

10TH
ANNIVERSARY
IN 2021

EMPLOYMENT LAW OVERVIEW
ARGENTINA 2021-2022

Allende & Brea / Proud Member of L&E GLOBAL

TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	05
III.	EMPLOYMENT CONTRACTS	06
IV.	WORKING CONDITIONS	08
V.	ANTI-DISCRIMINATION LAWS	10
VI.	PAY EQUITY LAWS	12
VII.	SOCIAL MEDIA AND DATA PRIVACY	13
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	14
IX.	RESTRICTIVE COVENANTS	18
X.	TRANSFER OF UNDERTAKINGS	19
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	20
XII.	EMPLOYEE BENEFITS	22



I. GENERAL OVERVIEW

1. INTRODUCTION

Argentina's labour laws are remarkably comprehensive and regulate virtually all the terms and conditions of the employment relationship. Labour laws are public policy and are therefore mandatory. The employer is obligated to grant employees at least what is afforded to them under labour legislation. Hence, an employer can extend benefits on top of the standard provisions, but cannot agree to terms that are less favourable or otherwise detrimental to an employee, nor can an employee waive any known right or privilege established for his/her protection or benefit under the law.

2. KEY POINTS

- Argentina's labour laws are pro-employee and have been designed to safeguard the rights of employees and workers, by instituting rules governing working conditions and working hours, providing for payment of salaries during illnesses, setting surcharges on salaries for overtime, establishing annual vacations and requiring the payment of severance compensation in the event of unfair dismissal (dismissal without justified cause).
 - Labour law in Argentina is comprised of public order provisions and thus cannot be ruled out, or waived by any agreement, applicable law or jurisdictional clauses subsequently included in any agreements. Accordingly, Argentina's labour laws will apply – and the labour courts will have jurisdiction – with respect to any eventual labour claim filed with the courts related to work performed in Argentina.
 - Employees are entitled to a 13th salary or statutory annual bonus, called "*aguinaldo*" or "*sueldo anual complementario/SAC*", which is payable in two semi-annual installments, to be paid on 30 June and 18 December. Each installment is equal to 50% of the highest monthly salary accrued during the corresponding semester.
 - Employers must pay a compulsory life insurance for all employees.
- The employer can only change the terms and conditions of employment, provided that those changes are not unreasonable and do not either:
 - modify the essential terms of the employment contract; or
 - cause moral or material damage to the employee.

3. LEGAL FRAMEWORK

- As labour laws are federal laws, the terms and conditions are standardised nationally.
- Labour Contract Law 20,744 (the "LCL"), together with any other complimentary legislation and applicable collective bargaining agreements, tailor the general provisions that govern the conditions of employment.
- Law No. 23,660, the Health Insurance Act, sets forth the measures necessary to establish appropriate health and medical care services to employees and their families.
- Argentina's Employees' Pension and Retirement Act (Law No. 24,241) secures access to public funds for employees and independent workers who are eligible to apply for retirement or a pension plan, a disability retirement annuity as well as pension coverage in case of death.
- Law No. 19,587 on Occupational Hygiene and Safety lays down the standards and procedures applicable to all workplace establishments, regardless of the nature of their economic activity.

- The Working Hours Act (Law No. 11.544/1929) regulates working hours.
- Law No. 24,013 regulates temporary personnel service companies and related fines for improper registration of labour relationships.

4. NEW DEVELOPMENTS

A prohibition on dismissals is currently in force, pursuant to Decree 624/2020, by which an employer cannot proceed with a dismissal without just cause, for lack of work or a decrease in work, or due to force majeure until 30 September 2020. In case the employer proceeds with a termination of an employee in violation of the above, such termination will be considered null and will have no legal effect. As such, the employment relationship will continue under the same terms and conditions. Decree 624/2020 also prohibits furloughs due to force majeure, for lack of work or a decrease in work until 30 September 2020.

Additionally, severance compensation duplication pursuant to Decree 528/2020 due to an occupational emergency is currently in force until 7 December 2020.

Both the prohibition on dismissals and the severance compensation duplication may be extended in time, according to the emergency context.

On 30 July 2020, the National Senate approved the Legal Regime of Teleworking Contract (“Teleworking Law”). This law guarantees minimum legal requirements for a teleworking contract and provides that specific regulations for each activity will be established through collective bargaining, complying with the principles of labour’s public order.

Pursuant to the Teleworking Law, the working day must be agreed in advance and in writing, complying with legal and conventional limits in force. The law provides that the platforms and/or software used must not authorise the worker’s connection outside of working hours. The teleworker will have the right to not be contacted and to disconnect from digital devices and/or ICTs during off-hours and leave periods.

The transfer from the on-site modality to the teleworking modality must be done with the employee’s voluntary acceptance in writing, except in duly accredited cases of force majeure.

In the case where the worker performed tasks under an on-site modality and voluntarily agreed to provide tasks under the teleworking modality, he/she may revoke the consent given at any time during the employment relationship and without prior notice, and the employer is obliged to reinstate the worker in the establishment in which he/she had previously performed their work or at the closest establishment to the worker’s home in which he/she could perform tasks, unless it would be impossible to comply with this obligation, for reasons which are legitimate and justified.

