International Labour and Employment Compliance Handbook

Edited by Salvador del Rey and Robert J. Mignin

Labour and Employment Compliance in Chile

Gerardo Otero A.
María Dolores Echeverría F.,
Macarena López M.
Juan Pablo Cabezón O.

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International Bar Association

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About the International Labour and Employment Compliance Handbook

From 1976 through 1988, the International Bar Association and Kluwer Law International published the groundbreaking International Handbook on Contracts of Employment. This Handbook provided one of the first global overviews of the law of the international employment relationship.

Since publishing the first edition, globalization of business has created an increased demand for knowledge of labor and employment laws throughout the world. Therefore, along with Kluwer, we decided to publish an updated Handbook which we have titled the International Labour and Employment Compliance Handbook.

This new Handbook was intended to be a practical guide by providing a general overview of key labor and employment issues in multiple jurisdictions. Each chapter was written so that it is easy to understand by lawyers and non-lawyers alike. Each country author has also followed a standard outline to assist readers in analysing employment issues in each country.

The first edition of this new Handbook included nineteen (19) different countries.

This Handbook would not have been possible without the help and assistance of many people. Most importantly, the individual country authors are all distinguished legal practitioners who spent considerable time drafting and revising their country reports to meet difficult deadlines. We thank each of them. Our friends at Kluwer, especially Ewa Szkatula, have done a wonderful job in keeping the editors and the authors on schedule. Finally, we want to also express our gratitude to Cuatrecasas, Gonçalves Pereira, and Baker & McKenzie LLP for their valuable assistance in the coordination and organization of this project. Our warmest thanks to each of them.

ABOUT THE INTERNATIONAL LABOUR AND EMPLOYMENT COMPLIANCE HANDBOOK

Because of the success of the Handbook,Wolters Kluwer Law & Business decided to publish each country report also as a separate book to give a choice in obtaining the information. We hope this new format will be a helpful and useful resource just like the Handbook. Both formats are available in print and online.

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1. LEGAL FRAMEWORK: EMPLOYMENT LAW

Labour law in Chile is basically contained in the Labor Code, which regulates relations between employers and employees. Unless express rule orders to apply it, the Code is not applicable to employees working for the State (whether centralized or decentralized agencies), for the Legislature or the Judiciary, or to any public employee subject to special rules (but only to the extent indicated by those special rules).

As a general overview, it is important to bear in mind that rights contained in the labour laws cannot be waived while the employment contract remains in force. Thus, each employee is entitled to certain minimum inalienable rights, and any attempt to employee waives such rights is prohibited and unenforceable. Those rights can be complemented by additional rights and benefits granted by the employer in the labour agreement, its exhibits or later modifications.

The Labor Code defines the subjects of labour relations, employer and employee. It indicates that the employer is any natural or legal entity who uses the intellectual or material services of one or more persons under an employment contract. On the other hand, employee is any person who renders intellectual or material services as a dependant and subordinated to an employer, under an employment contract.

As those definitions show, the basic aspects that determine whether a relationship must be treated under labour law or as independent contractor are subordination and dependency.

In this respect, it must be taken into consideration that any investment must consider the analysis of the labour aspects by specialists, in order to comply with regulations, make use of the existing benefits, and successfully deal with the country's practices, considering, for instance, some of the following aspects: Labour law is governed by what is known as 'Principle of

Reality', what means that the moment of judging practical situation, more than legal considerations, the reality of practice shall prevail. In fact, many legal figures which seem to be appropriate and lawful from a civil law perspective they may be in fact questionable from the labour law perspective. Also, it is important to bear in mind that Labor Courts has the tendency to judge in favour of employees, applying the '*Pro Operario*' principle, due to the idea that employees are the weakest part in an employment relationship.

2. CONTRACTS OF EMPLOYMENTS

2.1. Overview

According to Article 7 of the Labor Code, the individual employment contract is an agreement by which the employer and employee are mutually obliged, the latter to render personal services as a dependant and subordinate, and the former to pay a salary for such services.

In general terms there can be labour agreement agreed as indefinite for a fix period of time or for a certain work or service. In any case, basic general terms and condition must be included in the agreement and Law makes some specific requirements as it will be explained below.

2.2. Written Employment Contracts

Article 9 of Labor Code states that the employment contract can be made verbally or in writing, but a written counterpart must be signed within fifteen days after the employee started work or five days, if the employee is hired for a specific task, work or job that will take less than thirty days.

Article 10 of the law specifically describes the basic information that the contract should contain, such as date and place of the contract, identification of the parties, including the employee's nationality and date of birth, nature of the job, place where services must be carried out, salary and payment terms, work day and term of the contract.

2.3. Oral Contracts

Article 8 of Labor Code stipulates that rendering of services under subordination and dependency makes the existence of an employment contract, beyond the presence of a written agreement.

In case of the absence of a written contract, terms and condition of the labour relationship shall be determined by the employee declaration and a fine against the employer can be applied. Therefore, even it is not and existence requirement, written labour contract is strongly recommended.

2.4. Employee Handbooks

According with the provisions of Article 153 of the Labor Code, the employer with ten or more hired permanent employees have the obligation to draw up an Internal Rules of Order, Hygiene and Safety.

The employer shall establish the aforementioned rules according to their needs, but must cover compulsorily the particulars matters listed in Article 154 of the Labor Code: times at which work begins and ends; shifts, breaks; types of remuneration; the place, date and time of salaries' payment; employees obligations and prohibitions; the appointment of an executive or dependent to whom employees can address their requests, complaints, questions and suggestions; the special rules regarding different kinds of work according to employees' age and sex; necessary adjustments and support to enable disable employees to carry out his/her services properly; the manner to check compliance with the social security payments; compulsory military service; identity card identification and, in the case of underage persons, compliance with schooling duties; rules and instructions about prevention, health and safety to be observed into company premises; applicable sanctions for violation of obligations set forth in the internal regulations (which may consist only in verbal or written warning and a fine of up to 25% of the daily salary); the procedure for application of the sanctions referred to above; the procedure, measures and sanctions to be applied in cases of sexual harassment complaints; procedures in case of mobbing; procedures intended to control alcohol and other drugs abuse and finally, the procedure applicable in case of claims for violation of the principle of equal remuneration between men and women who carry out equal functions.

Any other subjects on regulations deemed necessary by the employer to guarantee a safe working environment might be included in the Internal Rule.

On issues related to health and safety, all necessary matter (rights and obligations) must be covered according to the nature of the activities, such as proper use and care of personnel protective equipments, rules and instructions for using of tools and working items, measures to avoid occupational disease and accidents, prohibitions, like operate machinery or equipment or intervene them without authorization, etc.

In terms of implementation, Internal Rules must be published for thirty days in two places of company premises, so as to give employees the opportunity to read it and make comments. After that, the Internal Rules will enter into force and a copy must be sent to the Health Minister and Labor Authority within five days from the date on which it has entered into force.

2.5. Job Descriptions

Article 10 of labour Code expressly requires that labour agreement includes description of 'nature of the job' to be executed by the employee. Labour authority has clarified the requirement, indicating that must be described clearly and precisely the job and services to be carried out by the employee. It does not mean to describe every task and function, but make a general and complete description including mains responsibilities to be covered by the position.

It practical terms a complete job descriptions is also important for the company in order to be able to demand compliance and, eventually, determine cases of employee's not fulfilment of his/her duties and obligations.

2.6. Offer Letters

There is no special regulation about offer letters and there is no compulsory requirement about them. However, it is important to consider that what has been offered to the employee and accepted by him is binding to employer unless terms and condition be modified afterwards at the moment of signing the labour agreement.

Nevertheless in most of cases offer letters are not signed and the labour agreement is directly agreed between parties.

2.7. Checklist of Do's and Don'ts

Enter into a written agreement on time according to deadlines given by Chilean legislation.

Beyond legal stipulation for labour agreement, have in mind that clauses regarding confidentiality and non-compete are recommended according to the employee's position.

Be careful regarding stipulation included in the labour agreement because it is not possible for employers to modify them unilaterally.

3. RECRUITING INTERVIEWING SCREENING AND HIRING EMPLOYEES

3.1. Overview

Analysis of all those matters must be done considering that Chilean Constitution forbids any kind of discrimination not based exclusively on capacity or personal aptitude.

In this sense, Article 2 of Labor Code expressly states that any kind of discrimination is a contravention of labour rules and principles. According to law, discrimination means 'any unfair distinctions based on race, sex, colour, age, marital status, union membership, religion, political ideas, nationality or social origin'.

Therefore, no employer can condition the hiring of an employee to those circumstances which may meant or imply discrimination.

3.2. Recruiting

Usually, employers recruit new employees through advertisements in newspaper or by a direct searching.

There is no express regulation about recruiting except for the above-mentioned rules relating non-discrimination.

3.3. Employment Application

There is no express regulation regarding Employment application. However, rules relating to non-discrimination must be observed.

It is not advisable to require candidates' photographs because it can be considered as discrimination for physical appearance in case it is not able to prove other circumstances that support non-hiring. Photographs are allowed if they are required exclusively for identification purposes.

In addition, Employers are allowed to require and verify references provided by the job applicant.

3.4. Pre-employment Inquiries

There is no express regulation about Pre Employment Inquiries except that rules relating to non-discrimination.

3.5. Pre-employment Tests and Examinations

It is possible that medical examinations may be required to candidates if a particular health condition is required for the position to be filled.

Even though psychological examinations are not compulsory, they are frequently required so as to verify suitability for the position.

3.6. Background, Reference and Credit Checks

Employer cannot condition a hiring to the absence of economic, financial, bank or commercial debts unless the employee is going to have representation faculties to act on behalf of the employer involving at least general managing powers or if he is going to be in charge of collecting, administrating or safekeeping funds or valuables of any nature.

References can be required, and also curriculum vitae information about studies and previous labour experience.

3.7. Interviewing

There is no express regulation regarding job interviews.

3.8. Hiring Procedures

There is no regulation about this matter, so the employer is free to conduct its hiring process according to its internal policies to the extent permitted by applicable law and as far as is not considered as discriminatory against the applicant.

3.9. Fine and Penalties

There are no special fines and penalties for breaching pre-contractual obligations beyond what has been indicated. In case of discrimination it is possible to claim the corresponding damages before an Ordinary Court.

3.10. Checklist of Do's and Don'ts

Do not require information or ask in interview process about matter which may imply discrimination for instance sexual orientation, eventual pregnancy, etc.

Do not require economic, financial, bank or commercial background unless the employee are going to have representation faculties to act on behalf of the employer involving at least general managing powers; or he/she are going to be in charge of collecting, administrating or safekeeping funds or valuables of any nature.

4. MANAGING PERFORMANCE/CONDUCT

4.1. Overview

Under Chilean legislation, poor performance is not considered a breach of contract's obligation, a fault nor cause for termination, unless it implies breach of the obligations agreed in the labour contract.

It is assumed that it is Employer's obligation to train employees to perform their work in the best possible way, allowing them to assist to training sessions which cost must be borne by the company.

Nevertheless, if the Company has performance bonus and a formal evaluation process clearly informed, including the parameters to be measured, performance can be evaluated and employer could subject the bonus or its amount to the evaluation's results. In any case, such evaluation should be clearly stated, and mostly based in objective and quantifiable parameters.

Also, if the labour contract clearly stated the employee's obligations, material breach of them is a cause for termination. In case of conflict, Courts are to decide whether the seriousness of the contract breach entitles the employer to terminate the contract.

4.2. Coaching and Counselling

There is no formal process required nor Employer is subject to obligations in this area.

4.3. Written Evaluations

There is no need of written evaluations. Notwithstanding, any measurement – if the employer decides to apply them – should be mostly based on objective and quantifiable parameters which are previously known by the employee and informed to him/her. It is also important that parameters are able to be proved in Court if the employee complains for such evaluation and its effects.

4.4. Warning and Suspensions

The Employer can have an employee handbook (Internal Rules) which states the conducts that are prohibited in the company and possible tools to be used by the company in case of breach, such as written notices, suspension and even termination in serious cases.

Also, labour contract should clearly state the obligations employee has under his position.

Nevertheless, poor performance cannot be considered as a fault or breach subject to those sanctions unless it implies material breach of obligations contained in the labour contract.

