EMPLOYMENT LAW OVERVIEW
DOMINICAN REPUBLIC 2021-2022
Sánchez & Salegna
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. GENERAL OVERVIEW</td>
<td>03</td>
</tr>
<tr>
<td>II. HIRING PRACTICES</td>
<td>06</td>
</tr>
<tr>
<td>III. EMPLOYMENT CONTRACTS</td>
<td>08</td>
</tr>
<tr>
<td>IV. WORKING CONDITIONS</td>
<td>10</td>
</tr>
<tr>
<td>V. ANTI-DISCRIMINATION LAWS</td>
<td>13</td>
</tr>
<tr>
<td>VI. PAY EQUITY LAWS</td>
<td>16</td>
</tr>
<tr>
<td>VII. SOCIAL MEDIA AND DATA PRIVACY</td>
<td>17</td>
</tr>
<tr>
<td>VIII. TERMINATION OF EMPLOYMENT CONTRACTS</td>
<td>18</td>
</tr>
<tr>
<td>IX. RESTRICTIVE COVENANTS</td>
<td>21</td>
</tr>
<tr>
<td>X. TRANSFER OF UNDERTAKINGS</td>
<td>23</td>
</tr>
<tr>
<td>XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS</td>
<td>25</td>
</tr>
<tr>
<td>XII. EMPLOYEE BENEFITS</td>
<td>28</td>
</tr>
</tbody>
</table>
I. GENERAL OVERVIEW

1. INTRODUCTION

The labour laws of the Dominican Republic are of public order and, therefore, are mandatory. An employer can extend benefits beyond the established provisions. However, it is prohibited to include terms that are less favorable to an employee, nor can an employee waive any right set by the law, for his protection.

Dominican Republic labour laws protect employees. Some basic principles provided by law will govern any employment relationship in the Dominican Republic. The most relevant principles are:

- prevalence of the facts: in determining the labour consequences, the pertinent facts surrounding an employment relationship will prevail over the official documents;
- prohibition of harmful changes: employers are prevented from introducing changes in employment conditions that are harmful to employees, regardless of whether the employee has previously consented to the change; and
- joint responsibility (a group of companies): companies that belong to a group of legal entities under the same control, direction or management are jointly responsible for the obligations of any company belonging to that group, concerning labour relations.

2. KEY POINTS

- The labour laws of the Dominican Republic are pro-employee and seek to safeguard employees’ rights. They establish norms that regulate working conditions and hours of work and demand compensation for dismissal without just cause.
- Labour laws in the Dominican Republic are comprised of public order provisions, which cannot be ruled out or repealed by any covenant included in any contract. Consequently, the Dominican Republic’s labour laws will apply—and the labour courts will have jurisdiction—concerning any eventual labour claim brought before the courts regarding work performed in the Dominican Republic.
- Employees are entitled to a thirteenth salary or Christmas salary, payable no later than 20 December of each year.
- The employer can only change the employment conditions if these changes do not alter the employment contract’s basic terms and do not harm the employee.
- The jobs are at will, which means that either party can terminate the employment contract without cause, subject to prior mandatory notice and compensation, where applicable.
- The Labour Code assumes, as a general principle, that an employment contract has been executed for an indefinite period, unless the particular nature or type of service to be rendered requires an employment contract for a specific job or term.
- Among others, all workers have the following rights: freedom of association, social security, collective bargaining, respect for their physical capacity, and the right to privacy and personal dignity.
- The Labour Code prohibits all kinds of discrimination in access to employment or during the provision of a service.
- The law recognises the workers’ right to strike, provided that such rights are exercised according to the law.
- Employers must guarantee their workers’ health, hygiene and safety conditions and a work
environment where their fundamental rights are respected.
- Equal pay is guaranteed for work of equal value, without gender or other form of discrimination, and under the same conditions of capacity, efficiency and seniority.

3. LEGAL FRAMEWORK

Article 62 of the Dominican Constitution regulates the right to work. It stipulates that work is a right, a duty and a social function exercised with the State's protection and assistance. It is an important purpose of the State to promote decent and remunerated employment.

Law No. 16-92 (commonly called the “Labour Code”) and Decree No. 258-92 (Regulation for the Application of the Labour Code) are the primary sources of law regulating labour relations in the Dominican Republic.

Law 87-01 establishes the Dominican Social Security System to regulate and develop the reciprocal rights and duties of the State and citizens, regarding financing for the protection of the population against the risks of disability, unemployment by advanced age, survival, illness, maternity and occupational hazards.

Regulation No. 522-06 on Hygiene and Safety at work, establishes the norms and procedures applicable to all branches of labour activity carried out in the national territory.

4. NEW DEVELOPMENTS

Executive Power had to be used to regulate critical elements of the government’s response to the COVID-19 pandemic, specifically, the Special Protocol for Safety at Work to combat COVID-19 and the elaboration of the Ministry of Labour Resolution regulating telework.

A. PROTOCOLS FOR COVID-19

On 17 May 2020, the Ministry of the Presidency issued the General and Sector Protocol for Labour Reintegration. This document provides general and sectoral protocols to be followed by all companies nationwide. It also serves as a framework to guide each sector with planning its re-opening.

The guide indicates that government authorities may modify the protocols according to the population's primary health indicators as they evolve.

The High-Level Commission for the Prevention and Control of the Coronavirus will publicise all information related to changes that arise in the protocols. Employers should immediately comply with such measures.

The first steps are to routinely clean and disinfect (at least every two hours) all surfaces frequently touched in the workplace, such as workstations, keyboards, telephones, handrails and doorknobs.

It suggests increasing ventilation levels, avoiding low temperatures in offices and maintaining air conditioners (cleaning or changing the filter), by improving the percentage of outdoor air circulating in the system. Installing high-efficiency air purifiers in closed or air-conditioned spaces, disabling fingerprint access systems in offices and processing lines will avoid cross-contamination.

The protocol recommends checking the temperature of each employee or client, using digital infrared thermometers, before they gain entrance to the company’s offices or premises. Employers should also ensure that the person(s) taking the temperature of individuals entering the facilities wear gloves, masks or respirators, and when finished, wash their hands and arms properly.

The employees who present symptoms associated with the coronavirus must notify their supervisors. Furthermore, they are required to stay at home, seek medical assistance immediately, and do not return to work until they meet the criteria to suspend isolation, following a negative PCR test result in consultation with healthcare providers.

Employees who are negative for COVID-19, but who have a sick family member at home must notify their supervisor, remain at home and, if possible, work remotely or perform other tasks with similar characteristics that the company requires. They must eventually send their employer evidence
showing that the member of their nuclear family is no longer affected by the virus.