Regarding a worker who, from the beginning of the relationship, agreed to provide tasks under the teleworking modality, the eventual change to an on-site modality, will operate according to the guidelines established by collective bargaining for each activity.

The employer must provide the employee with the necessary equipment, including hardware and software, work tools and the support necessary to perform the tasks, as well as assume the costs of installation, maintenance and repair of such devices. The Teleworking Law contemplates the possibility that the teleworker will satisfy the essential working elements, and that the employer will compensate for the use of such tools which are owned by the worker, in which case, such compensation will operate according to the guidelines to be established by collective bargaining.

The control systems implemented to protect the employer’s assets and information shall have union participation, in order to safeguard the teleworker’s privacy and the privacy of his/her home.

In cases of transnational telework, the law governing the place of performance of the tasks, or the law of the employer’s domicile, whichever is more favourable to the teleworker, shall apply.

The Teleworking Law will enter into force ninety days after the end of the mandatory social distancing and self-isolation measures currently in force.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

There is no restriction regarding the employment of foreigners in Argentina. Requirements differ if the employee's nationality is from a country of Mercosur or affiliated to Mercosur (Uruguay, Paraguay, Brazil, Argentina, Colombia, Chile, Venezuela, Ecuador, Bolivia and Perú) or other countries. Employees who are not nationals of a country member of the Mercosur, or affiliated to Mercosur, are required to obtain a working visa to work under an employment relationship in Argentina. Employers must first register before a registry of employers that hires foreigners. In order to obtain a working visa, the employee should be registered as an employee of a local company in Argentina. All foreigners have to file a criminal records certificate, duly legalised from the country or countries where they have been living for the last 3 years, as well as from Argentina.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

A foreign employer needs to establish a local entity to hire an employee, in order to register the employee before the local tax authorities and pay local taxes and social security obligations.

3. LIMITATIONS ON BACKGROUND CHECKS

In Argentina, an employer cannot perform a criminal background check on an employee, either directly by the employer or by the use of a vendor. Only the employee can obtain the criminal background and then provide it to the employer. This is established in section 8 subsection (f) of the Criminal Records Register Act (Law No. 22,117) which states that the Criminal Records Registry will be confidential and may only provide reports to individuals who, by demonstrating the existence of a legitimate interest, request a criminal certification. Moreover, the Regulatory Decree No. 2004, states that the certificate must be requested by the interested party personally or through his legal representative. In addition, the Argentine Data Protection Act establishes that personal data referring to criminal records can be processed only by the competent public authorities.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Employers cannot include restrictions on applications that may entail any discrimination, such as gender, age, political or religious beliefs and/or marital status. Potential employees are not obliged to provide background information due to the fact that it is considered personal private information. The employer is obligated to conduct pre-employment medical examinations to determine if the employee is fit to work and to determine any prior health conditions at the beginning of the labour relationship.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

Written employment contracts are not required for permanent, full-time employment relationships, because labour laws are mandatory, very comprehensive and rule almost every term of the employment relationship. Labour laws only require the employer to register the employee in the company labour books and before the tax authorities, pay social security and taxes in respect to all salaries payable to the employee, and prepare and deliver to the employee the correspondent salary slips on a monthly basis. Employers must also provide for mandatory life insurance as well as working accident insurance for all employees.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

For a fixed-term contract:

- a written employment contract must be executed;
- it requires an extraordinary need that duly justifies executing a fixed term contract
- there is a maximum term of 5 years;
- the employer must serve prior notice of termination (no less than 1 month and no more than 2 months). Failure in serving such notice cannot be replaced by any compensation and will automatically transform the contract into an indefinite term contract;
- in case the employer dismisses an employee without justified cause before the expiration of the agreed term, the employee is entitled to claim damages. Labour Courts have usually awarded pending wages until the original expiration of the agreed term;

- once the agreed term ends, the employer must pay a severance compensation equivalent to 50% of a regular one; and
- a fixed-term contract has no trial period.

A temporary contract can be used when extraordinary and transitory production demands or requirements are foreseeable, although a specific term for the contract termination cannot be foreseen. The contract will also take place when the relationship begins and ends with the specific job execution or with the specific service for which the employee was hired to execute. The guidelines required by law are:

- there is no obligation to give any notice of termination;
- no severance payments or compensations are owed when the contract finishes;
- a written contract is required by law;
- the specific cause must be clearly described, as the employer must prove the temporary nature of the contract;
- no trial period is applicable;
- Law No. 24,013 caps the term of this contract to a maximum term of 6 months per year and up to 12 months over a 3 year period; and
- it can be either provided directly by the employer or through an employment agency authorised by the Ministry of Labour. In this last case, the company is jointly and severally liable with the employment agency for any labour and social security debts in connection with the employee hired through an employment agency, including payment of severance compensation.

3. TRIAL PERIOD

Trial periods can be up to 3 months for indefinite term contracts. Termination during the trial period can be decided without paying any compensation

or severance payment liability to the employee (except that a prior notice of 15 days is required and the wages due).