4.5. Checklist of Do's and Don'ts

- Parameters and issues to be measured should be mostly objective, quantifiable and probable in court.
- Existence of an evaluation process for performance bonus purposes should be clearly stated and duly informed to employee.
- Obligations to be complied by the employee must be clearly stated.
- Termination or sanctions for poor performance are not possible, unless it implies material breach of obligations contained in the contract.

5. TERMINATION OF EMPLOYEES FOR PERFORMANCE OR DISCIPLINARY REASONS

5.1. Overview

Employment stability is a governing principle in Chile and most of the employment relationships have an indefinite duration, unless otherwise stated.

Under Chilean law, dismissal must be based on any causes stated in the law. Hence, the employment contract may be terminated only on any of the grounds set forth in the Labour Code, and the employee shall be entitled to receive severance payment depending upon the reason for termination. It could be for fair causes (certain specific breaches) which do not imply any severance payment, or based on company needs which must be real, verifiable and clearly informed, in this case severance payment is mandatory.

Termination for no cause is only possible in the case of managers with powers of attorney to represent the company with general administration powers or employees hired in an exclusive reliance status of the employer accordingly to their contract obligations. Poor performance cannot be argued unless it implies material breach of obligations arising from the labour contract.

5.2. Separation and Severance Payment

According to the law, the employment contract can end by mutual agreement, by resignation of the employee, by the death of the employee, expiration of the term agreed in the contract, the conclusion of the task or work for which he/she was hired and by acts of God. In these cases, there is no severance payment and the employer must only pay outstanding accrued benefits.

Additionally, the employer may, unilaterally and without expressing any reason, terminate the contracts of executive and senior officers who have power of attorney to act on behalf of the company or acting in an exclusive reliance status, and it can also terminate other employees because of needs of the company. Such needs shall be specifically informed in the dismissal letter and set ground for litigation in case employee considers the cause is not applicable or fair. In both cases the employee is entitled to severance payment.

In any of these cases:

(a) A formal notice shall be given to the employee not less than thirty days in advance, unless compensation is paid in lieu of such notice equivalent to the last monthly salary earned by the employee. The letter needs to contain all the causes for dismissal and the facts in which such cause is supported, as the causes and facts contained therein set the ground for discussion in court, no other reasons or facts can be argued later.
(b) Severance payment shall be paid if the contract has been in force for a year or more, equivalent to thirty days of the last salary earned by the employee for each year of service or fraction over six months,

with a cap of 330 days (eleven years of services). The salary used as a base for this calculation is limited by law to 90 Unidades de Fomento per month (90 UF = USD 4.000 approximately depending on daily exchange rates). The employer may always agree on paying the severance payment based on the real salary earned by the employee, but it is not mandatory unless there is a formal written agreement in such sense. In case the employer exceeds these limits without being obliged to do so could allow the IRS to reject such expenses.

Also, the law considers some causes for terminating the contract without severance payment, such as proven serious misconduct due to dishonesty in the execution of the work, slander against the employer and immoral behaviour that affects the company where he or she works; material breach of contract or obligations, etc. The argued cause must be specifically detailed in the termination letter.

Any final settlement, which is the only document that finally settles and terminates the labour relationship, must be signed and ratified by the employee before a faith minister which is usually a Public Notary.

Severance must be paid at the moment the settlement is signed, but if parties agree on a payment in instalments, the payment must include interest and readjustments. In this latter case, said settlement cannot be authenticated by a Notary Public but only by a Labor Inspector.

5.3. Fines and Penalties

If the cause invoked by the employer in the formal letter of dismissal as cause for termination is considered unfair or inapplicable, the employee has sixty days to file a suit against his/her employer. In such a case, if no agreement is reached as a first step the employee is entitled to claim before labour authorities who can summon both parties in order to reach an agreement. The employee is always entitled to directly file a suit before labour courts. If the court accepts the employee's claim, the severance payment can be increased by 30% to 100%, depending on the cause argued which is considered unfair or inapplicable.

If the court deems that the dismissal has violated the employee's fundamental constitutional rights, the employer might be obliged to pay an additional fine equivalent to six to eleven monthly salaries. If the dismissal is considered as an anti-union conduct or seriously discriminatory the employee may choose between been reinstated to his/her job or the fines and legal compensations.

5.4. Checklist of Do's and Don'ts

- Dismissal process is a very complex one, and mistakes are very risky. Thus, we strongly recommend discussing the matter with a local attorney before proceeding, and also have the dismissal letter prepared by attorneys, based on the facts informed to them, but bearing in mind that the information and causes need to be complete, accurate, real and able to be proved in court. No further causes or supporting facts can be argued later.
- Also, written offers, emails or any written correspondence must always contain exclusively the amounts required to be paid by law, offers of additional amounts must be informal, as otherwise they become and acquired right even if settlement is not signed. Thus, additional amounts to be offered in order to reach an agreement should only be in written in the final settlement to be signed before the Notary Public.

6. LAYOFFS, REDUCTIONS IN FORCE, AND/OR REDUNDANCIES AS A RESULT OF JOB ELIMINATIONS OR OTHER RESTRUCTURING

6.1. Overview

As stated above employment stability is a governing principle in Chile and most of the employment relationships are of an indefinite duration. Therefore in general terms, the employer can only argue a legal cause for dismissal. Only legal causes are applicable.

6.2. Reductions in Force, Layoffs/Job Eliminations

Reductions in force, layoffs or job eliminations are not by themselves legal causes for dismissal. The generic cause would be 'company needs', which could be based in any of the mentioned reasons, which in any case should also be supported by facts, results of the company, business plans or any other related situations. Such facts, reasons and situations need to be clearly stated in the dismissal letter and should be able to be proved in court if the employee files a claim.

6.3. Fines and Penalties

The fines and penalties mentioned under section 5.3 above are applicable. Bear in mind that dismissal is a complex process and the termination letter

needs to contain all the causes for dismissal and the facts in which such cause is supported, as the causes and facts contained therein set the ground for discussion in court and no other reasons or facts can be argued later.

6.4. Checklist of Do's and Don'ts

See section 5.4 above.

7. LABOUR AND EMPLOYMENT LAW RAMIFICATIONS UPON ACQUISITION OR SALE OF A BUSINESS

7.1. Overview

First of all, it is essential to distinguish between the purchase of an employer company, from the purchase of certain assets or the business unit.

The law provides specific regulation in case of total or partial amendments to the company's ownership, stating the 'labour continuity principle'. Some authors and jurisprudence consider that the same continuity applies in case of purchase of the company's assets and debts, or of a business unit, but this could be arguable.

Such labour continuity means that the ownership changes do not affect the employee's rights and obligations arising from individual or collective contracts, which will remain in force with the new employer.

7.2. Acquisition of a Business

Acquisition of a business does not necessarily mean a change in the company's ownership, unless in fact it is a purchase of shares or rights or it is the real purchase of the whole business unit, its assets, rights and liabilities and not only its assets.

If it is an acquisition of business in which labour continuity is not applicable, the transfer of employees from Seller to Buyer is not just a matter of law, and will require the employee's express consent. If purchaser is not willing to accept all benefits already accrued (pending vacations, years of antiquity, etc.), it could request seller to previously terminate its employees who would then be hired by purchaser with no pending rights or obligations.

In such case, the purchaser should agree with the employer and the employee on the terms of such termination and/or transition of the employee to the new company, as it is not 'automatic'. Thus, the corresponding assignment of the labour contract should be agreed to in writing by the three

parties, stating specifically the applicable rules regarding pending vacations, accrued years of work, benefits, etc. If any changes are needed in order to unify labour rights, salaries, benefits, the employee should accept the changes in writing.

If such assignment is not agreed, employees would remain under seller's payroll and it would remain responsible for all labour obligations.

If the purchase can be considered as a change in company's ownership, then the company continues being the employer and labour rights and obligations would not be affected. The assignment is 'as it is' and thus, if any changes are needed in order to unify labour rights, salaries, benefits, the employee should accept the change, as otherwise individual and collective contracts remain unchanged with the new owners, who cannot modify such conditions unilaterally.

Determination should be conservative, and try to agree on assignments of the labour contract with the employees when possible and in cases when the situation is not clear, to avoid any risks or new situations not considered in the purchase agreement.

Therefore, in all purchase agreements it is essential to confirm which party will bear the costs for termination and settlements with the employees who do not accept to be transfer in case the labour continuity principle is not applicable.

Also, related to this matter, we deem it is important to confirm who will bear eventual costs for termination of contracts with companies that provide personnel to sold company or render services to its clients. As some labour law contingencies will be triggered relating to said employees in case the purchaser maintains such contracts.

7.3. Acquisition Checklist

- It is essential to analyze if the acquisition is of a business or it means a change in the company's ownership.
- It should be discussed if employees would be assigned, previously terminated and hired as new employees by purchaser or remain as seller's employees.
- Labour contracts should be updated with any new conditions agreed. This is not necessary if labour continuity applies.
- A thorough due diligence is needed to be sure which labour contingencies are assumed by the purchaser.

7.4. Sale of a Business

Applicable rules are the same as stated above, except for the fact that if there is no assignment agreement nor labour continuity is applicable, seller remains as employer and thus subject to all labour obligations; except this is the main business, in which case labour continuity could be argued and the enforceability of the employment contract regarding the buyer.

Sale of business could be argued as valid fact to support company needs for dismissal, but employer should pay the corresponding severance payments and other pending benefits.

7.5. Sale Checklist

Same as in case of acquisition.

8. USE OF ALTERNATIVE WORKFORCES: INDEPENDENT CONTRACTORS, CONTRACT EMPLOYEES, AND TEMPORARY OR LEASED WORKERS

8.1. Overview

In this matter it is necessary to previously distinguish between two situations: (i) an independent contractor rendering services; (ii) an independent contractor rendering services at its own expense and risk and at client's premises, work or operation.

In the first case the relationship is regulated by civil or commercial Law; the second is known as Subcontracting, which beyond civil and commercial implications also produce labour effects, because labour Law imposes responsibilities on the Principal (client), so as to protect employees of contractor rendering services.

However, it is necessary to consider that in case of Subcontracting, there is no subordination and dependency relationship between such Principal and the Contractor's personnel. In consequence, the object of the service hired to the Contractor is a work or service which does not involve the provision of permanent personnel to fulfil positions or functions into the Principal Company. Otherwise, according to reality principle, there is no real service but a labour relationship between the Principal and Contractor's personnel.

8.2. Independent Contractors

8.2.1. Definition

According to Article 183 A of Labor Code Independent Contractor under a Subcontracting relationship must be defined considering subcontracting concept, which is:

> the activity performed under an employment contract by a employee for an employer, denominated contractor or subcontractor, when the latter, by reason of a contractual agreement, executes works or services at its own expense and risk and with employees under its dependency, for a third natural person or legal entity that is the owner of the works, company or operation, denominated Principal, where the services are provided or the contracted works are executed.

In case of services different from Subcontracting, independent contractor will be the company or person who renders civil or commercial services to another company or person, without dependency and subordination and without additional labour responsibilities for the Principal (client).

8.2.2. Creating and Relationship

The relationship between and Independent Contractor and the company to whom services are rendered is created by means of the corresponding agreement reached by parties to regulate terms and conditions of hired services.

However, in case of subcontracting, Law states rules in protection of independent contractor's employees which basically imposes labour responsibilities to Principal regarding labour obligation not fulfilled by independent contractor to its personnel. For details see section 8.3.

8.2.3. Compensation

Compensation to be paid by the Client Company to the Independent Contractor will be determined by the corresponding fee agreed by parties.

8.2.4. Other Terms and Conditions

To the extent permitted by Law, parties are free to agree on the terms and conditions for hired services.

8.3. Contract Workers

As it was previously mentioned, in case of subcontracting relationship, Law imposes important labour responsibilities on the Principal (client). In this sense consider as follow:

(a) The Principal shall have joint and several liability to comply with labour obligation of employees assigned by the independent contractor to the execution of the services. In other words, in case of non-compliance, the employee may require the payment due thereto indistinctly from his/her employer (independent contractor), and from the Principal.
(b) However, Law contemplates that, in case that Principal exercises the rights indicated in following letters (a) and (b) l (right to information and withholding), its liability shall be subsidiary and the first obliged to pay shall be the independent contractor, and only if the contractor fails to respond shall the Principal do so. At any event, the employee may subsidiarily sue the Principal in the same legal action in which he/she sues the contractor.