Employers must insist on the need for their employees not to stigmatise people who are ill or suspected of having COVID-19, since this virus can spread to anyone and without them knowing it. Consider using video conferencing or teleconferencing when possible for work-related meetings and encounters.

B. TELEWORKING RESOLUTION

On 12 November 2020, the Ministry of Labour issued Resolution 23/2020 on work regulation as a particular modality of telework. This Resolution guarantees the minimum legal requirements for a telework contract. Following the Teleworking Resolution, the working hours must be previously agreed upon in writing and in compliance with the legal and conventional limits in force. The Resolution establishes that employees have the right to digital disconnection outside of working hours.

The transition from the face-to-face mode to the telework mode must be done with the employee’s voluntary acceptance in writing. If the parties have signed the employment contract under the modality of face-to-face work, any party may request, within a pre-established period, to return to the modality of face-to-face work, unless it is impossible to fulfill this obligation for legitimate and justified reasons.

The employer must provide the employee with the necessary equipment, including hardware and software, work tools and the support required to perform the tasks.

The control systems implemented to protect the employer’s assets and information must respect the employee’s intimacy and privacy. Video cameras cannot be used to monitor teleworkers’ labour.
II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Provided that at least 80% of a company’s workforce must be Dominican, the Labour Code allows for the employment of foreigners in the Dominican Republic. Apart from this limitation, foreign employers and employees receive the same treatment as Dominicans since their immigration status cannot be grounds for discrimination. However, under Dominican immigration law, employers who hire illegal immigrants can be penalised.

The employer could also not fulfill its obligation to contribute to the Dominican Social Security System on behalf of employees with immigration difficulties, since the system requires the correct identification of workers through a legally obtained identity card.

The requirements to request a temporary residence permit for the purpose of employment (with a formal contract) are established in article 48 of Regulation 631-11 for the application of Law 285-04, which are:

• Undergo a medical examination authorised by the General Directorate of Migration, in which the interested party must present the following documentation:
  o two copies of the passport duly issued by the competent authority; and
  o a copy of the Temporary Resident Visa granted by the Dominican Consulate in the country of origin of the person requesting it.
• Two copies of the passport photo.
• Two copies of the Resident or Work Visa (NM1) granted by the Ministry of Foreign Affairs through the Dominican Consulate in the country of origin or residence and a copy of the entry through the immigration control post.

• Temporary residence application form, duly completed by the foreigner, whose signature and fingerprints will be taken in the presence of an immigration officer.
• Birth certificate duly apostilled or legalised and translated into Spanish if it is in another language.

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

No, a foreign employer does not need to establish a local entity to hire workers. The foreign employer must present a local address to be registered in the Dominican Republic. The registry includes the Commercial Registry and the National Registry of Contributions. Once the employer is registered, it will have the same rights and obligations as a local entity.

Law 479, issued in December 2008 on Commercial Companies and Individual Limited Liability Companies, recognises equality between foreign and local companies. Therefore, it will not require foreign entities to provide any type of surety bond or insurance when seeking legal action in local courts.

In this sense, if a foreign company wishes to establish permanent operations in the Dominican Republic by creating a branch, it does not need to set up a Dominican company. Another benefit is that a foreign company can freely repatriate the Dominican Republic’s net earnings without any restrictions.
3. LIMITATIONS ON BACKGROUND CHECKS

Resolution 02/2015 of the Ministry of Labour prohibits background checks on credit to access and/or remain in employment.

In the Dominican Republic, an employer cannot conduct a criminal background check on a candidate, either directly or through a vendor. Only the candidate can obtain the criminal record and then provide it to the employer. The criminal record shows if the applicant has been convicted of a felony.

Under the current labour laws, it is forbidden to carry out medical examinations to determine if a candidate is pregnant or has HIV.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Employers cannot restrict applications in such a way that may lead to discrimination of any kind, based on sex, age, political or religious beliefs. The employer is free to ask a candidate whatever questions it deems appropriate in all stages of the hiring process. There is almost no limitation to the scope of these questions from a legal point of view, except for the pregnancy status of working women or other information that may imply a discriminatory practice.
III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

Written employment agreements are not necessary for permanent employment contracts. Labour laws only charge the employer to list an employee in company workbooks and with tax authorities, pay Social Security, and report taxes on all wages paid to the employee. However, when the employment contract is in writing, any modifications must be made in the same way.

Article 24 of the Labour Code prescribes the necessary elements required for employment contracts. These essential terms are:

- Names and surnames, nationality, age, sex, marital status, full addresses of the parties, and identification numbers of the parties involved.
- Service that the worker agrees to provide and the time and place in which it will be performed.
- Salary and payment conditions.
- Duration of the contract if it is of definitive duration (otherwise, it will be considered a contract of indeterminate duration).
- Any other stipulation that the parties have agreed upon and the signatures of both parties.

Article 90 of the Dominican Constitution establishes that Spanish is the official language of the country. Therefore, all employment contracts must be written or translated into Spanish to be enforceable.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

The duration of an employment contract is considered indefinite, unless the nature of the services provided requires specific work or a fixed-term. If an employee works successively on defined terms for the same employer, this contract will be considered indefinite. The contract will also be considered indefinite if the employee continues to work for the employer after the termination of the services for which he was hired.

For a fixed-term contract or a contract for specific work, a written employment agreement is required. It is necessary as well to duly justify the execution of a fixed-term contract or an agreement for a particular job.

Finally, a temporary contract can be used when extraordinary and transitory demands or production needs are anticipated. However, a specific term cannot be foreseen for the termination of the contract.

A fixed-term contract will also occur when the relationship begins and ends with the execution of the work or the specific service for which the employee was hired. In those cases:

- there is no obligation to give any notice of termination;
- compensation (if any) should be paid when the contract ends;
- the law requires a written agreement;
- the employer must prove the contract’s temporary nature.

3. TRIAL PERIOD

In the Dominican Republic, there is no specific trial period, but during the first three (3) months of employment, the contract can be terminated without imposing any obligations on the employer.
4. NOTICE PERIOD

The party exercising the right of dismissal without cause must give advance notice to the other party, according to the following rules:

• after continuous work of no less than three months, nor more than six, a minimum of seven days of advance notice;
• after continuous work of more than six months and less than a year, a minimum of fourteen days of advance notice;
• after a year of continuous work, a minimum of twenty-eight days of advance notice.

The employer has the option to omit advance notice, in which case it must pay compensation in lieu of notice, for the amounts owed. It is customary for employers to choose this option and pay compensation, rather than give advance notice.

The employee must also give notice equal to that required by the employer, if the employee decides to terminate the contract without just cause.
IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Employees are entitled to a minimum wage regularly adjusted, taking into account the country’s inflation rate. There are several minimum wages in the Dominican Republic, depending on the sector and the size of the company. In effect, the Dominican Republic’s minimum wages are determined by the National Salary Committee.