4. NOTICE PERIOD

Employers must give a prior written notice to the employee in the event of a termination of employment, absent a justified cause. Such prior notice must be given by the employer: (i) 15 days in advance, if the labour contract is under the trial period; (ii) 1 month in advance, if the employee has served for up to 5 years; and (iii) 2 months in advance, if the employee has served for more than 5 years. Employers have the option to not give such prior notice, in which case it must pay severance compensation in lieu of notice, equal to 15 days' salary, plus one or two monthly salaries, depending on each case. It is customary that employers opt to pay this compensation instead of giving prior notice.

The employee must also give 15 days' prior notice to the employer in the event that he plans to resign from his job, without detriment to his seniority. Decree 1043/2018, published on 13 November 2018, provides that until 31 March 2019, employers in Argentina must follow a procedure before dismissing, without just cause, an employee hired under an indefinite term employment contract. The employer must serve notice of that dismissal upon the Ministry of Production and Labour of Argentina, no less than 10 business days before the dismissal becomes effective.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Employees are entitled to a minimum wage that is adjusted from time to time. As from October 2019, the minimum mandatory wage is AR \$16,875, currently equal to US \$216.

However, the minimum wage is higher for employees under collective bargaining agreements, who are also granted periodic salary increases agreed upon by unions and chambers of industry and commerce. Part-time workers and internships can be paid a lower salary, provided that they comply with the legal requirements set forth for those relationships.

Employees are entitled to mandatory health coverage and a pension plan (funded through mandatory social security contributions by both employer and employee), paid vacations, 13th salary and maximum working hours. They are also entitled to paid sick leave. There are other compulsory leaves of absence on the grounds of childbirth, marriage, mourning or educational examinations. Applicable collective bargaining agreements also provide additional paid leaves.

2. SALARY

A minimum wage has been established and is adjusted at intervals. However, said minimum wage is generally exceeded by the basic salaries established in the collective bargaining agreements. Collective bargaining agreements are negotiated by unions with the chambers that represent employers of each industry. The provisions of a particular collective bargaining agreement are mandatory by law and regulated by law. A particular collective bargaining agreement is applicable to all employees

working in activities such as industrial, commerce, health and other sectors. In general, employees who work as managers, supervisors or in other hierarchy positions are excluded from the legal framework of the collective bargaining agreement. The consent of the employee is not necessary, since they are automatically included in the collective bargaining agreement just for working in a company under a particular agreement. Collective bargaining agreements usually provide benefits to employees on top of what is provided for under Argentine labour and employment laws.

3. MAXIMUM WORKING WEEK

The normal working hours for employees and workers are limited to 8 per day or 48 per week. Night shift and unhealthy work provide reduced working hours.

4. OVERTIME

Overtime is paid at a rate of 50% of the normal pay, unless it is worked on Saturdays after 1 P.M., Sundays and holidays, in which case it is paid at a rate of 100% of the normal pay. Applicable collective bargaining agreements may provide higher payments. Overtime must not exceed 3 hours per day, 30 hours a month and 200 hours a year. All employees are entitled to overtime pay, except corporate directors or corporate managers, registered as such before the Office of Corporations (Register of Commerce). Part-time employees cannot perform overtime work.

5. HEALTH AND SAFETY IN THE WORKPLACE

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

Employers are obliged to grant mandatory life insurance and working accident insurance to employees. Employers are also obliged to provide a healthy and safe workplace (both physical and psychological), in compliance with the labour authorities' instructions, as well as the working insurance instructions. Employers in certain industries, must provide employees with work clothes, working tools and protection equipment, and must have preventative measures in place to prevent accidents and perform regular medical examinations.

B. COVID-19 PROTOCOLS

Considering the exceptional emergency context due to COVID-19, the companies currently operating from their establishments/offices must have in place, a hygiene and safety protocol to ensure that employees are working safely and to minimise the risk of transmitting the virus.

Such protocols include, among other issues, the control of access of employees and suppliers, maintaining the distance between employees, defining specific personal protection items (face masks or even clothing, depending on the situation) and having an isolation protocol for suspected or confirmed cases of COVID-19.

On 12 August 2020, the Work Risk Superintendence through Disposition 16/2020, approved the "General Protocol for the Prevention of COVID-19 - Guidelines for a Gradual and Responsible Return to Work" (the "General Protocol"), stating that employers must not only follow the recommendations included therein, but may also complement such guidelines with relevant measures, considering the particularities of the processes involved in the tasks performed in each establishment. The General Protocol (in line with the "Ten Steps for a Safe and Healthy Return to Work Tool" published by the International Labour

Organisation) provides minimum preventive measures for the planning by the employers, together with the relevant work union, for the return to work. Such measures involve setting up information systems, instituting action protocols, providing awareness regarding care, the obligation to provide information, provisions for adequate personal protection equipment and the adoption of engineering controls.