In order to minimize above mentioned Principal's responsibilities he must exercise the following rights granted by Law:

(a) Right to Information: The Principal is entitled to require information regarding the effective compliance of the independent contractor's labour obligations to its personnel assigned to the execution of the contracted services (ART 183 Labor Code). For these purposes, the respective Labor Authority (Inspección del Trabajo) will issue certificates evidencing the fulfilment of such obligations, which should be required by the Principal from its contractors.
(b) Withholding Right: In the event that the independent contractor does not comply with its obligations to its employees assigned to the provision of services, the Principal shall be entitled to withhold from the price to be paid thereby to the contractor, the necessary amounts to fulfil such obligations, proceeding to the payment thereof at the corresponding social institutions.

In any case, Principal responsibility is related to obligations generated during the provision of the services, and just in relation with legal duties, including compensations for working accidents which occur in its working place; thereby any other payments beyond the legal that the independent contractor may have agreed with its employees is excluded.

8.4. Leased Workers

As it was mentioned above, provide personnel to a company through subcontracts are not authorized by the law, because it is consider as hidden labour relationship and not as a real service. According to that, as a general rule 'lease of personnel' is not legal in Chile.

However, Law contemplates certain exceptions which allow providing personnel to a company and without generating subordination or dependency respect to the Principal. In those cases, Law only allows contracting such services to a company legally incorporated as Transitory Services Company, which will provide personnel to the Principal only in the following cases:

(a) suspension of the employment contract or of the obligation to provide services, of one or more employees due to medical leaves, maternity leaves or holidays;
(b) extraordinary events such as the organization of conferences, fairs, exhibitions or other events of a similar nature;
(c) new and specific projects of the User (client), such as the construction of new facilities, additions to existing facilities, or the expansion to new markets;
(d) period of start-up of activities in new companies;
(e) occasional, whether or not periodic, or extraordinary increases in the activities of a given section, operation or premises of the User; or
(f) urgent, specific and impossible to postpone works that require immediate execution, such as repairs in the facilities and services of the User.

In case indicated in letter (a), the contract shall last the period of the absence of the replaced employee due to the suspension of the contract or the obligation of providing services.

In cases indicated in letters (b) and (e), the employment contract to provide services shall not exceed ninety days. In case of letters (c) and (d), said period shall be 180 days. No renewal is allowed in any of these cases.

However, if contracts are entered into force for less than 90 or 180 days, respectively, and upon the termination thereof the circumstances that motivated their execution prevail, the contracts may be extended, but only until completing the 90 or 180 days, as the case may be.

The provision of temporary services employees to a company shall be recorded in writing; indicate the grounds invoked for contracting a temporary service according to Article 183 Ñ of Labor Code, the jobs for which such contract is made, the duration thereof, and the agreed price; indicate whether the employees provided shall or shall not be entitled to use the collective transportation and facilities of the company. The identification

of the parties shall include the name, domicile and identity card or tax registration number of them. In case of corporations, such identification shall additionally include the legal representative(s).

The lack of a written agreement shall exclude the company hiring services from the application of the regulations on temporary services and the employee shall be deemed to be a dependant of such company.

Finally, just to indicate that temporary services cannot be contracted in the following cases:

(a) to carry out tasks which entail the right to represent the company, such as manager, assistant manager, agent or attorney;
(b) to replace employees who have called a legal strike in the respective collective bargaining process; or
(c) to assign employees to other temporary services companies.

Violations of the foregoing shall exclude the company from the application of the regulations on temporary services, and the employee shall be deemed to be a dependant of the company hiring services.

8.5. Checklist of Do's and Don'ts

Carefully determine cases where the relationship must be treated as subcontracting.

In case of subcontracting, Principal must exercise its rights of information and withholding so as to minimize its eventual labour responsibility to Independent contractor' s personnel rendering the hired services.

As it was previously mentioned, in case of temporary services bear in mind cases where the agreement is permitted, duration for such agreement, and cases where temporary services are forbidden.

9. OBLIGATION TO BARGAIN COLLECTIVELY WITH TRADE UNIONS: EMPLOYEES' RIGHT TO STRIKE AND A COMPANY'S RIGHT TO CONTINUE BUSINESS OPERATIONS

9.1 Overview of Unions' Right to Organize

Article 212 of the Labour Code grants employees from the private sector and government agencies the right to create, without prior authorization, the unions they deem appropriate and, consequently, the employer is obliged to accept and respect them. In any case, a minimum quorum of members is required to create unions in a company, depending on the number of

employees of said company. Companies with more than fifty employees require a minimum of twenty-five members representing, at least, 10% of the total number of employees. If there are less than fifty employees, a minimum of eight members is required. If there is no union in the company, one may be created with at least eight members but it has to comply with the required quorum within a maximum period of one year. However, 250 or more employees may always create a union, regardless of the percentage said number represents of the total number of employees of the company. There may be more than one union in a company.

The role or purpose of the unions is listed in an unrestricted manner in Article 220 of the Labour Code, which could be summarized in general terms as the representation and defence of the professional and economic interests of its members or affiliates before the employer, courts, government agencies, pension and/or health and other employees' organizations.

One of its most important aims is to represent their members in cases of collective bargaining, whose principal purpose is to agree on common working conditions. The agreed terms give rise to a collective agreement whose validity may not be less than two years or more than four.

9.2 Right of Employees to Join Unions

Article 19 no. 16 of the Constitution and Article 214 of the Labour Code establish the freedom to be a member of a union. This implies freedom to join, not join or leave a union whenever it is deemed appropriate. No one can be forced to join a union to perform a job or develop an activity. Employment cannot be conditional on membership or non-membership of a union. An employee cannot belong to more than one union for the same job.

9.3 How Employees Select Unions

The employee is free to select which Union of the Company he wants to join. According Article 214 of Labour Code the 'affiliation to a Union is voluntary, personal and not delegable'.

Notwithstanding the above, each union may set in its own bylaws the membership requirements and the rights and obligations of its members. Among the obligations is the obligation to pay union dues.

9.4 Pre-election Campaigning

Under Article 237 of the Labour Code, in the first election of the board, all employees attending the constituent assembly and meeting the requirements established in its bylaws to become union director, may be candidates.

Nominations for the next elections must be submitted in the form, term and publicity stated in the bylaws. In case of no rules in this regard in the bylaws, applications must be submitted in writing to the secretary of the board between fifteen and two days prior to the date of the election.

Those obtaining the highest number of votes are elected. In case of a tie, the instructions of the bylaws must be complied with and if nothing is stated in it to this effect, a new election will take place only among those are tied.

Unions with fewer than twenty-five members may only have one Director who acts as chairman. In other cases, they may have the number of directors set in their respective bylaws, but with a limit of from three to nine directors, according to the number of members, who will enjoy the privileges and immunities the law holds for them.

9.5 Unfair Labour Practices

Our legislation provides a general rule applicable to all contracts, including employment contracts, under which they must be fulfilled in good faith and, therefore, bind the parties not only to what is stated in them but also to all that which comes from the nature of the obligation or pertaining to it by law or custom.

As a consequence, the relationship between employee and employer must be based on mutual trust and loyalty. That is why our labour laws sanction conducts it deems unfair, whether from the employer, the employee or the union. Unfair practices are considered those that violate freedom of association and those that interfere with collective bargaining and its procedures.

These conducts are punishable by a fine, whose amount will depend on the severity of such conduct, without prejudice to the criminal penalties that may take place if the conduct constitutes a criminal offence.

If the anti-union conduct involved the discharge of an employee, in addition to the fines that may be applicable, the employee may demand his reinstatement with payment of benefits for the time that he has been separated from his duties or the payment of compensation provided by law.

The Labour Authority maintains a register of employers who have been convicted of unfair anti-union and or collective bargaining practices and must publish every six months the list of infringing companies and unions.

9.6 Relocation of Work/Shutdown of Business

The union has the obligation to negotiate common working conditions with the employer, through collective regulated or informal negotiations, and represent the collective rights of its members, regardless of other obligations set forth in its statutes and not prohibited by law.

A company must be in business for at least, one year before there can be any collective bargaining. Collective bargaining agreements term cannot last less than two and no more than four years.

The union may only call a strike if, within a regulated process of collective bargaining and once the period set by the law has expired (depending on whether there is a previous collective agreement still in force or not), no agreement has been reached with the employer. The strike must be approved by an absolute majority of the employees involved in the negotiation and made effective at the beginning of the third day after its approval. Otherwise, the last offer made by the employer is considered as accepted. It is understood that the strike has not been effective if more than half of the employees involved in the negotiation go to work. The strike may not be voted on if the collective bargaining is subject to mandatory arbitration or if the parties have agreed to submit themselves to said arbitration. Furthermore, it has to be considered that employees of companies that are in certain situations provided by law may not declare a strike and their collective bargaining is subject to mandatory arbitration. In July of each year the Ministries of Labour and Social Security, National Defence and Economy qualify by joint resolution the companies that are in said situation.

Once the strike has been declared and made effective, if it affects more than 50% of the company's employees or means the stoppage of activities essential for its operation, the employer may declare its total or partial temporary lock-out or closure.

Under certain circumstances and subject to compliance with certain requirements, the employer may hire replacement staff from the first day or the fifteenth day of the strike, as the case may be. During the strike or lock-out the labour relation is suspended and the employee is not obligated to work neither the employer is obligated to pay the salary and other benefits.

An impasse in collective bargaining can be submitted to mediation or arbitration if the parties decide to do so in order to try to reach an agreement.

9.7 Checklist of Do's and Don'ts

- Do not perform any act aimed at preventing the creation of a union or discourage membership to it.
- Do not perform acts to hinder collective bargaining or the negotiating ability of the union.
- Be prepared to face an eventual strike within a process of regulated collective bargaining.

10. WORKING CONDITIONS: HOURS OF WORK AND PAYMENT OF WAGES – BY STATUTE OR COLLECTIVE AGREEMENTS

10.1 Overview of Wage and Hours Laws

According to Article 41 of the Labour Code is considered as wage or salary any sum of money or kind appraisable in money that the employee receives for his work, excluding meal, transportation and travel allowances, family benefits and others. Also, wages can be fixed or variable, calculated on the basis of time or productivity, paid in cash in full or partly in kind. Article 42 of the Code states that it includes salary, overtime payments, commissions, and profit share.

Article 22 of the Labour Code establishes a general maximum work week of forty-five hours that cannot be divided into less than five or more than six days. The work day cannot exceed ten hours. Special rules apply to special jobs such as crew on fishing ships that do not involve continuous work during the day, or drivers.

The above-mentioned time limit is not applicable to top levels of the organization, such as vice-presidents, managers, executives, administrators and others who render similar services or work without direct superior supervision.

10.2. Minimum Wage

Although the amount of salary is freely determined by the parties, the monthly salary that is agreed upon in the employment contract cannot be lower than the minimum salary established by law yearly (as since the first of July 2012 amounts to CLP 193,000 per month, equivalent to approximately USD 410.00 per month) subject to legal raise very soon. The

wages for part-time jobs cannot be lower than the minimum applicable, calculated proportional to the normal workday.

Also, a percentage of company's annual profits must be distributed among employees in one of the following ways: (i) with the 30% of net taxable profits of the Company, with certain adjustments; or (ii) with the 25% of the employee's annual salary, with a maximum of 4.75 minimum salaries per employee. The employer is free to decide which alternative to use every year.

The parties can also agree to additional benefits, which may or may not be imputed toward the above-mentioned legal benefits. But, according principle of reality explained in the Introduction, if an additional benefit is usually or regularly paid to the employees it could be considered by a Court that such benefit is an acquired right, even though is not expressly considered in the employment contract.

10.3. Overtime

A maximum of two hours per day of Overtime can be agreed, and that time must be paid with a 50% surcharge. The agreement must be in writing and to in force for no longer than three months. The purpose must be solely to attend to temporary and specific needs of the company.

The above-mentioned Overtime is not applicable to top levels of the Company's organization, such as vice-presidents, managers, executives, administrators and others who render similar services or work without direct superior supervision.

10.4. Meal and Rest Periods

The work day must be divided in two in order to allow at least thirty minutes for lunch. This time will not be considered nor compensate work time, except if the employee remains at the employer's disposal and must comply with the employer's instructions. An established practice or a collective bargaining agreement can however provide for the payment of breaks and their inclusion in the calculation of effective working time.