In the Dominican Republic, employees have the right to compulsory health insurance and a pension plan, financed through mandatory social security contributions from both the employer and the employee. The Labour Code also prescribes other minimum conditions:

• compulsory paid vacations;
• a Christmas bonus or 13th salary;
• a maximum of daily and weekly working hours;
• right to paid sick leave;
• other compulsory leave for reasons of childbirth, marriage or a death in the family;
• employees are entitled to participate in the employer’s benefits, which are currently set at 10% of the company’s net income before taxes.

2. SALARY

As mentioned, several minimum wages are regularly adjusted according to the size and sector of the company. The current minimum wages have been in effect since July 2021, following Resolution No. 01/2021 of the National Salary Committee. This document establishes a median increase of 24.2% in the minimum wage in the private sector.

This 24.2% rise represents an increase of 3,389.74 Dominican pesos for the higher minimum wage (large companies). For the other two wages, there was an increase of 7,142.92 Dominican pesos and 2,170.78 Dominican pesos, respectively.

Thus, we currently have the following categories and minimum wages in the Dominican Republic for part of 2021 and the beginning of 2022:

A. MINIMUM WAGE FOR LARGE COMPANIES

These are companies whose net annual sales are equal to, or exceed, the figure of two-hundred and two million Dominican pesos (RD $202,000,000.00) or one hundred fifty-five employees or more (155+). Minimum monthly salary: 21,000.00 Dominican pesos (US $363.95), which represents an increase of 19%.

B. MINIMUM WAGE FOR MEDIUM-SIZED COMPANIES

These are companies that have net annual sales from fifty-four million to two-hundred and two million Dominican pesos (54,000,000 to 202,000,000) or from fifty-one to one hundred fifty employees (51-150). Minimum monthly salary: 19,250.00 Dominican pesos (US $333.62), which represents an increase of 59%.

C. MINIMUM WAGE FOR SMALL BUSINESSES

These are companies that have net annual sales from eight million Dominican pesos to fifty-four million Dominican pesos (8,000,000 to 54,000,000) or from eleven to fifty employees (11-50). Minimum monthly salary: 12,900.00 Dominican pesos (US $223.57), which represents an increase of 11%.
D. MINIMUM WAGE FOR MICRO BUSINESSES

These are companies that have net annual sales of eight million Dominican pesos (8,000,000) or up to ten employees (10). Minimum monthly salary: 11,900.00 Dominican pesos (US $206.24).

E. MINIMUM WAGE FOR FARMWORKERS

A daily (rather than monthly) amount determines this salary: 500.00 Dominican pesos (US $8.66).

F. MINIMUM WAGE FOR SECURITY GUARDS

The minimum wage for security guards is 17,250.00 Dominican pesos (US $298.96).

G. MINIMUM WAGE FOR OTHER WORKERS

Employees of the sugar industry receive a minimum rate of 7,633.42 Dominican pesos per month (US $130).

The operators of heavy machinery in the agricultural area have a minimum wage of 11,109 Dominican pesos (US $189).

H. OTHER REQUIREMENTS REGARDING SALARIES

Salary must be paid in cash, by check, or by direct deposit to the employee’s account at a bank or other financial institution and it can be paid for hours, days, weeks, fortnights or months. It is forbidden to pay the salary for periods exceeding one month. The law prohibits paying wages through the issuance and delivery of cards, vouchers, certificates, etc.

Salary includes cash payments of wages, bonuses, commissions, benefits in kind and any other amount or benefit given to the worker for his work; it does not include profit-sharing payments.

The employer may not, under any circumstances, charge interest for the employee’s debts with the employer, nor may the employee’s wages be embargoed, except for the payment of alimony to the spouse. In the event of the company’s insolvency, the salaries and compensation due to the employees supersede any other credit.

3. MAXIMUM WORKING WEEK

The regular work period cannot exceed eight (8) hours per day and 44 hours per week. One (1) hour of rest for lunch is mandatory for employees who work more than six (6) hours a day. Employees also have the right to a weekly rest period of 36 hours.

The Labour Code establishes three types of shifts:

- Day shift: work performed between 7:00 AM and 9:00 PM
- Night shift: work performed between 9:00 PM and 7:00 AM
- Mixed shift: work that includes periods of both the day shift and night shift.

The weekly work shift usually ends at noon on Saturday. This provides employees with 36 hours of continuous rest. Any other working hours arrangements must provide the same minimum 36-hour continuous rest period.

This rules does not extend to employees in executive or managerial positions and trusted personnel.

4. OVERTIME

The weekly work period cannot exceed 44 hours and the daily work period of eight (8) hours. In practice, most employees work Monday through Friday and a half-day on Saturday.

Article 203 of the Labour Code establishes that the employer will pay each hour that exceeds the limit of 44 hours per week at 135% of the regular hourly wage.

Article 204 of the Labour Code establishes that the employer will pay each hour that exceeds 68 hours per week at 200% of the regular hourly wage. Night hours are paid with an additional increase of 15%.
All employees are entitled to overtime pay, excluding company directors, managers and persons in trust positions.

The employer needs to keep records of the effective duration of the working day and be able to prove it accordingly, if the employee claims to have worked overtime.

5. HEALTH AND SAFETY IN THE WORKPLACE

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

The Occupational Health and Safety Regulation (No. 522-06) establishes a system of procedures to protect employees from accidents during working hours.

This Regulation establishes the requirements at the national level of employers concerning: 1) the prevention of accidents and damage to health that occur or are related to work activity, or that arise during such activity; and 2) minimising the causes of hazards inherent in the work environment.

Employers have to provide a healthy and safe workplace (both physical and psychological) following the labour authorities’ instructions. Employers in specific industries must provide employees with work clothes, work tools and protective equipment and must take preventive measures to avoid accidents.

B. COVID-19 PROTOCOLS

Due to COVID-19, companies that are currently operating from their worksite(s) must have a hygiene and safety protocol to ensure a healthy work environment for employees and to minimise the risk of transmitting / spreading the virus. Such protocols include, among other measures, conducting daily health checks, frequent cleaning and disinfection guidance, implementing policies and practices for social distancing, encouraging employees to wear cloth face coverings in the workplace and, where appropriate, improving the building’s ventilation system and having a protocol in place for suspected or confirmed COVID-19 cases.

Also, the Regulation establishes the following obligations of the employer:

• the Safety and Hygiene Committee between employers and employees has to prepare an annual work program;
• maintain training and teaching certificates to prevent, protect and extinguish fires;
• prepare and maintain an emergency evacuation plan in case of fire;
• put into practice, operating and safety procedures to avoid fire risks;
• keep a list of the type of firefighting equipment, including instructions on how to use and recharge the equipment;
• obtain a certificate from the fire brigade;
• highlight the emergency exits within the facilities, suitable for disabled people who work in the company;
• conduct a fire drill at least once a year; and
• keep records and statistics of the occupational injuries during the last year and a certificate of notice to the safety commissions.