Major risk sectors, such as health services, were not addressed in the General Protocol. The General Protocol sets forth that employers and unions will be responsible for the dissemination of the information contained therein, and compelling employees to comply with all measures adopted by the employer in line with the General Protocol. The foregoing, regardless of any measure implemented by the sanitation authorities, local work agencies, protocols agreed to between employer's chambers and unions or other recommendations of the Work Risk Superintendence.

C. COMPLAINT PROCEDURES

Employees may file a petition before the union and/or the labour authorities complaining about the breach of health and safety obligations by employer. The labour authorities may inspect the workplace at any time and order the employer to remedy any breach and impose fines.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

Labour Law No. 20,744 as well as Law No. 23,592 and international treaties entered into by Argentina, prohibit discrimination. If an employee is discriminated against because of race, religion, age, gender, disability or political or union activities, the employer's action can be declared null or void and the employer can be ordered to both reinstate the dismissed employee and compensate the employee for any damages caused. As far as labour conditions are concerned, the law obliges the employer to give the same benefits/salary to employees within the same category and seniority.

2. EXTENT OF PROTECTION

Different conditions granted by the employer to the employees must be justified in objective parameters (seniority, job position, responsibilities and performance).

3. PROTECTIONS AGAINST HARASSMENT

The employer is obliged to keep a safe working environment, including preventing and protecting employees against physical and psychological damages caused by discrimination. The employer could not only be ordered to protect an employee, but can also be held liable for any damages suffered by the employee due to discrimination.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

Employers are obliged to provide reasonable access to disabled employees, such as employees in wheelchairs.

5. REMEDIES

Employees who are discriminated against can assert unequal treatment, claiming payment of salary variances or to be granted the same benefits. In case of termination due to discrimination, the employee is entitled to claim tort damages and even reinstatement at work, and have the discriminatory act declared null and void.

Additional severance is provided for dismissed employees recently married or pregnant. Union delegates cannot be dismissed while they hold office and for one year thereafter. In the case of dismissal, the union delegate may claim the reinstatement or consider himself/herself dismissed on a constructive basis and claim payment of severance compensation plus pending salaries until the expiration of his period, plus an additional severance equal to 13 salaries.

In the event of a dismissal of an employee who is ill, the employee can either claim reinstatement or be paid severance compensation, plus the pending salaries until the expiration of the paid sick certificate, plus tort damages.

6. OTHER REQUIREMENTS

In recent case law, a labour court ordered a transportation company to hire at least 30% of female bus drivers. This percentage was determined in accordance with the quota provided by union laws for female union delegates.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

Section 14 bis of the Argentine National Constitution, provides for the principle of equal salary for equal work. Additionally, Argentina has ratified the Equal Remuneration Convention C. 100 of the International Labour Organisation. The foregoing, in addition to Labour Law No. 20,744 as well as Anti-discrimination Law No. 23,592 and international treaties entered into by Argentina, prohibit discrimination.

Notwithstanding the above, different conditions (including salary variations) may be instated by the employer when it is justified by objective parameters (i.e., seniority, job position, responsibilities, tasks and performance).

2. REMEDIES

A claim challenging equal pay practices is based on discrimination. In this respect, employees who are discriminated against can assert unequal treatment, claiming payment of salary variances, under the caveat of considering themselves dismissed on a constructive basis, further claiming –

- payment of mandatory severance compensation for dismissal without just cause, severance compensation duplication (if applicable) and fines;
- or, by demanding that the employer cease all discriminatory practices, the employee may be given equal pay

– in addition to pursuing moral and material damages, which is possible in both scenarios.

3. ENFORCEMENT/ LITIGATION

Local case law has ruled in favour of employees who have claimed salary discrimination, when the employer could not produce conclusive evidence regarding the objective parameters for the different treatment (i.e., different salary compared to another employee performing the same tasks). In a recent case dated March 2020, a labour court ruled in favour of a female employee, who claimed to be underpaid in comparison to other employees in the same working category (approximately 50% of the salary of male employees in the same working category). The court found that the disparity between the parallel salaries was not justified.

4. OTHER REQUIREMENTS

Employers are not required to take any action under pay discrimination such as reporting to governmental authorities, public disclosure of data or conducting pay analyses. However, employers must comply with positive actions with the constitutional principle of equal pay for equal work, in line with anti-discrimination laws, labour laws and international treaties.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

Employers can restrict employees' Internet use and/or social media use during working hours, instructing that it can only be used for labour purposes.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

Employers can monitor, access and review only labour/corporate employees' electronic communications, provided that the employee is notified in advance (by signing a corporate policy in that respect) that the electronic communications are to be used only for working purposes and can be monitored and therefore, the employee should have no expectation of privacy.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

Provided that the employees have signed a copy of the company's policy for the use of social media and provided that employer can prove the employee's breach and the damage to the employer, employees who do not follow the social media policy can be subject to disciplinary sanctions. Employees who divulge confidential information can also be subject to disciplinary sanctions or dismissed with justified cause, depending on the seriousness of the fault, their seniority and any prior sanctions of the employee.

VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

Employers can terminate employment at any time without justified cause, subject to payment of severance compensation provided by labour laws. Employees on a trial period, i.e. during the first three months of employment, are not entitled to severance compensation; exception made to prior notice (15 days). Termination of employment with justified cause does not entail payment of severance compensation.