10.5. Deductions from Wages

Employees must finance their retirement pension through the contribution of 11.14% to 11.54% of their monthly salary. Men may retire at the age of 65 years old and women at the age of 60 years old. Contributions are made to

pension funds managed by private entities (AFP), subject to control by government superintendence.

Death and disability pensions are financed with retirement funds and insurance plans. These contributions are paid to the same pension fund to which retirement contributions are made.

Regarding health benefits, employees may choose between a public health system, financed by a contribution of 7% of the employee's salary, or a private system under which the employee affiliates to a private health insurance company (ISAPRE). The minimum contribution is similar to that of the public health system.

All these social security benefits are withheld by employer from employees' salary and paid to the corresponding entities. Such contributions are a tax deduction for employees rent and are calculated against a salary that is limited to 70.3 Unidades de Fomento (approximately USD 3,395). This is the minimum, but the employee can agree to deposit a higher amount.

Work accident and occupational disease benefits are financed by employers through a basic contribution equivalent to 0.95% of monthly salaries. The salary limit to apply this percentage is UF 70.3 (approximately USD 3,395).

Expatriates who have a professional or technical degree may obtain a waiver of social security contributions provided they are enrolled abroad in a social security system that provides benefits at least similar to those existing in Chile. The exemption does not include work accident insurance contributions.

The contributions for which the employer and employee are responsible shall be paid to the Corporate Manager of the Insurance by the employer. As a general rule, this payment shall be made within the first ten days of the month following the month when the income or subsidy is due.

Any other deductions, such as loans payments provided by the employer to the employee, need written agreement by the employee.

10.6. GARNISHMENT

According to Article 1618 of the Civil Code and Article 445 of the Chilean Civil Procedural Code, salaries are protected against garnishment by the employee's creditors.

However, for debts that come from court-ordered child support, the Court could garnish up to 50% of benefits and salaries received by the obligor (employee). Such garnishment must be withheld by the employer.

10.7. Exemptions to Wage and Hour Laws

Regarding special jobs such as crew on fishing ships that do not involve continuous work during the day, or drivers, special rules apply.

Also, Hour Laws and Overtime rules are not applicable to top levels of the organization, such as vice-presidents, managers, executives, administrators and others who render similar services or work without direct superior supervision.

Regarding Wage, wages for part-time jobs cannot be lower than the minimum applicable, calculated proportional to the normal workday.

10.8. Child Labour

Any person older than 18 years can sign any type of employment contract. No authorization is required.

Between the ages of 15 and 18, an employee needs his parents' authorization to work with a maximum of thirty hours per month. Persons between the ages of 15 and 18 can work only if they have the above-mentioned authorization, after finishing schoolwork and provided it is light work that does not affect their health.

Also, individuals under the age of 18 cannot work in cabarets or places where alcoholic beverages are sold nor work at night or have a work placement in drinking establishments. In addition, individuals under the age of 18 cannot be employed in certain hazardous activities.

10.9. Recordkeeping Requirements

In this point it is very important to bear in mind that Article 5 of the Labour Code expressly states that employers can exercise their rights within the limits imposed by the Constitution, especially regarding respect of privacy.

In Chile, protection of personal data is regulated by Law 19,628. According to its rules, personal data can be processed only when expressly authorized by law or the employee. Such authorization is not required if the data comes from public records, or when it is commercial, financial, banking related or economic information, when it is contained in listings that only mention activity, profession, education and degrees, address and date of birth.

The aforesaid authorization is not required if the company needs the data for internal reasons not be disclosed to third parties. Also, the law requires employers to protect personal data from improper disclosure.

10.9.1. Information That Must Be Maintained

According to Chilean Labour Law and the requirements of Chilean Labour Authorities, the employer has to keep a record of the hours worked each day, daily working time and overtime, days of sickness and periods of vacation. Furthermore, the employer is obliged to keep payroll information including the name and home address of the employee, date of birth, sex, occupation, agreed work and agreed hours of work.

With regard to the payroll, the employer has to keep relevant internal information, such as agreed salary, hours worked, health insurance and fees.

Also, working hours of each employee must be calculated daily, by recording, using any means, the starting and finishing hours of each working period or by keeping a record of the number of hours worked.

In this sense, the employer has to inform the Labour Authorities about any termination and it has to maintain the necessary information from the employees.

10.9.2. Records That Must Be Retained

The employer must keep files with the data and information of its employees such as employment contracts, receipts for payment of salaries and pension contributions and vacations, among others. The law allows such information to be kept by the employer within the central premises of the Company.

Although specific law does not establish a determined retention period for the aforesaid documents, the employer should keep certain documents for a prudential period of time (five years since the contract termination) in case of contingencies regarding termination, such as settlement agreements, social security payments certificates, wages payment receipts signed by the employees.

10.9.3. Failure to Maintain Required Records

If the employer fails to keep records as explained paragraphs a. and b. above, it could result in the appliance of fines by the Labour Authorities and in a lack of proof in case of a lawsuit.

10.10 Reductions in Compensation Caused by Economic Downturn

In Chile there is no legal cause as Economic Downturn that could entitle the employer to reduce employees' wages or compensation.

Notwithstanding the aforesaid impossibility, according to Article 161 of the Labour Code, the employer is entitled to terminate the labour contracts invoking the legal cause called 'Business Needs' based on an economic or financial restructuration in order to obtain significant costs savings.

In such case, the employer must proceed as follows: (i) A thirty-day termination notice must be given to the employees, notifying also the Labour Authorities. Otherwise, compensation must be paid in lieu, to the equivalent to one month salary with a cap of UF 90 (90 Unidades de Fomento, or approximately USD 4,345). (ii) Also, in case that employment contract has been in force for one year or more, the employee is entitled to a severance payment which as a general rule is the equivalent to one month of salary per year of services or fraction over six months. The salary used in this calculation is limited by law to UF 90 monthly (90 Unidades de Fomento, or approximately USD 4,345). For severance payments employment law contemplates a cap of eleven years of services to be indemnified.

10.11. Checklist of Do's and Don'ts

- Is very important that employee's assistance is kept in a special record. This is important in other to demonstrate Overtime. Also, is very important to keep track of absences.
- When negotiating a Labour Contract, is important to make clear that amounts agreed are gross or liquid prior to the signature of the contract.
- In case of dismissal based on Business Needs, is very important to describe the grounds of the cause invoked, for it will determine the basis for the defence in case of claim is brought by the employee before a Court.
- Is crucial that social security benefits withheld by the employer from employees' salary are properly paid to the corresponding entities. Otherwise it could result in very serious penalties, even criminal.

11. OTHER WORKING CONDITIONS AND BENEFITS: BY STATUTE, COLLECTIVE AGREEMENTS, OR COMPANY POLICY

11.1. Health and Other Insurance

Regarding health benefits, employees may choose between a public health system, financed by a contribution of 7% of the employee's salary, or a private system under which the employee affiliates to a private health insurance company (ISAPRE). The minimum contribution is similar to that of the public health system.

Unemployment

Since October, 2002 Chile has an unemployment insurance system. This insurance establishes benefits for employees who lose their jobs, and it is financed by the employee, by the employer and by the Government.

An employee whose employment contract has been terminated has the right to receive compensation financed with the amount accrued in his Individual Account. He or She will be entitled to receive extra compensation from the Unemployment Solidarity Fund whenever the compensation obtained from his Individual Account is insufficient, pursuant to Article 25 of Law 19,728.

Employees must meet the following requirements to be entitled to compensation from the Individual Account:

(1) The employment contract must have ended for the reasons established in Articles 159, 160 or 161 of the Labor Code or by indirect dismissal pursuant to Article 171 of such code.
(2) The employee must register at least twelve monthly contributions, whether continuous or discontinuous, in his Individual Account.

The unemployment insurance does not apply to: (i) servants (employees working in a private residence); (ii) employees hired under an apprenticeship agreement; (iii) employees under 18 years of age, (iv) independent employees; and (v) pensioners receiving a total disability or retirement pension.

The employer must communicate the commencement or termination of the employee's services to the Corporation Manager of the Unemployment Insurance within fifteen days of the occurrence. A breach of this duty will be fined in the amount of 0.5 UF (USD 25 approximately).

The insurance has a tripartite funding comprised of the following: (i) the employee must contribute 0.6% of his taxable income; (ii) the employer

must contribute 2.4% of the employee's taxable income; and (iii) the Government will contribute annually an amount equal to 225,792 Monthly Tax Units, or approximately USD 9,000,000.

Contributions are calculated on the basis of the taxable income of the employee, with a maximum of 105 UF (approximately USD 5,090).

Job disability

Whenever the employee has a temporary authorized leave of absence due to work accidents or occupational diseases, the employees are entitled to receive their remunerations from the health insurance company funded by the employer through a contribution equivalent to 0.95% on the basis of monthly salary.

Extinguishment of the obligations

The period to demand payment of the contributions is five years as of the day that the labour relationship ended.

11.2. Pension and Retirement Benefits

Employees must finance their retirement pension through the contribution of 10% of their monthly salary. Men may retire at the age of 65 years old and women at the age of 60 years old. Contributions are made to pension funds managed by private entities (AFP), subject to control by government superintendence.

Death and disability pensions are financed with retirement funds and insurance plans. These contributions are paid to the same pension fund to which retirement contributions are made.

11.3. Vacation and Holiday Payments on Termination

Employees with more than one year in the company have the right to a paid holiday of fifteen working days per year. Ten of these days must be taken consecutively, and the remaining five as agreed by the parties. Vacations can be accumulated only for up to two consecutive years. The employer can only compensate vacation time by a cash payment when the employee resigns or is terminated without having made use of his vacation time.

When termination is to enter in force, Pending Vacations have to be paid to the employee, considering for each year of services the employee is entitled to fifteen days of vacations. Proportional vacations are the vacations to which employee is entitled from the date of his/her contract (in case labour contract lasts less than a year) or anniversary contract, to the termination date. Pending vacations include any other period pending.

In order to calculate Pending Vacations, the following procedure must be applied: 1.25 days must be considered for each month worked (15 days / 12 months = 1.25). Therefore, per each full worked month the employee is entitled to 1.25 days for vacations, or the corresponding proportion in case the last month was not completely worked. The resulting days must be paid considering the amount of the daily salary (monthly salary / 30 = daily salary). Finally, bear in mind that to the total days to be indemnified for pending vacations, you must add payment for Saturdays, Sundays and holydays included from the termination date to the end of the days resulting as pending vacations.

11.4. Leaves of Absence

11.4.1. Personal Leave

The Labour Code does not provide especial personal Leave to allow the employee, for example, to attend medical appointments, to marry, or other personal arrangements. Therefore the employer is not obliged to grant them. Nevertheless, nothing prevents the parties to the employment relationship to freely agree Personal Leaves, as established by Article 32 Labour Code, which allows the compensation of personal leaves establishing that such compensations shall not be considered as Overtime, provided that such compensation and leave solicitude had been requested in writing by the employee and authorized by the employer.

11.4.2. Medical or Sick Leave

In case of illness or accident, the employee is entitled to a paid leave for the period indicated in the corresponding medical certificate. In such cases, the employment contract remains in force, but the employer suspends payment of salary and the employee instead receives compensation from the health insurance company.

Except for termination based on one of the special causes established in Article 160 of the Labor Code, employees cannot be terminated while the leave of absence is in force.

11.4.3. Bereavement Leave

In accordance with the provisions of Article 66 of the Labour Code the employee is entitled to three days of paid leave -in addition to annual holiday- in case of death of his/her father or mother. This leave must be applied since the date the respective death and cannot be compensated in money by the employer. The same leave is to be applied in case of death of the employee's unborn child.

In case of death of an employee's child or spouse, the employee is entitled to a seven days paid leave in addition to the annual holiday. This Leave must be paid from the date of death and cannot be compensated in money. It should be pointed out that during this leave the employee has the privilege of immunity for a month since the date of death.

11.4.4. Family Leave

Chilean Labour Law does not establish any especial Family Leave. Notwithstanding, according to Article 199 of the Labour Code, if a child younger than one year needs attention at home due to a serious sickness, the working mother or father has the right to request a special leave of absence. In order to use this Leave of absence, the employee has to prove the seriousness of the sickness by a medical certificate.