C. COMPLAINT PROCEDURES

Employees could file a claim with the union representatives or labour authorities to complain about the employer’s failure to comply with health and safety obligations. Labour authorities can inspect the workplace at any time and order the employer to remedy any non-compliance, impose fines and close establishments.

Employees can file labour claims while working, or after the termination date, demanding rights related to the employment contract.

D. PROTECTION FROM RETALIATION

There is no specific legislation on retaliation in the Dominican Republic. However, the Labour Code is based on the principle of good faith. Every relationship in the workplace should be based on this principle. Retaliation is an act of bad faith and it falls on the plaintiff to prove the act of bad faith.
V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The Constitution prohibits the main types of discrimination:

- sex;
- age;
- race or skin color;
- nationality;
- social origin;
- political opinions;
- union activity; and
- discrimination on the grounds of religion.

The Labour Code also prohibits discrimination in the workplace, during and after the hiring phase. Furthermore, the following statutes are applicable in cases of discrimination:

- Free Trade Agreement between the United States, Central America and the Dominican Republic (CAFTA), Chapter 16, Article 16.8;
- Constitution articles 39 and 62;
- Declaration for the Elimination of Discrimination against Women;
- American Convention on Human Rights;
- Universal Declaration of Human Rights;
- International Treaty on Civil and Political Rights;
- United Nations Convention for the Elimination of All Forms of Discrimination against Women;
- General Law on HIV-AIDS and Regulations;
- The Declaration of the Rights of the Disabled (Resolution No. 3447 of the Thirtieth General Assembly of the United Nations 1975);
- The Declaration of the Rights of the Deaf and the Blind (Decision 1979/24 of the United Nations Economic and Social Council 1979);
- The Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities, adopted at the 29th session of the General Assembly of the Organisation of American States (OAS), on 7 June 1999; and

If an employee is discriminated against for reasons of race, religion, age, sex, disability, political or union activities, the employer’s action can be declared void. The employer can be ordered both to reinstate the dismissed employee and to compensate for the damages caused. The law requires the employer to provide the same benefits to employees of the same category and seniority, as regards working conditions.

2. EXTENT OF PROTECTION

Employers are prohibited from discriminating against any candidate/employee during the hiring process and employment relationship for any reason, including but not limited to sex, origin, race, color, marital status, family status, disability, professional rehabilitation and age.

Employers should avoid any practice, such as requesting non-pregnancy certificates from women or health certificates from employees and, in general, any practice that may imply a distinction between two or more people applying for the same job.

3. PROTECTIONS AGAINST HARASSMENT

Sexual harassment in the Labour Code is contemplated in article 47 ordinal 9, only as a
just cause of resignation for the employee and does not sanction the employer or the aggressor. However, article 333-2 of Law 24-97 defines sexual harassment as “any order, threat, constraint or offer intended to obtain favors of a sexual nature, made by a person who abuses the authority conferred by his functions.” The penalty for this offense is one year in prison and a fine of five thousand to ten thousand pesos.

The law states that an employee can be terminated without any obligation to the employer, if he or she incurs sexual harassment.

Companies must assume a very active role in preventing and combating sexual harassment, taking into account that it occurs within their own workspace and sphere of influence.

The employee may report any sexual harassment to the company. The latter is obliged to carry out the pertinent investigations until it finishes its inquiry and maintains the complainant’s confidentiality, while striving to protect the victim’s rights at all times.

If the company does not make the corresponding investigation, or the victim disagrees with the result, the employee will have other avenues to turn to. The victim of sexual harassment acquires a right of resignation that will allow them to obtain all their employee benefits. In the same way, the victim can file criminal charges covered by article 333-2 of Law 24-97. Sexual harassment is punishable by one year in prison and a fine of five thousand to ten thousand pesos.

4. EMPLOYER’S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

The Dominican Republic has enacted several laws designed to protect people with permanent or temporary disabilities. Article 314 of the Labour Code defines a disabled person as a person with “any congenital or acquired abnormality that implies a reduction in the normal ability to work.” Likewise, article 315 of the Labour Code protects disabled workers from any unfair treatment in employment, providing the right to obtain a fixed and permanent occupation equal to that of other workers. Article 315 of the Labour Code further provides that disabled persons shall be qualified for work based on their ability to perform the work in question, regardless of the status of their disability.

Law 42-00 on disability in the Dominican Republic establishes that people with disabilities are considered equal to the rest of the population. Although they deserve a higher level of protection against discrimination, disabled persons are not entitled to special privileges due to their condition.

Law 42-00 also provides that the Dominican State will supervise and apply the surveillance and control mechanisms necessary to guarantee compliance with current legislation and the achievement of its objectives. For this, the National Disability Council (CONADIS), an autonomous state institution dependent on the Presidency of the Republic, is in charge of eliminating all forms of discrimination against people with disabilities. Therefore, employers are required to provide reasonable access to disabled employees, such as employees in wheelchairs.

In article 45 on Freedom of Conscience and Religion, the Constitution stipulates that, “the State guarantees freedom of conscience and religion, subject to the need for public order and respect for public morals.” As such, Dominican law prohibits all kinds of religious discrimination. However, employers do not need to make any accommodations for different religious practices.

5. REMEDIES

The Labour Code establishes that the employee must be in a healthy workplace where his/her fundamental rights are respected. For this reason, article 96 sanctions moral harassment exhaustively and specifically. Likewise, Law 24-97 (on violence against women) and the Penal Code (in articles 309-1 and 333-2) contain protective measures against situations such as sexual harassment.
A complaint of harassment or discrimination must be based on conduct that has caused harm to the employee. For employees who think they have been the victim of discrimination, they can contact their workplace supervisors (and the union, if any) or representatives of the employer’s human resources department. The employer should analyse the context as a whole, the facts together with the evidence, and proceed to declare if the discrimination occurred. If so, depending on the bias, the employer could terminate for cause, the employee who harassed another employee. The company could request the participation of an inspector from the Ministry of Labour, who can help carry out the investigation.

Principle VII of the Labour Code prohibits any discrimination, exclusion, or preference based on sex, age, race, color, etc. This principle only allows exclusion based on the qualification required for a given job. On the other hand, Dominican law does not prescribe quotas to address past discrimination.

For larger companies, we suggest establishing a written policy that explains what harassment is; that harassment will not be tolerated; and that sets out how employers and employees should respond to incidents of harassment. Anti-harassment policies should also establish a detailed mechanism by which employees can file complaints when sexual harassment occurs.