The employer can dismiss an employee with justified cause in the event of the employee's failure to fulfil his obligations which, by their gravity, do not consent to the continuation of the relationship. Labour laws do not list specific breaches that justify dismissal and should be analysed on a case-by-case basis. The employer has the burden of proving the cause of dismissal. The employee can also challenge any dismissal with justified cause as decided by the employer, in which case a labour court will decide if the employer had a justified cause for dismissal. Labour courts are very restrictive when it comes to evaluating whether the cause for dismissal meets the legal standards, in order to be considered justified. Labour courts usually analyse the employee's seniority and hierarchy and if they have had any prior sanctions.

An employee can also resign, in which case, no severance compensation is payable. The employee can consider himself dismissed on a constructive basis due to an employer's breach, the seriousness of which, does not lend itself to the continuation of the relationship, in which case a labour court will decide if the employee had a justified cause for constructive dismissal. Lastly, an employment relationship can terminate due to the fact that

the employee retires at the time he/she is granted the governmental pension plan. No severance compensation is payable in that case.

A prohibition on dismissals is currently in force, pursuant to Decree 624/2020, by which an employer cannot proceed with a dismissal without just cause, for lack of work or a decrease in work, or due to force majeure until 30 September 2020. In case the employer proceeds with a termination of an employee in violation of the above, such termination will be considered null and will have no legal effect. As such, the employment relationship will continue under the same terms and conditions. Decree 624/2020 also prohibits furloughs due to force majeure, for lack of work or a decrease in work until 30 September 2020. Additionally, severance compensation duplication pursuant to Decree 528/2020 due to an occupational emergency is currently in force until 7 December 2020. Both the prohibition on dismissals and the severance compensation duplication may be extended in time, according to the emergency context.

2. COLLECTIVE DISMISSALS

The company has to go through a mandatory conciliation procedure before the Ministry of Labour, prior to dismissing a certain minimum number of employees, provided in Law No. 24,013:

- when the company has less than 400 employees and the company will dismiss more than 15% of the total payroll;
- when the company has between 400 and 1,000 employees and the company will dismiss more than 10% of the total payroll;
- when the company has more than 1,000 employees and the company will dismiss more than 5% of the total payroll.

3. INDIVIDUAL DISMISSALS

Employer can terminate employment at any time without justified cause, subject to payment of severance compensation.

Union delegates are protected and therefore, cannot be dismissed during their term and for one year afterwards. In case of dismissal of pregnant, married or sick employees, among others, additional severance compensation is payable.

Employers have to serve notice of termination in writing and through a notary public or certified letter for all dismissals. A resignation must be made in writing and the employee has to send a telegram from the official postal company (Correo Argentino).

A. IS SEVERANCE PAY REQUIRED?

In case of termination of employment without justified cause, the employer must pay the employee mandatory severance compensation, as provided by law, within 4 days after serving notice of termination, as follows:

Seniority compensation: equivalent to the highest monthly salary for each year of employment or period exceeding 3 months, taking, as a basis, the highest monthly salary and the regular and ordinary salary accrued during the last working year. Such basis has a maximum ceiling amount provided by the applicable bargaining agreement (three times the average of all wages provided by such collective bargaining agreement) and a minimum cap amount (one gross monthly salary). The Supreme Court ruled that said ceiling must not imply a reduction of more than 33% of the highest monthly salary basis.

Compensation in lieu of notice: the employer must give a prior written notice to the employee in the event of a termination of employment absent justified cause. Such prior notice must be given by the employer: (i) 15 days in advance, if the labour contract is under the trial period; (ii) 1 month in advance, if the employee has served for up to 5 years; and (iii) 2 months in advance, if the employee has served for more than 5 years. If the employer does not give such prior notice, it must pay this severance compensation in lieu of notice, equal to 15 days' salary plus one or two

monthly salaries (dependent upon each specific case). It is customary for employers opt to pay this compensation instead of giving prior notice.

Pending days till the end of the month: if the dismissal does not take place on the last day of the month, the employer must pay a compensation equal to the proportional salary for the pending days, to complete the entire month in which the dismissal took place.

Compensation for unused vacations: the employee is entitled to compensation equal to the vacation pay in proportion to the days effectively worked, for the year in which the dismissal took place.

Statutory Annual Bonus: the employee is entitled to the proportional amount of this 13th salary. The severance compensation is reduced by one half if the labour relationship ends as a result of the employee's death. Additional severance (equal to 13 monthly salaries) must be paid in case of termination without justified cause of a pregnant employee (during pregnancy and up to 7.5 months after giving birth) or an employee who has been married (and is fired within 3 months prior to the marriage or 6 months after the marriage). If the employee is dismissed during his or her paid sick leave, the employee is entitled to claim the months remaining to complete the paid leave, as provided by law, plus moral damages. The employee may claim payment for labour fines provided in favour of the employee, which may significantly increase the severance owed, if he is able to prove that there was an unregistered labour relationship.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

No separation agreement is required. The advantages of a separation agreement should be analysed on a case-by-case basis, depending on the amount to be paid to the employee and the employer's exposure. Argentina's labour law provides that any labour settlement agreement shall only be valid if it is approved by a labour court

or the Ministry of Labour. Any such agreement duly approved by a labour court or the Ministry of Labour is binding and final, having the effect of *res judicata*, not only with respect to any claim of severance compensation and salary differences, but also with respect to any possible claim for labour fines.