Also, when the health of a child under eighteen years require parental care because of a serious accident or illness, or the child is in the final stage terminal or serious illness, severe or likely risk of death, the working mother is entitled to a leave of absence by the number of hours equivalent to ten ordinary working days per year, distributed at the discretion of her full-time, partial time or a combination of both, which are to be considered as worked hours for all legal purposes.

11.4.5. Pregnancy Leave

According to Article 195 of the Labour Code, the working mother is entitled to a Leave of Absence prior to delivery and Leave of Absence after the delivery. The first one consists of a Leave of absence of six weeks before delivery. The doctor or matron in charge of the care of the pregnant employee determines the possible date of birth for effects of the prior to delivery Leave. The second leave of absence consists of a rest period of twelve weeks after the birth.

In addition, since October 2011 entered into force in Chile a Parental Leave of Absence of twelve additional weeks after the aforesaid after

delivery Leave of Absence. This additional Parental Leave of Absence has a subsidy ceiling of gross 66 UF (approximately USD 3,200). If working mother exercises the right to work half a day, the Parental Leave of Absence is extended to eighteen additional weeks since the completion of regular after delivery Leave.

If both parents are working, either of them, according to the mother's decision, can enjoy the Parental Leave of Absence, from its seventh week and for the number of weeks that the mother indicates. Therefore, the father may be entitled to the Parental Leave of Absence, with a maximum of six weeks if the mother chooses not to work half day, or of twelve weeks if he chooses to do so.

11.4.6. Maternity Leave

See letter 'e' above.

11.4.7. Injury at Work

See letter 'b' above.

11.5. Checklists of Do's and Don'ts

- Is crucial that social security benefits withheld by the employer from employees' salary are properly paid to the corresponding entities. Otherwise it could result in very serious sanctions, even criminal penalties.
- Bear in mind that the failure of the employee in withholding social security benefits will result in the impossibility of terminating by any cause the labour relation. Such failure could result in fines applied by the Labour Authorities. Moreover, Notary Publics will not authorize any settlement agreements which lack of the social security benefits properly withheld, and severance that lack social security benefits properly withheld will be declared null and void.
- Regarding medical or Sick Leave, keep a record of the corresponding medical certificate. Clarify the reason why employees are absent from work. Also, is very important to keep track of absences.
- Always avoid to discriminate against an employee due to health reasons or because an employee is pregnant.

12. WORKERS' COMPENSATION

12.1. Overview

Both Law 16.744, in its Articles 76 et seq., and the Supreme Decree 109 of the Labour Ministry, in its Articles 7 et seq., establish procedures and remedies to declare an accident or sickness as a Working Accident or a Working Sickness, in order to allow the employee to require payment by the administrative entity for the benefit of insurance.

In this sense, employees are protected while commuting from his home to his place of work, as far as the commute is as direct as possible. Accidents occurring during the commute of an employee whose employment contract is suspended are not covered.

The injured employee must file an application in other to get his/ her injury or sickness declared as Working Accident/Sickness. Broadly speaking, the three instances of this procedure are the COMPIN, the COMERE and the Superintendence of Social Security. In these stages, the corresponding Board of occupational health doctors concludes if the employee is unfit to return to his position, determining its handicap degree. For an accident or a sickness to be considered as Working Accident/ Sickness there must be a final and enforceable administrative decision to declare it as such.

Once this happens, the entity which administrates the insurance must compensate the employee who has suffered the Working Accident or a Working Sickness, according to the employee's degree of disability. In case of job disability, according to Article 161 bis of the labour Code, the employee cannot be dismissed for such reason, except if the employer pays a compensation consisting of one month remuneration per each year worked. Also, civil tort could be demanded by the employee sustained on a breach of contract obligations by the employer in order to assure a safe working place.

12.2. Checklist of Do's and Don'ts

- Employees subject to a workplace injury Leave cannot by dismissed.
- Employees subject to a workplace injury Leave have their employment contract suspended but they cannot be terminated.

13. COMPANY'S OBLIGATION TO PROVIDE SAFE AND HEALTHY WORKPLACE

13.1. Overview of Safety and Environmental Laws and Regulations

Article 184 of the Labor Code imposes upon the employer the obligation to observe health and safety standards in the workplace, to implant measures to prevent accidents, and others alike. Every company, establishment, job or economic unit, whether commercial or industrial, that has more than ten employees, needs to adopt Internal Health, Safety and Hygiene Regulations (company's Internal Code) that must set down the prohibitions and obligations imposed upon employees in regard to their jobs, permanence and life in the respective company or establishment.

Every employer must also pay special work accident and occupational disease insurance for each employee. The amount of the payment depends on the risks associated with the job, and the basic rate is 0.95% of the salary.

13.2. Requirements

As mentioned above, according to Article 184 of the Labor Code the employer is obliged to guarantee by every means the health and safety of his employees. This means that the employer must apply the outmost diligence to assure the health and safety of the employees, so in case of Injuries or Working Accidents of the employees, the employer will have to demonstrate that every legal measure was taken in order to prevent such accident.

According to Article 184 of the Labour Code and Law 16.744, the employee must fulfil the following requirements regarding safety standards in the workplace:

(i) The employer with more than ten permanent employees has the obligation to elaborate an Internal Health, Safety and Hygiene Regulations (company's Internal Code). In terms of implementation, the company's Internal Rules must be published for thirty days in two places of company premises, so as to give employees the opportunity to read it and make comments. After that, the Internal Ruling will enter into force and a copy must be sent to the Health Minister and other to the Labor Authority.

(ii) According to Article 66, paragraph 4 of Law 16.744 companies which employ over 100 employees will be required to constitute a Department of Prevention of Occupational Risks which will be led by an expert in prevention.

(iii) Provide their employees with protective equipment and tools necessary and in accordance to the job rendered. In any case the employee could charge its value to the employee.
(iv) According to Decree 54 Companies with more than twenty-five employees must constitute a Joint Committee, composed of three representatives of the company and three employees. Its main functions are to instruct the employees on proper use of personal protective equipment, monitor compliance with health prevention and safety standards, investigate causes of accidents and occupational diseases in the company, adopt health and safety measures for the prevention of occupational hazards, and promote employees training, among others.

13.3. Rights of the Employees

According to Article 21 of Supreme Decree 40 of 1969, which approved the regulations on prevention of occupational hazards, the employer has an obligation to report promptly and appropriately to all its employees about the hazards of their activities, preventive policies and adequate working methods. The employer has to dully fulfil this obligation: (i) when the employee is hired; (ii) when implementing a new working procedure; and (iii) when changing the production processes.

Also, the employer is obliged to keep the workplace health and environmental conditions necessary to protect life and health of employees who perform them, whether they are direct dependents of the employee or hired by third party contractors.

In addition, when the nature of the work compels employees to consume food in the workplace, the employer must have a room for this purpose, which must be completely isolated from work areas and any source of environmental contamination.

In any workplace where the type of activity requires a change of clothing, the employees should be provided with a fixed or mobile station where to change clothes, whose interior is to be properly clean and protected from outdoor weather conditions.

The employees are entitled to be provided by the employer with protective equipment free of charge.

13.4. Right of Employer

All employees must fulfil the preventative procedures established or obligatory in their workplace according to the company's Internal Rules.

The employer can also require to the employees to use the company's machines and tools in accordance with their designated purpose and as instructed by the employees superiors.

In this sense, employees can be considered to have reporting duties with their employers that must be included in their labour contracts and in the company's Internal Rules. Hence, employees must inform the employer or their supervisors of any dangers to safety and health and of any errors in protective systems, and to follow instructions of their supervisors and superiors.

The employer, in order to enforce the preventative procedures and to avoid responsibility in case of working accidents, may include the obligation of the employee to comply with such the preventative procedures in the corresponding Labour Contract. In this scenario the employer will be entitled to terminate the employee if there is a substantial breach of employment contract duties, depending on the circumstances, regarding the preventative procedures.

13.5. Specific Standards

See section 13.2 above.

13.6. Injury or Accident at Work

Employers must record accidents in their establishments if an employee suffers an accident and to establish reaction procedures to attend the injured employee.

13.7. Workplace Violence

There are no especial rules regarding workplace violence. Notwithstanding, such violence would constitute a cause for termination the labour contract, according to Article 160 no. 1, paragraph c), without severance payment.

13.8. Fines and Penalties

Breaches of health and safety requirements could result in fines applied by the Labour Authorities or the by Health Authorities. Fines amounts can go between 10 Unidades Tributarias Mensuales (approximately USD 853) to 60

Unidades Tributarias Mensuales (approximately USD 5,118) depending on the size of the company and the seriousness of the breach.

Also, in case of a working accident, the employee could sue the employee for not taking all possible measures to assure his/her health and safety. In this sense the employee could claim the Courts compensation for every tort caused by the employer's negligence.

13.9. Checklists of Do's and Don'ts

- Strictly comply with any applicable health and safety rules established by the company.
- Review the applicable regulations and requirements and install necessary safety rules and procedures.
- Keep the Internal Health, Safety and Hygiene Regulations updated according to legal regulations and requirements.
- Appoint the required specialists.
- Observe the codetermination right of the works council on the implementation of any basic regulations on health protection.
- Request your employees to comply with your health and safety standards. They may and are supposed to make their own proposals on improving safety at work.
- Request your employees to sign a receipt when any health and safety standards are given to them, including general instructions by superiors.
- In this sense, the most important objective is to take preventive measures to ensure the health and safety of employees.

14. IMMIGRATION, SECONDMENT AND FOREIGN ASSIGNMENT

14.1 Overview Laws Controlling Immigration

Chilean Immigration Laws state that tourists are forbidden from undertaking any paid activities in Chile without the corresponding permit. Special working permit can be granted for foreigners hired to work temporarily in Chile. Also, working visa or temporary residence permit can be granted to foreigners who will develop paid activities in Chile for a longer period (up to one year for temporary residence and two years for working permit, renewable in both cases).

If a company has more than twenty-five employees, 85% of them must be Chilean. If it has less than twenty-five employees, there is no limitation. The

calculation of this percentage must consider all of the company's employees in the country, and exclude technical specialists who cannot be replaced by Chilean personnel. Also, an employee is considered Chilean, and thus not considered as foreign for calculation purposes, if he/she has a Chilean spouse or children, or is a widow or widower of a Chilean, or has lived in the country for more than five years.

Foreigners who are coming to render short term services can remain as tourists and apply for a special working permit which needs to be requested at their arrival in Chile, accompanying the labour contract. Permits are granted for thirty days and can be renewed once; there is 150% of the regular visa fee.

In order to work for a longer term in Chile, foreigners require a visa subject to an employment contract, or a temporary residence permit. For such purposes, an application must be filed before the Department of Foreign Affairs and Immigration or at the Chilean Consulate, ideally before entering Chile (the latter is more advisable as it allows foreigner to enter the country with the corresponding visa, obtain their ID Card almost immediately the ID. Card and avoids the approximately six months delay applicable if filed locally).

Specific documentation must be attached to the application, including a work contract signed by the employer before Notary Public, a letter explaining secondment, if the case, or bylaws of the companies in which it is a partner in case it is not hired to work in Chile for a Chilean or foreign company. In any case, foreigners need to prove to the authorities that they have sufficient financial means to subsist during their stay in Chile.

Dependant visas can be requested for spouse (legally married), children and eventually parents living under their financial aid. Such relationship must be proved by means of the corresponding certificates and an affidavit stating that the applicant will finance their expenses while living in Chile. Dependant visa does not allow them to develop paid work in Chile.

Applications need to be filed before arriving to Chile in case they are requested at the Consulate, or before the tourist permit expires if done in Chile.

Visa subject to a working contract can be granted for up to two years and can be renewed, and temporary residence is granted for one year, and is renewable. After one year has expired (in case of temporary residence) or two years (in case of working permits), the foreigner can request a permanent residence which is granted indefinitely and allows to keep developing paid activities in Chile. One of the requisites to opt for the Permanent Residence is not to exceed the period of 180 days outside the country during the last year of residence, and it is lost if the foreigner spent more than a year abroad and did not request an extension.

Foreigners cannot start working until the visa has been granted, or until the special working permit is stamped in the passport. Therefore, frequently the application includes a special working permit request, which is decided in a shorter term that the visa application.

Once the visa or permit has been granted, and within thirty days since such date, the employee must register his/her visa before the International Police and obtain a foreigner's identity card.