Additionally, individuals can be held liable for discrimination, retaliation, harassment and a retaliation lawsuits in civil court. In some instances, such as sexual harassment, the person may also be accountable in criminal court.

6. OTHER REQUIREMENTS

Apart from the rule that at least 80% of the employees must be Dominican, there is no other diversity requirement or affirmative action.
VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

In the Dominican Republic, the Labour Code establishes the principle of equal pay for equal work. Also, the Dominican Republic has ratified Convention C. 100 of the International Labour Organisation on equal pay. Notwithstanding the preceding, the employer may establish different conditions when justified by objective parameters (seniority, responsibilities, tasks and performance).

Equal pay is guaranteed for work of equal value, free of gender or any other form of discrimination, and under the same conditions of capacity, efficiency and seniority.

2. REMEDIES

If a company does not comply with the equal remuneration regulations, the company may be subject to:

• inspection by the Ministry of Labour, which may oblige the company to pay administrative and criminal sanctions; and
• individual labour claims filed by employees or former employees, in which moral damages are claimed for discriminatory treatment and payment of salary differences.

3. ENFORCEMENT/ LITIGATION

Equal pay for equal work is not a common labour claim in the Dominican Republic. In principle, it is not a regular violation of the labour practice of the Dominican Republic. In any case, the Inspection Department of the Ministry of Labour can take efficient measures in this regard.

The Ministry of Labour is the institution with the primary concern of enforcing labour laws in the Dominican Republic. There are also specialised labour courts familiar with the kinds of issues that can arise between employees and employers.

The Labour Courts are the principal means for the resolution of conflicts between employees and employers.

4. OTHER REQUIREMENTS

There is no requirement for the employer to take any action to address pay discrimination, except reporting the payroll, in a form called DGT3, annually to the Ministry of Labour.

By the principle of good faith, the employer must comply with the Constitution, statutory law and international treaties.
VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

The Labour Code prescribes that the employer must provide employees with the work tools necessary for the performance of their duties. The Labour Code further establishes that the employee cannot use the work tools for anything other than their intended use. The employer has the right to ensure that the employee uses the work tools provided by the employer, following the intended work purpose, and to prohibit the employee’s access to social media.

Regarding employees’ personal devices, employers can restrict the use of the Internet or social media by employees during working hours. The employer can instruct them that it can only be used for work purposes, but that restriction has to be in writing and preferably included in the employment contract.

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

In the Dominican Republic, employers may monitor and inspect only the electronic communications in the place of work, if the employee is notified in advance that the electronic communications will be for employment purposes. So, the employee should not have expectations of privacy.

Employers are also allowed to install voice or image recording devices whenever necessary for the company to meet its business needs. Installing such devices in bathrooms or changing rooms is prohibited.

Employers are authorised to control computers, telephones, and any other instrument that they provide to employees. Such control does not violate privacy and the legal rights that each person has.

Information obtained through monitoring and surveillance cannot be shared and exported to related companies in other countries, unless the employee has previously given their consent in writing.

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

Employees have a duty of loyalty to the employer, which means that employees must refrain from taking actions that may damage the company’s reputation, other employees, or the company in general. The opposite may be grounds for dismissal with cause. Employers may, at their sole discretion, stipulate their requirements for employment. One of those requirements could be the signing of a confidentiality agreement in addition to the employment agreement.

The confidentiality agreement could include an obligation not to use, disclose, publish or otherwise divulge the employer’s trade secrets or confidential information to its past, present or future (potential) clients.
VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

The parties are exempt from their legal obligations in the event that termination occurs:

- by mutual consent, which we recommend executing before a notary;
- by execution of the agreement (the contract for a particular job or work ends with the work’s conclusion);
- with just cause (employers can dismiss their employees alleging one or more of the specific reasons listed in Article 88 of the Labour Code).

Dismissal for just cause requires the employer to establish that the dismissal was the result of an act (under Article 88 of the Labour Code) committed by the employee. Article 88 also requires the employer to notify the Department of Labour of the termination, with the reasons included, within 48 hours from the dismissal. If the employer does not prove just cause or does not submit the notice within the required 48 hours, it will be responsible for paying the employee’s severance. The employer’s right to base the dismissal on a specific cause, will expire 15 days after the employee has committed the act alleged as the grounds for the termination.

The employer can dismiss an employee with just cause, if the employee fails to fulfill a serious obligation. The employer has the burden to prove the cause of the dismissal. The employee can also challenge any dismissal for just cause, decided by the employer. An employment court will determine whether the employer had justifiable grounds for the termination. Labour courts are very restrictive when it comes to evaluating whether the cause of dismissal meets the legal standards and is considered justified.

An employer should only terminate employment for cause, when the offense is provided for by law and is severe enough to justify such a serious penalty. The Labour Code lists as misconduct, among others, the following:

- lack of integrity;
- criminal conviction (final instance);
- negligence in the performance of their duties;
- violation of confidentiality;
- act of disobedience or insubordination;
- abandonment of employment;
- having committed a dishonest act or acts of violence, insults or mistreatment against the employer;
- having committed a dishonest act or acts of violence, insults or mistreatment against a co-worker, that disrupts the order of the establishment;
- having been absent from work for two consecutive days, or two days in a month, without obtaining permission from the employer or his representative;
- lack of dedication to the job for which he/she has been hired or any other serious breach of the obligations imposed by the employment contract.

Justified dismissal (for cause) is one of the most common sources of labour lawsuits, as it is a unilateral decision. The employer must prove the cause for the dismissal. If it does not, the termination will be declared unacceptable, and the employer will be ordered to pay a series of fines and labour benefits.

Employers may terminate the employment contract at any time without just cause, subject to payment of severance compensation, as provided in the Labour Code.
The fixed-term employment relationship may end, precisely, on the last day of that period without any obligation of the parties.

2. COLLECTIVE DISMISSALS

Collective dismissals are not regulated by Dominican labour law. However, if the company ceases to operate, the employer is obliged to dismiss all workers as follows:

- terminate employment contracts under the provisions of article 75 of the Labour Code, in which case the company must comply with the payment of the corresponding compensation; or
- invoke the provisions of article 82 of the Labour Code, according to which the company only pays financial assistance to the employee (which is less than the corresponding compensation).

If the company decides to invoke the provisions of Article 82, it must submit a request for authorisation to the Ministry of Labour explaining the economic reasons for the request. In this case, the company must add the documents that justify that it is experiencing one of the grounds for the closure, specified in paragraph 4 of Article 82, which are:

- the lack of elements to continue the operation; or
- the inability to pay for the same; or
- any other similar cause.

Once the application is submitted, the Ministry of Labour will instruct an inspector to visit the company to examine and verify its conformity with the declarations presented. Subsequently, the Department of Labour will issue a resolution authorising or rejecting the cessation of its operations.