Any labour settlement agreement that does not fulfill these legal requirements (or if the contractor continues working for the company, either as an employee or as an independent contractor) would not prevent the contractor from bringing a labour claim in the future, even after executing the settlement agreement and collecting the settlement amount. In this case, any settlement payment would be taken on account of, and deducted from, an eventual adverse ruling against the company (settlement amounts will not be adjusted by inflation nor would they accrue any interest) and both periods of time (before and after execution of the settlement agreement) will be considered for purposes of calculating severance compensation, labour fines and other amounts ultimately awarded to the employee.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

Both parties must appear before the Ministry of Labour, and assisted by counsel. A settlement agreement should always be concluded, without acknowledging any facts or rights, and subject to the prior approval by the Ministry of Labour. A confidentiality provision, as well as a broad waiver, are also standard. Lastly, a provision stating that the amount payable due to the separation agreement should be offset against any eventual future claim or amount awarded to the employee by a court.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

In principal the age of the employee does not make a difference, but when employees reach 70 years old and have 30 years of contributions to the social security system, the employer is entitled to demand that the employee begin the process to obtain retirement and the governmental pension plan. The employer must serve notice to the employee

in these circumstances. The employer must also deliver the labour certificates to the employee in advance and verify that the employee is eligible for retirement.

Once the employer has served notice and delivered the labour certificates, the employer is obliged to maintain the labour relationship with the employee (and pay salaries and all benefits) until either the employee obtains retirement, or for a period of one year from the time the employee was served notice (whichever occurs first). Once the employee obtains retirement or the one year period has expired (whichever occurs first), the employer is entitled to terminate the employment relationship due to the employee's retirement, without paying any severance compensation to the employee.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

In some cases, parties agree that (i) the employee returns all work equipment or tools of the company; (ii) the employee resigns from any board of directors or legal representative position; (iii) the employer pays the employee's medical coverage for a limited period of time after termination; (iv) the employer pays proportional bonus or stock options; (v) the employer transfers the company car to the employee; (vi) the employee returns the company car; and/or (vii) a non-compete clause applies.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

The employee can challenge dismissal with justified cause, by claiming payment of severance compensation for dismissal without justified cause, plus a fine in his favour equal to 50% of the severance compensation (plus interest and legal fees), in which case a labour court will decide if the employer had a justified cause for dismissal. The employer has the burden of proving the cause of dismissal.

The employee can also claim payment of severance differences, alleging that the severance

compensation was not properly calculated, as well as certain fines provided in his/her favour for improper registration of salary or entry date, in which case a labour court will decide if the employer correctly paid the salaries and severance compensation, as well as properly registered the employee's labour relationship and salary.

The employee must go through a mandatory conciliation process prior to filing a court claim. Parties must attend hearings before a conciliator appointed by the Ministry of Labour, to explore a settlement.

6. WHISTLEBLOWER LAWS

Argentine criminal laws provide reduction of penalties for whistleblowers in respect to crimes against the public administration (corruption and fraud against public administration) customs, criminal offenses, economic and financial crimes, drug trafficking, terrorism, human trafficking and money laundering, among others. These laws also provide a reduction of penalties to be imposed on companies for crimes committed by their employees or officers, provided that the company has set forth a compliance policy that includes, among others, the company's protection to whistleblowers against retaliation.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

During the employment relationship, employees are obliged to respect in respect to employer's intellectual property, confidentiality and non-compete provisions. There are no specific laws about restrictive covenants after termination of employment. However, the Constitution provides freedom of work, which means that the employee may challenge any non-compete or non-solicitation provisions after termination of employment.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

The employee is obliged by labour laws not to compete with the employer during the labour relationship. Labour Courts have ruled that non-compete provisions after termination are only permissible if they are limited in time (maximum 2 years, in exceptional cases can be exceeded) and compensated (at least 50% of monthly salary, approx.). Failure to follow these requirements will render a non-compete provision null and unenforceable.

B. NON-SOLICITATION OF CUSTOMERS

The employee is bound during the labour relationship. After termination, it will be analysed as a non-compete provision.

C. NON-SOLICITATION OF EMPLOYEES

Non-solicitation of employees is unenforceable in Argentina due to the employee's constitutional right of freedom to work.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

Restrictive Covenants, such as non-compete or non-solicitation of customers, after termination of the labour relationship, must comply with specific requirements to be enforceable. The provision should be limited in time (maximum 2 years), compensation (at least 50% of monthly salary approx.) and the geographical and industry/company's scope must be clearly outlined.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Argentina's labour laws have no specific provision regarding garden leave. Employers cannot force employees to take garden leave (paid leave), since the employer is obliged to give work to the employee. However, the employee can accept the garden leave, in which case the employee must be paid his salary and benefits in full, as if he was working.