14.2 Recruiting, Screening and Hiring Process

The applicable rules are the same for foreigners and Chileans, (see section 3), except for the fact that employees need to be allowed to work by the corresponding visa or permit before starting to render their services.

Labour contract for foreigners also need to include some special clauses, such as the company's responsibility to comply with tax and social security obligations, declaration that the term starts after the foreigner has obtained the corresponding visa or permit, and a travel-expenses clause stating that back home tickets in case of termination by any cause will be borne by employer.

Foreigners who have a professional or technical degree may obtain a waiver of social security contributions, provided that they are enrolled abroad in a social security system that provides benefits at least similar to those existing in Chile. For that purpose a certificate from the social security system abroad and the authorized copy of the professional or technical title are required (duly legalized and officially translated if not in Spanish), and also a special stipulation to be agreed in labour agreement.

14.3 Obligation of Employer to Enforce Immigration Laws

It is both employers and employee's obligation to comply with immigration laws, as sanctions and fines are considered for both of them.

14.4 Fines and Penalties

Sanctions may be classified in:

Warning: Written sanction that the migratory authorities apply to people who disobey the law, such as the exercise of remunerated activities without authorization to do so, or foreigners who extend their stay in the country after their tourism permit, other permits or visas have expired. Warnings may

be applicable as long as the foreigner who is committing the infraction is not a re-offender.

Fine: It is a sanction in money that shall be paid by the foreigner committing the violation of the immigration legislation. The amounts of the fines may vary depending on the infraction committed. In the case of natural or juridical person giving work to foreigners that are not authorized to do so, the fines may vary between one and forty minimum wages.

Expulsion: This is a sanction that establishes mandatory order for the foreigner to leave the country when specific causes occur.

14.5 Secondment/Foreign Assignment

Secondment and foreign assignments are valid causes to support a temporary residence permit, provided the foreigner or the company requesting the permit are able to prove such situation by means of letters signed by both the local company where the foreigner will render its services and the foreign company. Salaries can be paid in Chile or abroad.

Under these circumstances the employee remains as employer of the company abroad, provided there is no subordination or dependence with the local company.

14.6 Checklist of Do's and Don'ts

It is essential that employers review immigration status of foreign employers to avoid fines.

15. RESTRICTIVE COVENANTS AND PROTECTION OF TRADE SECRETS AND CONFIDENTIAL INFORMATION

15.1. Overview

As a result of the TRIPS agreements signed by Chile in the framework of WIPO, Chile introduced reforms to the Chilean Industrial Property Law in 2005. Indeed, Chile incorporated rules on trade secret protection entitled 'trade secrets' in three articles which expressly incorporates this institution to our legislation (Law 19,996 amending the Industrial Property Law 19,039). Prior to this legal amendment, the decisions in this regard were given under the principles and rules on unfair competition.

15.2 The Law of Trade Secrets

Article 86 of the Chilean industrial property law defines trade secrets as follows: Business Secret means any knowledge of industrial products or processes, which the maintenance in reserve gives its holder, an improvement, advancement or competitive advantage. In addition, Article 87 of the Act establishes the grounds that constitute infringement, noting that: It is an infringement of the trade secret law the illegitimate acquisition thereof, disclosure or exploitation without the authorization of the owner and the dissemination or exploitation of trade secrets to which has legitimately had access under a non disclosure clause, provided that the violation of confidentiality has been made with the intention of obtaining benefit or advantage by a third party or intention of harm to its owner. The Article 88 provides that: Nevertheless the appropriate criminal responsibility, it also shall apply to the violation of trade secret, the rules stated on Title X concerning the enforcement of industrial property rights.

Therefore, the law considers the type of information that is protected. This means that it protects only the knowledge of products or industrial processes (industrial secrets), and then excludes the protection of commercial secrets. It includes not only disclosure but also acts of exploitation of information and considers several scenarios of how the information was obtained (information extraction). In addition, knowledge must be kept in confidential (although there is no mention concerning the duty to adopt reasonable steps to preserve the secret by the owner). Knowledge must have economic value, and to be given to the holder of that knowledge an advantage of improvement, advancement or competition. Moreover, the regulation extends to third parties and competitors. The allegedly illegal acquisition and use of the information found to be broad enough to include those who encourage practices like those who have merely making a profit of a trade secret violation.

Additionally, Article 284 of the Penal Code punishes the employee or former employees: Whoever fraudulently has communicated the trade secrets of the industry from is or has been employed shall suffer the penalty of imprisonment in its medium degree or minimum fine of 1,120 UTM. The offence requires: a wilful act, which can come only from a person who is or has been employed, referring only to industrial secrets (not commercial ones). Refers only to duties of confidentiality by employees or former employees, does not say anything about third parties or competitors who may benefit from such conduct. Furthermore, it says nothing about sanctions or prohibitions on the use and enjoyment that these people could be made of information obtained by these means.

15.3 Restrictive Covenants and Non-compete Agreements

An effective means to protect the information should be the route through the contractual duties of confidentiality and secrecy. By the principle of good faith can demand respect for confidentiality obligations implicit and explicit. The employee must use the information obtained in carrying out their duties solely to perform them. Nevertheless, one must distinguish between what constitutes a trade secret owned by the company and those competencies, skills and knowledge lawfully acquired by the employee, which constitute what is commonly referred to as work experience, for which a employee has a legitimate right to appeal to provide services to their future employers.

The Labor Authority *(Dirección del Trabajo)* in the ORD. 4731/081 dated 3 November 2010 stated that it was lawful to agree on a labour contract confidentiality clauses, even to rule beyond the expiration of their term, as far as it respects the requirements of suitability, necessity and proportionality of the obligation. This means that at least that confidentiality lies with the knowledge of the subjects whose reserve offers an advantage to the employer with respect to their competitors. It is also a necessity to use reasonable measures to withhold such material or information. Additionally, it is a requirement of that information that is not generally known or readily accessible to persons connected with those who normally use that type of information. It is necessary to establish a Non-disclosure Agreement regarding the privacy and secrecy of the information.

15.4 Checklist of Do's and Don'ts

It is lawful to agree on a labour contract confidentiality clauses. It is necessary: to fulfil the requirements of suitability, necessity and proportionality of the confidential obligation, use reasonable measures to withhold such material or information, and it is necessary to set a Non-disclosure Agreement regarding the privacy and confidentiality of the information. It need not be generally known or easily accessible to persons who habitually use such information.

16. PROTECTION OF WHISTLEBLOWING CLAIMS

16.1. Overview

There is neither protection nor especial regulation for whistleblowers under Chilean Labour nor Civil Law. In general terms, anyone is entitled to tell the public or someone in authority about alleged dishonest or illegal activities,

and to invoke non-discriminatory rules on his/her behalf (see sections 17 and 25).

In this sense, according to Article 485 of the Labour Code, any termination considered as a reprisal against an employee who has requested the control of Labour Authorities regarding labour irregularities could be subject of a 'Procedimiento de Tutela' (Protection Procedure).

Also, the company's Internal Rules must include a chapter indicating procedures that the employees can follow in other to report misconduct within the company and raise claims through proper channels.

In addition, Law 20,393 of 2 December 2009 establishes and regulates the criminal liability of moral entities for the crimes of money laundering, terrorist financing and bribery. In this sense, the company's Internal Rules must establish:

(1) Crime prevention policy of criminal liability of moral entities.
(2) Appointment of a manager of prevention.
(3) Establishment of a system of crime prevention.
(4) Monitoring and certification system of crime prevention.

16.2. Checklists of Do's and Don'ts

– Note that no measures can be taken against employees who have reported misconduct of the employer. Otherwise, it could be considered as a reprisal.
– Establish real instance for the employees to report misconducts inside the company, and include them in the Internal Health, Safety and Hygiene Regulations.
– Dully inform the employees to use the adequate channels and procedures to report misconducts.

17. PROHIBITION OF DISCRIMINATION IN THE WORKPLACE

17.1 Overview of Anti-discrimination Laws

The Chilean Constitution forbids any form of discrimination not based on capacity or personal adaptation. Notwithstanding, the law may requires Chilean nationality or minimum age for specific jobs.

According to Article 2 of the Labor Code any form of discrimination violates labour rules. Discrimination consists of distinctions, exclusions or preferences based on race, sex, colour, age, marital status, union

membership, religion, political ideas, nationality or social origin with the intention of annul or change the equality of opportunity or employment treatment.

No employer can condition the hiring of an employee to those circumstances. Nor can an employer condition the hiring of an employee to the absence of economic, financial, bank or commercial obligations unless the employee will have power of attorney to act on behalf of the employer that involves at least general managing powers; or he/she will be in charge of collecting, administrating or safekeeping funds or valuables of any nature.

Any job offer is considered discrimination and in violation of labour rules if special requirements are imposed regarding race, sex, colour, age, marital status, union membership, religion, political ideas, nationality or social origin.

Notwithstanding, no distinction, exclusion or preference based on personal qualifications required for a specific job shall be considered as discrimination. There are some special rules that provide differences according age, nationality, sex and others which are not considered as discrimination what will be mentioned in the next paragraphs.

Labour law contemplates a special procedure to protect employees against any kind of breach of fundamental rights granted by the Constitution and discriminatory conducts.

17.2 Age Discrimination

For the protection of youths there are some jobs or activities forbidden for persons under 18 years old or subject to special authorization from their parents, legal representatives or Family Judge.

Persons under 21 years old cannot be hired for underground mining activities without a previous ability exam.

17.3 Race Discrimination

There are no special rules considering race.

17.4 Sex Discrimination/Sexual Harassment

Women cannot carry, transport, load, haul or push manually, and without mechanical aid, loads of more than 20 kg.

By express provision of Article 62*bis* of the Labour Code, the employer must comply with the principle of equal remuneration for men and women

doing the same job. Differences based on skills, qualifications, suitability, responsibility or productivity are not considered arbitrary. The internal rules of the employer must include a procedure to submit claims which are caused by violation of this equality.

Our law considers sexual harassment as a conduct that violates the dignity of the individual. If such conduct is proven, it is cause for discharge without compensation.

The law requires that the internal rules of employers include a procedure to which sexual harassment claims will be submitted, as well as protective measures and the penalties applicable in such a case. The Labour Code, in its Articles 211-A and following contains the rules of a basic procedure to which the employer may refer the investigation of a sexual harassment claim.

17.5 Handicap and Disability Discrimination

Law 20.422 on equal opportunities and social inclusion of people with disabilities was passed on 10 February 2010, aimed at obtaining their full social inclusion, ensuring them the enjoyment of their rights and eliminating all forms of discrimination based on disability.

Under this law the State must create the conditions and ensure labour insertion and access to social security benefits of disabled individuals. For this end, it may develop either directly or through third parties, plans, programs and incentives and create tools to encourage employment of disabled people in permanent jobs. However, there is no provision in the law that neither obligate private employees to hire disabled people nor that authorize the State to force such hiring.

Under this law, internal rules of employers must include special rules for the various categories of labour, according to the age and sex of the employees and the necessary adjustments and support services to enable the disabled employee to perform an adequate work.

17.6 National Origin Discrimination

If a company has more than twenty-five employees, 85% must be Chilean. If it has less than twenty-five employees, there is no limitation. The calculation of this percentage must consider all of the company's employees in the country and exclude technical specialists who cannot be replaced by Chilean personnel. An employee is considered Chilean if he/she has a Chilean spouse or children or is a widow or widower of a Chilean or has lived in the country for more than five years.

In order to work in Chile, expatriates require a visa subject to an employment contract. For such purposes, an application must be filed before the Department of Foreign Affairs and Immigration. The employee must register his/her visa before the International Police and obtain a foreigner's identity card and a taxpayer identity number.

17.7 Religious Discrimination

There are no special rules considering religion.

17.8 Military Status Discrimination

While the employee is doing military service or is part of the mobilized national reserves or is called to active duty, he will retain his job without pay.

However, reservists called to active duty for periods not exceeding thirty days, will be entitled to be paid for said period the total wages they were being paid at the time of being called to active duty, which will be paid by the employer, unless by supreme decree it is expressly provided that they are to be paid by the State.

Military service does not interrupt the employee's seniority for all legal purposes.

The obligation of the employer to retain the employment of the employee, who must fulfil his military duties, shall be deemed satisfied if the employee is given another position of equal grade and payment to that previously performed, provided that the employee is qualified for it.