In practice, it is tough for the Ministry of Labour to approve this termination and that the employees only receive financial aid and not the corresponding compensation.

3. INDIVIDUAL DISMISSALS

The employer can terminate the contract at any time without just cause, subject to the payment of severance compensation.

Union representatives are protected and cannot be dismissed during their term and for eight months after that. Pregnant and sick employees are also protected.

A. IS SEVERANCE PAY REQUIRED?

In the event of termination of employment without just cause, the employer must pay the employee his/her severance pay, as provided by law, within ten days of notification of termination, as follows:

- after continuous work of not less than three months nor more than six, a sum equal to six days of ordinary salary;
- after continuous work of not less than six months nor more than one year, a sum equal to thirteen days of ordinary salary;
- after continuous work of not less than one year nor more than five, a sum equal to twenty-one days of ordinary salary for each year of service rendered;
- after continuous work of not less than five years, a sum equal to twenty-three days of ordinary salary for each year of service rendered.

Likewise, the party that exercises the right to dismissal without cause, must give prior notice to the other, under the following rules:

- after continuous work of not less than three months nor more than six, with a minimum of seven days’ advance notice;
- after continuous work that exceeds six months and is not more than one year, with a minimum of fourteen days’ advance notice;
- after a year of continuous work, with a minimum of twenty-eight days’ advance notice.

Suppose the party exercising the dismissal without cause does not comply with this requirement. In that case, they must pay compensation in lieu of notice, for the amounts owed by way of the notification. It is common for employers to choose to pay this compensation instead of giving advance notice.

Besides, the employer must pay the employee his/her acquired rights, whatever the reason for termination. These acquired rights include:
• compensation for vacations not taken;
• the proportional amount of the thirteenth salary; and
• profit-sharing, if the employer had benefits during that fiscal year.

4. SEPARATION AGREEMENTS

According to the Labour Code, the parties’ mutual consent is a cause for termination of the employment relationship, without any obligation for the parties. Therefore, this cause of termination is subject to the will of the parties.

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

A separation agreement is not required. However, it is convenient to execute the agreement in writing and include a discharge that neither party owes anything to the other party. It is not mandatory, but it is convenient to make this agreement in front of a notary public to authenticate the parties’ signatures.

The execution of a termination agreement by mutual consent, cannot contain a waiver of the employee’s minimum rights, the salaries earned, the indemnities or any other provision derived from the services rendered.

For a separation agreement to be binding on both parties, it must have been signed after the employment relationship ended, as acquired rights cannot be waived.

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

The standard provisions are:

• express consent of the parties to terminate the employment relationship and the date of termination; and
• total release by the employee from all labour and social security obligations in favor of the employer, subsidiaries or affiliates, predecessors, successors or assignees.

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

No, the age of the employee makes no difference.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

In some cases, the parties agree to i) the return of all files, documents and property of the company; ii) a confidentiality clause; and iii) a direct non-compete clause for a certain period.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

The employee can challenge the alleged wrongful termination, claiming the payment of severance, plus interest and attorneys’ fees, in which case a labour court will decide if the employee’s termination was based on just cause. The burden of proof for the cause of dismissal rests with the employer.

The employee can also claim payment of severance pay differences, arguing that the employer did not calculate the severance pay correctly. In which case, a labour court will decide whether the employer correctly paid the wages and severance pay, and whether it accurately recorded the employment relationship and the employee’s salary.

6. WHISTLEBLOWER LAWS

There is no specific protection for employees who alert or provide information about possible infractions of the law or good corporate governance policies, in the Dominican Republic. However, the employer can incorporate such protection in its internal code of conduct. Employers can use codes of conduct if they are part of the employment contract. Besides, the law establishes that employees should maintain appropriate behavior and strict discipline during the work shift.
IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

Employees must respect the provisions on intellectual property, confidentiality and non-competition related to the employer during the employment relationship. There are no specific laws on restrictive covenants after the termination of employment. Nevertheless, the Constitution establishes freedom of work, which means that the employee can challenge any restrictive covenants after termination of employment. However, the doctrine understands that restrictive covenants are entirely applicable as long as they are limited in time, geographic scope, clients and activity, products and services, and if compensation is paid in exchange.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

Non-compete, non-solicitation of clients and non-solicitation of employees are clear examples of restrictive pacts.

B. NON-SOLICITATION OF CUSTOMERS

There is no rule in Dominican labour law regarding the provisions of non-solicitation of clients. However, it is widespread for Dominican employers to address this restriction in employee-management contracts. This type of regulation is rarely enforced by labour courts, which means few decisions on its applicability exist.

In effect, no jurisprudence in the Dominican Republic establishes existing restrictions on an employer’s ability to impose agreements not to compete, or agreements not to solicit clients or employees. However, the Dominican Republic generally follows the prevailing opinions of the jurisprudence and doctrines recognised in other Latin American countries. In general, restrictions are permissible as long as they are reasonable.

C. NON-SOLICITATION OF EMPLOYEES

In the Dominican Republic, the use of non-solicitation employee covenants is unusual. In our opinion, it is inapplicable due to the employee’s constitutional right to freedom of work.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

Restrictive agreements, such as non-compete or non-solicitation of clients, after the termination of the employment relationship, must meet specific requirements to be applicable, as noted above. In particular, they need to be reasonable and they must be signed after the employment contract has ended.

In the event of a violation of the restrictive covenants, it is possible to file a lawsuit. In our opinion, the Labour Courts are not competent to hear disputes on post-employment restrictive covenants. The only possibility of execution therefore, is before the civil courts.

The employer may also exercise a civil action claiming the damages derived from said infringement, or even take criminal action if the employee had access to confidential information or trade secrets in the performance of his duties.
4. USE AND LIMITATIONS OF GARDEN LEAVE

Garden leave is the practice by which an employee, who leaves a job, is obliged to stay away from work for a period, while the employee is still on the payroll. This practice is frequently used to prevent an employee from using sensitive information when they leave their current employer, especially when they are very likely to join a competitor.

Garden leave in the Dominican Republic is not legally regulated, nor is it a common practice. Employers cannot force employees to take garden leave. Please consider however, that the employee can agree not to work for a certain time after the contract’s termination, but he must receive reasonable compensation (e.g., the salary and benefits in full as if he were working).
X. TRANSFER OF UNDERTAKINGS

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

Article 63 of the Labour Code establishes that the transfer of a company, a branch or an agency thereof, or the transfer of another worker to another company, transmits all the privileges and obligations resulting from the employment contracts that apply to the employee assigned or transferred.

Article 64 of the Labour Code provides, for its part, that the new employer is responsible, together with the precedent employer, for the obligations derived from the employment contracts and the rights arising before the date of the replacement.

