new employment contracts with the buyer. Although this is an alternative, it is not highly recommended as it would affect the principle of employment continuity.

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

In the sale of a business's assets, there is no previous requirement set forth by law that establishes an obligation to make a consultation or notification to employees, employee representatives, or government labor agencies.

§ 14.7 Employee transfer issues aside, what rules regarding a seller's employees and labor agreements govern a "transfer of undertakings" in the sale of a business's assets?

The labor effects of a sale of a business's assets have not been widely regulated in Peruvian legislation. Aside from the continuity of the employment relationships, for instance, previous labor agreements executed between employees and the seller will remain valid until changed by the agreement of the parties. *E.g.,* a collective agreement executed with the seller will remain in force even during the new period with the buyer as the employer until its actual ending date. Similarly, individual benefits agreed with the seller as the employer will remain in force unless and until a new agreement with the buyer changes this. Said agreements to change employment conditions will need the employee's assent.

§ 14.8 Before a *buyer* consummates either a stock (shares) or asset purchase of another business that has its own, separate workforce, what (if anything) does the law expressly require regarding notice to, or consultation with, the *buyer's* own existing workforce, employee representatives, or with government labor agencies?

Peruvian law does not require any express obligation regarding the buyer's employees, neither the consultation with them nor with employee representatives or government labor agencies.