This obligation extinguishes itself one month after the date of the respective discharge certificate and, in case of disease, proven with a medical certificate, will extend itself for a maximum period of four months.

17.9 Pregnancy Discrimination

The hiring of female employees, their retention or renewal of contract, or the promotion or mobility at work cannot be conditioned to the absence or existence of pregnancy, nor may any certificate or test be required for said purposes to verify whether the employee is pregnant or not.

In Chile, the working woman has a set of rights which are generated by the mere fact of motherhood, without requiring prior authorization or any other formality. The only requirement established by law to become a beneficiary of said protection and legal benefits, is a medical certificate attesting to the pregnancy and the formalities associated with a medical

license for the payment of subsidies for the periods of maternity leave granted by law.

A Maternity immunity protects the working woman from the beginning of pregnancy until one year after the first twelve postnatal weeks. This immunity prevents the termination of the individual employment contract during this period, except for certain causes and with the previous approval of the Court.

There is likewise a pre and post-natal rest period. The first one is the rest period before the birth of the child and extends itself for six weeks before delivery. The doctor or midwife in charge of the woman's cares determines the possible date of birth for purposes of the pre-natal leave. The second one is the rest period after the birth of the child, which lasts twelve weeks from the date of delivery.

Since October 2011, the so-called Parental Post-Natal Leave entered into force in Chile, consisting of an additional twelve weeks rest period, after the regular post-natal period of twelve weeks mentioned in the previous paragraph. For purposes of the parental post-natal leave, the mother has the option of not using her twelve additional weeks of rest and, instead, exercising the right of returning to her work on a part-time basis during eighteen weeks from the completion of the regular post-natal leave.

If both parents are employees, the mother may pass the parental post-natal rest period to the father from the seventh week on, for the number of weeks indicated by the mother. Therefore, the parental post-natal leave to which the father may be entitled has a limit of six weeks if the mother chooses not to return to work, or of twelve weeks if she chooses to do it on a part-time basis.

17.10 Marital Status Discrimination

There are no special rules considering Marital Status except that an employee is considered Chilean if he/she has a Chilean spouse.

17.11 Sexual Orientation Discrimination

There are no special rules considering sexual orientation.

17.12 Retaliation

Retaliation against employees due to or as a result of the supervision of the Labour Authority or the exercise of judicial actions, is considered by our

legislation as a violation of the fundamental rights of employees, who may file claims with the labour courts through a special procedure called 'Procedimiento de Tutela' (Protection Procedure). The union to which the employee belongs may become an intervenor in that claim or may even file directly a claim. Claims may also be filed against those acts with the Labour Authority who must report the facts to the competent court accompanied by an audit report. The Labour Authority may involve itself in the process giving rise to the complaint. Before making the complaint to the Court, the Labour Authority should conduct mediation in order to use all the possibilities of correcting the alleged conducts.

The Court may order the immediate cessation of the claimed conducts, order specific measures to repair the consequences of such conducts and applies fines.

If the retaliation has been the discharge of the employee and the judge so decides, the discharge is considered unfair and, in addition to compensation for lack of prior notice and severance payment with the surcharges that the law considers according to the cause of discharge, the employee shall be entitled to an additional compensation awarded by the Court equivalent to no less than six and no more than eleven monthly salary.

17.13 Constructive Discharge

The law does not consider acts of discrimination as a cause of constructive discharge. The cases in which the employee may claim constructive discharge are as follows: (a) Any of the following misconducts of a serious nature, duly proven: (i) lack of integrity; (ii) sexual harassment behaviours; (iii) acts of aggression exercised by the employer against the employee; (iv) insults made by the employer to the employee and (v) immoral conduct of the employer affecting the employee; (vi) failure to sanction or put an end to mobbing acts performed by other employees; (b) Acts, omissions or rash actions affecting the safety or the activities of the employee or their health. (c) Serious breach by the employer of his labour contract obligations.

If the claim is rejected, it is understood that the contract was terminated by voluntary resignation of the employee.

In case of acts of discrimination, the employee may exercise the same actions than in the case of retaliation mentioned in the above section 17.12.

17.14 Mobbing

The concept of labour harassment has been recently defined by the law published on the official gazette on 8 August 2012. Labour harassment or

mobbing – a term used to name this type of aggression – is defined as any conduct that constitutes harassment or repeated aggression exercised by the employer or by one or more workers, against one or more employees, by any means, and that results for those affected in their impairment, abuse or humiliation, or that threaten or harm their employment status or employment opportunities.

The fact that the employer incurs in mobbing behaviours entitles the employee to sue his constructive dismissal before the Courts of Justice.

17.15 Checklist of Do's and Don'ts

- To attest that a discharge for business needs of an employee performing similar work to another employee is not due to arbitrary discrimination but for his performance, a system of performance assessment is recommended.
- Before discharging an employee, it is important to know whether there is sufficient evidence to justify in a trial the veracity of the facts underlying the grounds for the discharge.
- Establish a special procedure within the Internal Ruling, in order to investigate and punish acts which may constitute mobbing or labour harassment.

18. SMOKING IN THE WORKPLACE

18.1 Overview

The Labour Authority, by ORD 3029 of 12 July 2010, set important requirements which must be included in the Internal Rules of each employer concerning smoking in the workplace.

In this ruling The Labour Authority established the obligation of incorporating in the Internal Rules of companies, establishments, tasks or economic units standards and bans related to smoking indoors and in public places, referred to in paragraph 1 of Article 11 of Law 20,105 of May 2006. Therefore, they are minimum requirements that all internal rules must mandatorily include.

Law 20.660, in force since 1 March 2013, forbids any smoking within closed spaces of any kind. This legal modification redefines the concept of closed spaces, including almost any type of areas.

18.2 Checklist of Do's and Don'ts

– Smoking should be banned in indoor facilities of the company.
– It is convenient to designate open spaces where employees may smoke.

19. USE OF DRUGS AND ALCOHOL IN THE WORKPLACE

19.1 Overview

The Labour Authority issued on 12 July 2010, ORD 3031, establishing important requirements that must be included in the Internal Rules of each employer concerning drug and alcohol consumption.

This ruling sets out basic requirements that must be included in the Internal Rules concerning drugs and alcohol consumption, such as who or which (individuals or institution) will be in charge of the control and what will be the control mechanism, as well as the procedure to be followed. In this regard, it requires temporal and territorial limit for the application of the control. They may affect only the tasks, stay and life of the employees in the company, without extending itself to activities outside working hours and workplace.

It also provides that any control measures taken by the employer to avoid drugs and alcohol consumption, may only be done by suitable means consistent with the nature of the employment relationship and, in any case, its application must be general, ensuring the impersonality of the measure and the respect of the dignity of the employee. Thus, the Labour Authority notes that any control measure must be subject to the principle of proportionality and must comply with the requirements established by law (generality and impartiality of the measure) and those derived from administrative doctrine (such as advertising control measures, among others).

Furthermore, the Labour Authority establishes the following additional requirements to be included in the Internal Rules:

(a) a reference as to what is to be considered as drugs (or if, for instance, the qualification will be that of Articles 1 and 2 of rule of Law 20,000 which sanctions the illegal traffic of narcotic drugs and psychotropic substances);
(b) a rule establishing what is to be deemed as 'under the influence' of said substances, as, among other things, this will determine whether the employee may perform or not his daily work.

Finally, according to this riling, it is essential to incorporate in the Internal Rules regulations protecting the privacy of the employees according to the requirements of Law 19.628 (rules of proper treatment of personal data of the employees) and in the Labour Code.

19.2 Checklist of Do's and Don'ts

- Strict confidentiality must be kept of the results of alcohol and drug tests.
- Any alcohol and drug tests must be applied randomly among the employees.

20. AIDS, HIV, SARS, BLOODBORNE PATHOGENS

20.1 Overview

There are no special rules regarding the control or examination of such diseases in the workplace, without prejudice to the duty of the employer to require the corresponding tests to determine if the employee meets the requirements or conditions for the specific work to be performed, since a employee cannot be required or admitted to perform work classified as beyond his strength or that may compromise his health or safety.

Notwithstanding, because of Article 154*bis* of the Labour Code, the employer must maintain confidentiality of all information and private data of the employee to which he has access due to the labour relationship.

20.2. Checklist of Do's and Don'ts

- Maintain strict confidentiality of test results to be made to employees of whom the employer has knowledge is needed.

21. DRESS AND GROOMING REQUIREMENTS

21.1 Overview

Internal Rules must include, among other things, the obligations and prohibitions to be observed by the employees, related to their work, stay and life in the workplace of the respective company or establishment.

In this regard, the employer is entitled to require the dress and grooming conditions in the company's workplace he deems convenient, provided they are appropriate and consistent with the nature of work and position in the company or establishment and, in any case, their application must be general, ensuring the impersonality of the measure, to respect the dignity of the employee.

21.2 Checklist of Do's and Don'ts

– There must be common rules applicable to all those performing similar work in the company or establishment.

22. PRIVACY, TECHNOLOGY AND TRANSFER OF PERSONAL DATA

22.1. Privacy Rights of Employees

Article 154*bis* of the Chilean Labor Code states that the employer shall maintain reserve of all private information and data of the employee to which it has access due to the labour relationship.

The Labor Authority *(Dirección del Trabajo*) pronounced on Article 154*bis* by means of ORD 1662-39 of 2 May 2003. The statement is the result of a query placed by an administrative body regarding its obligation to maintain confidential the data and information of their dependants (employees). In view that municipal officers and councillors, in several occasions, had requested information on labour agreements, salaries, indemnifications, social security payments and severance payments of certain dependants of said administrative body, the Labor Authority stated that if the administrative body provided the labour agreements/contracts and the information contained in them, besides salaries, indemnifications, social security payments and severance payments, would mean, without a doubt, a serious transgression of the duty of confidentiality that the employer must maintain regarding antecedents of the specifically private area of its dependant. In the opinion of the Authority, the mandatory wording of Article 154*bis* must prevail: the employer shall maintain reserve of all private information and data of the employee to which it has access due to the labour relationship.

Additionally, the ORD. 0260/0019, dated 24 January 2002 of the Labor Authority ruled on whether the employer can access the contents of emails sent and received by the employee through an email system of the company.

Before reaching the final judgment, the Labor Authority recognizes the existence of a conflict between two constitutional guarantees. On the one hand, the constitutional guarantee of the inviolability of all forms of private communication, which backed by subsection 1 of Article 5 of the Labor Code, protects the employee, and on the other, the constitutional guarantee of property rights, which gives the employer the right to organize, direct and manage its business. The employer has the right to regulate the conditions, frequency and timing of use of their property, but provided they do not violate the constitutional guarantee of the inviolability of all forms of private communication. In this regard, the Labor Authority sees no objection in the regulation of the corporate email, provided they do not affect the abovementioned constitutional guarantee.

According to the labour ruling, the employer can regulate the conditions, frequency, and timing of the use of corporate email. In this way, the company could enact that all emails that are sent from the company server will have to be sent with a copy to management. Moreover, the employer may regulate the use of non productive email. These measures should be included in the Internal Rules, to which the employee had prior knowledge.

Consequently, it is allowed to review or audit the corporate email, to the extent that meet certain requirements or conditions as the corporate email is a tool that the employer makes available to employees for the faithful performance of its orders. The control measures of the employer regarding the use of corporate email cannot involve excessive control that infringes the rights of privacy and dignity of the employee. The review or audit of corporate email must be incorporated in the Internal Rules, so that employees are aware that the corporate emails can be monitored and audited. In addition, it should include an internal procedure for reviewing such mailings, which has to protect and not infringe the privacy rights, dignity and honour of the employees. The review should be random (all employees of the company, or an area or a particular section of the company) or be the result of a specific complaint for misuse of the corporate email, which should be seen in the rules of procedure. The review in this case should be limited to verifying the existence of the infringement charged.

The employee must also understand that the corporate or institutional email should be used only for work; the employee should maintain his/her personal relationships or personal effects out of this area of corporate emails. Even though the employer cannot access to the personal email in any respect, could limit their access.

It should be borne in mind that general rules of law are still applied, by virtue of which the parties may have access to the information to the extent and where there is a legal requirement and/or a prior court order that justifies and authorizes said access.