Article 96 of the current Labour Code establishes that when a worker is transferred from one company to another, if the transfer is made for fraudulent purposes, both the predecessor and the successor are jointly responsible for compliance with the employee’s labour obligations. The law further establishes that fraud is presumed, which means that companies must prove that the employee’s transfer was made according to applicable law.

In the case of a legal business transfer, employees are transferred by law. The employee’s consent is not required, and notification is only needed in order to not be considered a fraudulent transfer. The new employer must maintain the employee’s job category, benefits, rights, wages and seniority acquired with the previous employer. The employment conditions may be modified, but only to the employee’s benefit. All obligations of the employees included are automatically transferred to the new employer.

The working conditions for employees must not be reduced or adversely affected by a business transfer. Employers cannot make detrimental changes to the employment conditions of the employees, regardless of whether they have previously consented to the change. Due to the concept of labour succession, the new owner of a company or business will be held responsible for all labour rights and obligations.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

Both the predecessor (former employer) and successor (new employer) will be responsible for the labour and social security debts derived from the employment relationship, before the transfer date. The new employer becomes solely responsible for the debts generated after the transfer. For the transfer not to be considered fraudulent, it must be reported to the Ministry of Labour, the union and also the workers.

The first aspect that must be considered, is the main effect that results from the transfer of companies. In this sense, Article 63 of the Labour Code establishes that the transfer of a company, branch, dependency, or the simple “transfer” of a worker to a new company, will transmit to the acquirer, all the prerogatives and obligations resulting from the contract of work originally agreed with the collaborator.

The rule mentioned above, further states that past claims and pending judgments before a judicial authority will fall within the obligations. Similarly, the article is clear when determining that the transfer of the company will not extinguish the acquired rights of the workers.
Another article that employers must consider when being part of a transfer process, is number 64 of the Labour Code. The new employer will be jointly liable with the replaced employer regarding the obligations assumed with their workers, either by the employment contract or by law.

Regarding Articles 63 and 64 of the Labour Code, reference is primarily made to cases where the company’s transfer is partial or total. Consequently, there has been a transfer of ownership of the company, which is why the predecessor and the successor become jointly and severally liable for the rights that correspond to the workers.

In the case provided for in Article 96 of the current Labour Code, this rule prescribes that both the predecessor and the successor are jointly and severally liable for compliance with labour obligations, when the worker is transferred from one company to another.

The same article indicates that fraud will be presumed. As such, the worker will not have to prove it. In any case, the interested company may extinguish this presumption by providing evidence showing that no fraudulent omissions have been incurred, nor actions aimed at evading the obligations derived either from the law, the employment contract or the collective agreement.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES’ AND EMPLOYERS’ ASSOCIATIONS

Under Article 47 of the Dominican Constitution, everyone has the right to associate with others. In the Dominican Republic, there are unions and employers’ associations that represent all kinds of activities. Employees have the right to organise in unions. The affiliation of employees to unions is not mandatory. The employee is free to decide whether or not to join the union. Also, there can be several unions in a company. There is no limitation in this regard. However, there are no unions by locality, but rather by company.

A trade union can be established with a minimum of twenty active-duty workers. An employers’ association needs at least three employers. No prior authorisation is required for the creation of a union or an employers’ association. Employees in a position of trust cannot be members of unions.

Unions in the Dominican Republic are common, especially in large companies that manage many workers. Unions are supposed to represent the interests and rights of workers. However, unions tend to be highly political, and this limits the effectiveness of such unions.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Among other activities, trade unions can do the following:

- initiate a collective dispute on economic issues;
- negotiate collective agreements on behalf of workers; and
- deal with health and safety problems at work.

The Dominican Republic has ratified ILO Convention 87, which prescribes that workers and employers have the right to join any organisation of their choice. Employees and employers’ organisations have the right to draft their statutes and regulations, freely elect their representatives, and organise their administration and activities. Convention 87 also provides that employees’ organisations will have the right to establish and join federations, confederations, and any other organisation of this type.

According to Dominican law, bargaining with unions is mandatory if the union has, as its members, more than 50% of the headcount (of employees) in the company.

Article 402 of the Labour Code recognises the right to strike for trade unions. However, strikes need to be peaceful. Strikes in essential services, such as public services, communications and hospitals, are illegal.

Before the strike, the unions must give ten days’ notice to the Ministry of Labour indicating the following:

- the economic conflict or the violation of rights that the strike seeks to resolve;
- what previous attempts to resolve disputes, without going on strike, have been unsuccessful;
- the strike has the approval of at least 51% of the union members; and
- the services affected by the strike are not essential to the public.
Disputes with workers represented by the unions, or with them, are resolved through conciliation or judicial proceedings. If workers are part of a union, the employer must follow a particular process to act against those workers.

The law protects union representatives with job stability. They cannot be dismissed without just cause while serving as union delegates, and this, until eight (8) months after the expiration of their mandate. For an employer to dismiss a union representative for just cause during the period of protection, it must request the prior authorisation of a Labour Court.

Unions can negotiate on behalf of employers and employees, and can enforce collective agreements. Collective agreements are instruments executed between unions representing employers and employees, to establish general rules and regulations governing the relationship of a specific category of employers and employees. The conditions negotiated by the unions are mandatory and cover all employees of the company.

An employer can also negotiate a specific collective agreement, applicable to its employees, directly with the employee union.

3. TYPES OF REPRESENTATION

Unions can represent their members at the national or local level. To obtain official recognition, unions must register with the Ministry of Labour. Legal registration of a union requires the following:

- a certified copy of the bylaws;
  - in the case of unions, the names and addresses of the members and their employers;
  - a certified copy of the minutes of the general assembly that established the union; and
- a certified copy of the minutes of the general assembly in which the board of directors was elected.

Once these documents are submitted, the Ministry of Labour has, in principle, 30 days to issue the registration. Registration can only be denied in the following circumstances:

- if the statutes do not contain the essential provisions for the regular operation of the union, or if any of its provisions are prohibited; or
- when any of the requirements of the Labour Code or bylaws are not met.

A union cannot be dissolved or suspended, nor can its registration be canceled, by administrative decision. Cancellation of registration requires a legal procedure brought before the Labour Courts, for just cause.

A. NUMBER OF REPRESENTATIVES

The Labour Code establishes that workers, who are members of the board of directors of a union, enjoy job stability:

- up to five, if the company employs no more than two hundred workers;
- up to eight, if the company employs more than two hundred workers, but less than four hundred; and
- up to ten, if the company employs more than four hundred workers.

If more than one union operates in a company, the union protection is distributed proportionally among the different unions, according to the number of contributing members from each.