X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

In case of a transfer of undertaking, employees are transferred as a matter of law. The consent of the employees is not necessary, and no notice is required. The new employer must maintain the employee's work category, benefits, rights, salaries and seniority acquired with the prior employer, otherwise the terms of employment may be modified, but only for the benefit of the employee. All liabilities of the in-scope employees transfer automatically to the new employer.

The employee may consider himself dismissed on a constructive basis, by reason of the transfer, if the terms of employment are changed to the detriment of the employee or he suffers any damage due to the transfer.

In case the assignment of personnel does not entail a transfer of undertaking, the employee must give his prior written consent and the new employer must maintain the employee's working conditions. All liabilities of the in-scope employees transfer automatically to the new employer, as in the transfer of undertaking.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

The prior employer will be jointly liable with the new employer for any labour and social security debts arising out of the employment relationship, prior to the date of transfer. The new employer becomes solely liable for those debts generated after the transfer. There is no legal obligation to inform, consult or obtain the authorisation of trade union/employee representatives or labour authorities.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

In Argentina, there are currently trade unions and employers' associations that represent all types of activities. Employees have the right to organise themselves into unions. Affiliation to unions by employees is not mandatory. The employee is free to decide whether to affiliate or not to the union. The Government grants official recognition only to the most representative union and this is the only union that can represent the employees in collective bargaining agreements.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Argentina has ratified ILO Convention # 87, which establishes that workers and employers, without any distinction whatsoever, shall have the right to establish and join organisations of their own choosing. It also provides that workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom and to organise their administration and activities. It also sets forth that workers' and employers' organisations shall have the right to establish and join federations, confederations and any such organisation.

Section 14 bis of the Argentine Constitution, provides that the Government must guarantee free and democratic unions and that unions have the right to execute collective bargaining agreements, file conciliation procedures and call a strike.

Law No. 23,551 provides freedom of association rights to unions, the right to organise, meet, file petitions to the authorities, freedom of affiliation for workers, requirements for union delegates, minimum union delegates per company and protection of union delegates. It also provides that the union that has been granted official recognition by the government, is the only one that can represent the employees and engage in collective bargaining agreements.

Union delegates are protected by law. They cannot be demoted, sanctioned or suspended and the terms and conditions of employment may not be changed to their detriment, nor can they be dismissed without justified cause, while they serve as union delegates, and this, until one year after their term expires. In order for an employer to apply a disciplinary sanction, suspend or dismiss with justified cause a union delegate during the protection term, the employer must seek the prior authorisation of a labour court. In case the employer breaches this protection, the union delegate may claim his reinstatement or payment of severance compensation for dismissal, payment of pending salaries until the expiration of his term, plus moral damages and an additional severance equal to 13 monthly salaries. The same protection is granted to employees who run as candidates for union delegates, but are not elected, and this, until 6 months after the election.

3. TYPES OF REPRESENTATION

A. NUMBER OF REPRESENTATIVES

Law No. 23,551 provides the minimum number of union delegates in respect to the employees of the company:

- from 10 to 50 employees: 1 union delegate
- from 51 to 100 employees: 2 union delegates
- more than 101 employees: an additional representative every 100 employees

Applicable collective bargaining agreements may provide a higher number.

B. APPOINTMENT OF REPRESENTATIVES

The union delegates are chosen by free and democratic vote of all employees, affiliated and non-affiliated. There is a requirement that 30% of the candidates must be women. Unions must inform the employer of the name of the candidates who will run, as well as the one who is elected.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The main tasks of the union delegate are: (i) to represent and make petitions representing individual workers; (ii) to verify compliance of labour laws and collective bargaining agreements in respect to workers; (iii) to participate in any inspection carried out by the labour authorities; (iv) to organise and conduct meetings; and (v) to educate and instruct individual workers.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Management can organise their own union, separate from the union of non-management employees.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Labour laws also allow the existence of other unions that are not officially recognised as the most representative union (referred to as “simply registered unions” before the Ministry of Labour). As such, simple registered unions cannot represent employees in collective bargaining agreements, but they can represent employees in other collective claims and file petitions to the labour authorities alleging employer’s breaches of labour laws. The Supreme Court and labour courts have ruled that the union delegates of simply registered unions are also protected against demotion, sanctions, suspensions, modification of the terms and conditions of employment to their detriment, and dismissal without justified cause.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

All employees are covered by a national retirement pension scheme, funded through mandatory contributions by both employer and employee. It is paid by the employee through withholdings of their gross salary and by the employer through fixed contributions, with each calculated as a percentage of the employee's salary. Employees are eligible for retirement and collect governmental pension when they reach retirement age (65 years for men and 60 years for women) and have made contributions to this system for 30 years. Employers can only compel employees to retire when they reach 70 years old, and have made contributions to this system for 30 years.