22.2. Transfer of Personal Data

The processing of personal data in records or data banks by public or private entities is subject to the provisions of The Law N° 19.628 (hereinafter 'The Privacy Act'), except if it is made in exercise of the freedom of opinion and reporting, which is governed by the law referred to in Article 19, No. 12 of the Chilean Constitution. Any person may process personal data, provided it is done in a manner consistent with The Privacy Act and for purposes permitted by law. In any case, said process must respect the full enjoyment of fundamental rights of the holders of said data and the powers The Privacy Act recognizes.

The processing of personal data can only take place when The Privacy Act or other legal regulations authorize it or the holder expressly agrees to it. The authorizing person must be duly informed about the purpose of storing personal data and the possible communication to the public. The authorization must be in writing. The authorization may be revoked, but without retroactive effect, which must also be in writing. Personal data should be used only for the purposes for which they have been collected, unless they come from, or have been gathered from, public sources. In any case, the information must be accurate, current and answer truthfully to the real situation of the holder of the data.

The person responsible for the records or databases where personal data are stored after being collected should take care of them with due diligence, taking responsibility for damage.

In Chile the cross-border of data is allowed, to the extent that the regulations of the Law are complied with. This flows from interpreting the history of The Privacy Act, which contained an article in its original bill banning the responsiblity of personal databanks from transmitting personal data from or to countries which legal regulations did not offer warranties analogue to those of The Privacy Act. Said article was suppressed in the meetings of the Mixed Commission during its discussion in Congress, and it is for this reason that can be sustained today that cross-border flow of data is allowed in Chile to the extent it is complied with the regulations contained in the Law.

Notwithstanding the above mentioned, there is a bill to amend certain provisions of the Privacy Act and there are certain amendments relating to trans-border flow of data (hereinafter 'The Bill').

The Bill states that the controller of a record or database shall only make transfers of personal data to entities not subject to Chilean law if the parties of the transfer set contractually guarantees and obligations for the recipient of the data, whether as the registrar or database or data processor, to make due compliance with the provisions of The Privacy Act. The guarantees and obligations agreed shall not impair the rights established by this law and by

the rules governing markets subject to special regulations to ensure that personal data collected from holders through entities subject to Chilean laws have the same level of protection granted by this ordinance. The parties to an international data transfer operation may adopt models for prevention of infringements of this law, certified by some of the Certifications Companies mentioned by The Bill. At any rate, whoever does the international data transfer to entities that are not subject to Chilean laws will always be liable for the fact that the processing of the data that are transferred complies with what is set out in this law and he must indemnify the holder concerned if the recipient of the transfer does not comply with this rule, without precluding the right to recourse of the recipient, according to the agreed guarantees and obligations.

22.3 Checklist of Do's and Don'ts

The employer shall maintain reserve of all private information and data of the employee to which it has access due to the labour relationship. Personal data should be used only for the purposes for which it has been collected.

The use of the email could be regulated within the company by means of an internal regulation, respecting the constitutional rights of the employees. In effect, the employer has the right to regulate the conditions, frequency and opportunity of use of its property, but to the extent it is not violated the constitutional right of inviolability of all form or manner of private communication. The power of review of corporate email must be provided in the Internal Rules, so that employees are aware that the corporate emails can be monitored and audited.

The review of the institutional or corporate email should respond to measures that are appropriate, essential to, proportional and justified.

The employee's personal email cannot be accessed by the employer.

23. WORKPLACE INVESTIGATIONS FOR COMPLAINTS OF DISCRIMINATION, HARASSMENT, FRAUD, THEFT, AND WHISTLEBLOWING

23.1 Overview

Under the Labour Code, the company's Internal Rules must at least include a procedure for investigating complaints of sexual harassment and one for investigating claims of breach of the principle of equal remuneration for men and women performing the same job. However, there may also be procedures for investigating other conducts inside the company that are

deemed inappropriate, like mobbing, provided they are of general application, impersonal and respecting the dignity of the employee.

Although it is not a labour obligation, it has to be borne in mind that on 2 December 2009, through the enactment of Law 20,393 the legal concept was created of criminal liability of legal entities, non-existent in our country until that date. This means that, as of that date, legal entities are not only civilly liable for the crimes committed by their agents, representatives, employees with management or supervisory powers, but they are also criminally liable. For now, this is only applicable to offences of money laundering, bribery (bribery of public employees) and terrorist financing, when said offence is a result of the failure to comply with the duties of direction and supervision.

The law presumes compliance with the duties of direction and supervision if prior to the offence, the company adopted and implemented models of organization, administration and supervision to prevent offences such as the one committed.

It is therefore advisable for companies to adopt and implement a prevention model that contains, at least: the appointment of a manager of prevention, defining his means and powers, the establishment of a crime prevention system and the supervision and certification of the system in place. The certification may be issued by external audit firms, risk rating agencies or other entities registered with the Chilean SEC.

23.2 Checklist of Do's and Don'ts

Any internal investigation performed by the employer must be done subject to a procedure set up in the Internal Rules of general application, impersonal and respecting the dignity of the employee.

24. AFFIRMATIVE ACTION/NON-DISCRIMINATION REQUIREMENTS

24.1 Overview

Chilean law does not contain positive discrimination provisions, except that the employer must comply with the principle of equal remuneration between men and women doing the same job and that the Internal Rules must include a procedure to submit claims which are caused by violation of this equality.

24.2 Checklist of Do's and Don'ts

Include in the Internal Rules a procedure to submit claims based on a violation of the principle of equal remuneration between men and women doing the same job.

25. RESOLUTION OF LABOUR, DISCRIMINATION AND EMPLOYMENT DISPUTES. LITIGATION, ARBITRATION, MEDIATION AND CONCILIATION

25.1. Internal Disputes Resolution Process

As it was previously mentioned, any internal procedure for resolving disputes in the company should be established in the Company's Internal Rules. For that purpose, Law expressly requires certain minimum matters to be included in the Internal Rules such as the appointment of an executive or dependent so as to address internal requests, complaints, questions and suggestions.

In addition Internal Rules must contain the applicable sanctions for violation of obligations set forth in the internal regulations; the procedure for application of the sanctions; the procedure, measures and sanctions to be applied in cases of sexual harassment complaints; and finally, the procedure applicable in case of claims for violation of the principle of equal remuneration between men and women who carry out equal functions.

Furthermore, other procedures to resolve internal disputes may be included in the Internal Rules documents as company deems as necessary.

25.2. Mediation and Conciliation

In Chile there are no agencies or independent instances for Mediation and Conciliation in labour matter. Except a possible instance of mediation, lead by labour authorities during a regulated collective bargaining process.

Law referred to Labor Courts as the exclusively competent for the resolution of labour disputes. In this sense in the ordinary procedure for labour dispute resolution, a mandatory conciliation hearing is considered before the evidence presentation.

25.3. Arbitration

In Chile it is not allowed that labour controversies be resolved by a private arbitration. The only exception is arbitration to resolve matters relating to collective negotiations being compulsory in negotiations where strike, temporal closing and lock out are prohibited.

25.4. Litigation

In matters related to litigation before a Labor Court, it is important to consider that law contemplates three main litigation procedures:

(a) the Ordinary procedure to resolve labour disputes;
(b) a simpler procedure called Monitorio in case where the amount in dispute is equal or less that ten minimum salaries; and
(c) the procedure to claim discrimination and violations of the fundamental rights of employees which is known as Tutela laboral.

Even though file a suit is a written presentation, judicial procedures are conducted mainly through oral hearing so as to save time and be more efficient.

In case of final decisions in the ordinary procedure, the only remedy available is the appeal for annulment, if during the process or in the final decision Constitutional rights have been infringed, or if the decision has been issued infringing a law which significantly influences the ruling on the case. The deadline for filing the appeal is ten days. Exceptionally, an appeal of unification of jurisprudence may be filed if there are different interpretations of the Superior Courts of Justice regarding the subject matter of the trial. The deadline for filing this appeal is fifteen days.

25.5. Fine, Penalties and Damages

In general terms, breaching labour obligations by the employer has consequence in terms of employer obligation to pay any due amount according to law.

Also there are fines regulated by Law. For instance, in case of unfair dismissal legal indemnification must be paid increased from a 30% up to 100% depending on the dismissal cause unfairly invoked. Also in case of discrimination or breach of constitutional rights with occasion of the dismissal, employer can be condemned to pay a fine in favour to the employee equivalent to six up to twelve monthly salaries.

In addition in case of non compliance of labour obligations administrative fines can be applicable and their amount will depend on the nature of non compliance and the company's number of employees.

25.6. Checklist of Do's and Don'ts

- In case of conflict and before the initiation of a judicial procedure, use internal procedure to resolve conflicts.
- When considering dismissing an employee the employer must be very careful neither to discriminate the employee nor to breach any of his/her constitutional rights with occasion of the dismissal.

26. EMPLOYER RECORDKEEPING, DATA PROTECTION, AND EMPLOYEE ACCESS TO PERSONNEL FILES AND RECORDS

26.1. Overview

In general terms, personnel files are a positive labour practice which allows authority to duly conduct revision procedures and also allows companies to have order in its personnel management.

It is important to have in mind that employee personal and sensitive information must be treated as confidential by the employer, so any use of such information must be related to labour and internal purposes.

26.2. Personnel files

Labour Law does not indicate documents that must be included in each employee file.

However, Labour Authority has stated that those files must contain all necessary information to duly conduct revision process by the authority. In consequence, at least personnel files must include: labour agreement and its annexes and amendments, remuneration receipts, social security payments certificates, control assistance records, vacation receipts.

26.3. Confidentiality Rules

According to Article 154*bis* of labour Code, Employer has the obligation of treating as Confidential any employee's information and private data which know or be disclosed because of labour relationship. Among other, this obligation include any personal data, health information, results of alcohol and/drug tests, etc.

26.4. Employee Access

As personnel files contains documents and information known by the employee, there is no legal restriction in order to allow him the access to the file and even require copy of documents.

27. REQUIRED NOTICES AND POSTINGS.

27.1 Overview

Except for the cases mentioned above (terminations, etc.), for any applicable policies and for the Internal Health, Hygiene and Safety Regulations, the law does not require notices to be posted where employees have easy access to the information.

Any applicable policies or Internal Regulations need to be referred to in the Labor Contract and a copy of it must have been given to employee, who must sign a copy to prove its receipt.

Additionally, Internal Regulations need to be posted as described under section 2.4.

Dismissal must be informed with a notice sent thirty days before termination, unless a severance payment is paid in lieu of such notice. Terminations need to be informed by a letter delivered at the termination process, or certified letter sent within three days since termination.

Changes in the labour schedule for circumstances affecting the whole process of the company or some of its units are authorized, changing in up to sixty minutes, provided employer informs the change with a notice sent with a thirty days' advance.

27.2 Checklist of Do's and Don'ts

– Notices and posting as stated in the applicable laws are essential in order to make applicable the corresponding termination, rulings, etc.

International Labour and Employment Compliance Handbook

Edited by Salvador del Rey and Robert J. Mignin

Labour and Employment Compliance in Chile

Gerardo Otero A., María Dolores Echeverría F.,
Macarena López M. & Juan Pablo Cabezón O.

Detailed attention to compliance with labour and employment laws is crucial for success in setting up business in a foreign country. This book – one of a series derived from Kluwer's matchless publication International Labour and Employment Compliance Handbook – focuses on the relevant laws and regulations in Chile. It is thoroughly practical in orientation. Employers and their counsel can be assured that it fulfills the need for accurate and detailed knowledge of laws in Chile on all aspects of employment, from recruiting to termination, working conditions, compensation and benefits to collective bargaining.

The volume proceeds in a logical sequence through such topics as the following:

- written and oral contracts
- interviewing and screening
- evaluations and warnings
- severance pay
- reductions in force
- temporary workers
- trade union rights
- wage and hour laws
- employee benefits
- workers' compensation
- safety and environmental regulations
- immigration law compliance
- restrictive covenants
- anti-discrimination laws
- employee privacy rights
- dispute resolution
- recordkeeping requirements

A wealth of practical features such as checklists of do's and don'ts, step-by-step compliance measures, applicable fines and penalties, and much more contribute to the book's day-to-day usefulness. Easy to understand for lawyers and non-lawyers alike, this book is sure to be welcomed by business executives and human resources professionals, as well as by corporate counsel and business lawyers.

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