2. HEALTHCARE AND INSURANCES

Healthcare schemes exist for all employees, entitling them to free medical treatment and hospital care. These are funded through employer contributions and employee withholdings, both a percentage of the employee's salary. Employers must obtain a mandatory insurance that covers the employee's death, illness or disability in connection to work. Employers must secure insurance contracts through authorised insurance companies. Such entities are obliged to provide financial and medical assistance to the injured employees. For this provision and coverage, the employer must pay a monthly contribution. Only accidents in connection with labour duties, and a restricted list of occupational diseases, are covered by this insurance. During the period that insurance aid is provided, the worker is entitled to receive medical assistance and medications, prosthesis and orthopedic items, if required. Burial expenses are also included. The employer must also provide mandatory life insurance for his employees, payable by the employer through monthly contributions. Keep in mind that applicable collective bargaining

agreements might set forth other additional insurances.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Employees are entitled to an annual paid vacation period. Vacations are compulsory and the employer must grant them between 1 October and 30 April, as follows:

- up to 5 years of service: 14 calendar days
- between 5 and 10 years of service: 21 calendar days
- between 10 and 20 years of service: 28 calendar days
- over 20 years of service: 35 calendar days

The parties may always agree to a longer period than the one provided by law, but may not agree on a shorter period.

National holidays must be observed, and the corresponding salary should be paid at twice (2x) the rate, whenever services are actually performed during those days.

B. MATERNITY AND PATERNITY LEAVE

Female employees are entitled to 90 days' paid maternity leave. This is usually taken in the 45 days before giving birth and the 45 days afterwards. However, the employee can instead choose to take 30 days' leave before giving birth and 60 days' leave afterwards. Leave is paid by the social security system as a family allowance. Female employees can request additional unpaid leave between three and six months. While a newborn baby is breastfeeding, a female employee can take two, half-hour periods a day to feed her baby, for up to one year after the birth. Paternity leave is 2 days.

C. SICKNESS AND DISABILITY LEAVE

In the event of sickness leave or injury related to work, the employer must pay the employee's salary for the first fifteen days. After the fifteenth day, the working insurance company will pay the sick leave to the employee. In respect to accidents or illnesses not related to work, employees who have served for up to 5 years are entitled to 3 months of paid sick leave. If the employee has a family, the paid sick leave is 6 months. For those employees who have served for more than 5 years, the paid sick leave is 6 months and if the employee has a family, the paid sick leave is 12 months. These paid sick leaves, since they are not related to work, are not covered by any insurance nor by the government, and are paid by the employer. The employer is entitled to require the employee to submit to an examination by a medical doctor, appointed by the employer, to verify that the employee is actually ill and in no condition to work. Once the paid sick leave term has lapsed, in case the employee is not able to return to work, the employer is obliged to keep the employee on its payroll as in leave, but without paying any salary to him/her for up to twelve more months.

If, during that term, the employee is found to have a permanent disability that prevents him from being able to perform the same work, the employer is obliged to give him work in accordance with his disability. If the employer can prove that he is not able to provide the employee with work in accordance with the employee's disability, the employer can terminate the employment by paying 50% of the severance compensation as provided in a dismissal without justified cause, and must pay 100% in case of total permanent disability.

D. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

Argentina's labour laws also provide leaves of absence on the grounds of marriage (10 days), mourning (3 days) or educational examinations (2 days per exam and up to 10 days per year). Applicable collective bargaining agreements usually provide for other leaves or additional days of leave.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

Employees are entitled to collect a mandatory pension when they reach retirement age (65 years for men and 60 years for women) and have made contributions to this system for 30 years. Employers can only compel employees to retire when they reach 70 years old, and have made contributions to this system for 30 years.

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

Employees under a collective bargaining agreement for commercial activities, are entitled to a retirement insurance.

Nicolás Grandi
Partner, **Allende & Brea**
ngrandi@allende.com
+54 11 4318 9984



ALLENDE & BREA

ARGENTINA

Allende & Brea is one of the most prestigious law firms in Argentina. Founded in 1957, the firm enjoys a long-established reputation for superior legal work. Allende & Brea's employment department provides advice on day-to-day labour matters and skillfully represents international companies in complex labour litigation cases, from a variety of different industry sectors. The employment team has considerable experience counseling clients with respect to labour issues that arise in M&A transactions, immigration, compliance and discrimination, drafting employment contracts and benefit plans (bonus, stock options, restricted shares, car and mobile phone policies, among others), identifying labour liabilities and risks, calculating severance compensation and its tax treatment, individual and collective dismissals, claims and dismissals of top executives, collective bargaining, expatriate regimes, transfer of employees, obtaining work visas, codes of conduct and data protection (monitoring and privacy policies dealing with Internet and email use at work). Allende & Brea's employment department has been recognised by industry insiders including, among others, Chambers and Partners, The Legal 500 and Latin Lawyer 250.

This memorandum has been provided by:

Allende & Brea

Maipú 1300
11th Floor
Buenos Aires
Capital Federal
Argentina
C1006 ACT
P +54 11 431 899 84
www.allende.com

CONTACT US

For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org



10TH ANNIVERSARY IN 2021

This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name in relation to and by some or all of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained herein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.