B. APPOINTMENT OF REPRESENTATIVES

The unions’ representatives have job stability as from the communication of their appointment to the employer, until eight months after the mandate’s end. Those members cannot be arbitrarily dismissed. In other words, they cannot be dismissed without a just cause and the approval of the Court of Appeals.
4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The main tasks of union representatives are:

- represent and formulate petitions on behalf of workers in a collective capacity;
- verify compliance with labour laws and collective agreements concerning workers;
- organise and conduct meetings; and
- educate and instruct the company’s workers.

5. EMPLOYEES’ REPRESENTATION IN MANAGEMENT

In the Dominican Republic, the unions do not participate in the direction or management of the company, but they do have the right to participate as representatives of the employees, in the company’s Joint Hygiene and Safety Committees. Employees have the right to appoint representatives to form part of the Joint Health and Safety Committee. If there is a union, the union will represent the employees before the Joint Hygiene and Safety Committee.

However, some large companies with unions, create a Consultative Committee to meet monthly; the foremost union leaders meet with human resource management to discuss all matters concerning the company’s workers.
XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

In the Dominican Republic, in principle, all workers need to be covered by a national retirement pension plan funded by contributions from both the employer and the employee. The employee pays this through withholdings from his salary, and the employer through a percentage of the employee’s salary.

Employees are entitled to retirement and to receive the government pension, when they reach the retirement age (60 years) and have contributed a minimum of 360 months.

Family Health Insurance: the percentage paid to Social Security, by both the employee and the employer, is as follows:

- employee’s contribution: 3.04%
- employer’s contribution: 7.09%

Old-age Allowance, Disability and Survival: the percentage paid to Social Security, by both the employee and the employer, is as follows:

- employee’s contribution: 2.87%
- employer’s contribution: 7.10%

2. HEALTHCARE AND INSURANCES

The social security authority offers the following (primary) insurances to workers who have contributed to the system, depending on the number of contributions made and the amounts involved in each quote: i) death benefit; ii) accident allowance; and iii) health benefit.

All employees have the right to be covered by social security. All employees must belong to the Social Security system, regardless of their income or work. A government institution administers occupational risk insurance; therefore, there will be no option in this regard.

For family health insurance, the maximum salary contribution will be the equivalent of ten minimum wages. According to Law 87-01, the financing for this insurance will be made gradually, from the employee’s and employer’s joint contributions.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

National holidays must be observed, and the salary corresponding to twice the rate must be paid, provided that the services are effectively rendered during those days. Holidays change depending on which day they fall, according to Law 13-97. There are a total of 12 holidays in 2021. There will only be two non-working days that will be changed in 2021: Three Kings Day and Juan Pablo Duarte’s birthday. The remaining ten will be held on the date designated.

The dates on which holidays will be celebrated during the year 2021 will be:

- Friday, 1 January, the New Year’s celebration: will not change
- Wednesday, 6 January, Three Kings Day: will be changed to Monday, 4 January
- Thursday, 21 January, Our Lady of Altagracia: will not change
- Tuesday, 26 January, the birth of Juan Pablo Duarte: will be changed to Monday, 25 January
- Saturday, 27 February, National Independence Day: will not change
- Friday, 3 April, Good Friday: will not change
- Saturday, 1 May, Labour Day: will not change
- Thursday, 3 June, Corpus Christi: will not change
- Monday, 16 August, Restoration Day: will not change
- Friday, 24 September, Our Lady of Mercedes Day: will not change
• Saturday, 6 November, Constitution Day: will not change
• Saturday, 25 December, Christmas Day: will not change.

Employees are entitled to a period of paid vacation annual leave. Article 177 of the Labour Code establishes that employers must grant their employees a minimum of 14 working days of paid vacation per year. Employees acquire the right to take vacation after being employed, uninterruptedly, for one year. After five years on the job, the employer must increase the paid leave to 18 business days.

Article 182 establishes that vacation time cannot be taken for periods of less than one week. Vacations cannot be replaced by an additional payment or any other form of compensation. The employer must pay the salary corresponding to the vacation period, the day before the vacation begins. The parties can always agree to a more extended period than the one provided by law, but cannot agree to a shorter period.

B. MATERNITY AND PATERNITY LEAVE

Employees who are pregnant or have recently given birth, enjoy superior protection under the Labour Code. Regarding maternity leave, the law establishes the mother’s right to paid leave during the seven (7) weeks preceding the probable date of delivery, as well as the seven (7) weeks that follow. Article 240 establishes that the employee also has the right to three rest periods of 20 minutes each, per working day, to breastfeed her child.

The Dominican social security system created by Law 87-01 contemplates health and maternity insurance, financed with salary contributions. During the employee’s maternity leave, the company must pay the ordinary salary in full, and the TSS will return to the employer, the equivalent of three months of contributory salary.

Regarding paternity leave, article 54 of the Labour Code provides that the employee has the right to two (2) days of paid leave if his wife gives birth.

C. SICKNESS AND DISABILITY LEAVE

According to Dominican law, there is no difference between short-term sick leave and long-term sick leave. In any case, the Social Security Treasury must pay the employee a percentage of the worker’s contribution, but only if the sick leave is for more than four (4) days. According to Article 52 of the Labour Code, the worker will only receive medical attention and the compensation provided by the laws relating to accidents at work and Social Security, in case of illness.

Suppose the employer does not register the worker in the Dominican Social Security or does not pay the corresponding contributions. In that case, the employer must pay the entire corresponding salary during the worker’s absence and the employee’s expenses, due to illness or accident.

If the disability lasts for more than one (1) year, the employer must pay financial assistance according to the time the company has employed the employee.

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

In Article 54, the Labour Code provides for leave for reasons of marriage (five days) and death of a close relative (three days). The applicable collective agreements usually provide for other leave or additional days of rest.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

There is no mandatory requirement for retirement in the Dominican Republic. The Social Security Law establishes that a 60-year-old person, who has been contributing to Social Security for at least 360 months, can obtain this benefit.

The Dominican Social Security system establishes an obligation for employers to contribute 70% of the contributory plan’s cost to finance old-age, disability and survival insurance, and family health insurance. In comparison, employees must contribute the remaining 30%.

Angelina Salegna Bacó
Partner, Sánchez & Salegna
asalegna@sys.do
+1 809 542 2424
Sánchez & Salegna is a Dominican firm located in Santo Domingo, specialising in commercial, labour and litigation law. Our firm brings vast experience and professionalism to each case, and we personalise our support to match our client’s individual needs and concerns.

Our labour law department represents clients in all facets of labour matters. Our team is well-known for offering high-quality services in the area of labour law. Sánchez & Salegna provides effective advice designed to prevent potential employment and work-related litigation, an area where we excel, and we have experience handling all aspects of employment relationships.

This memorandum has been provided by:

Sánchez & Salegna
Torre Novo-Centro, Suite 605
Santo Domingo, 10119
Dominican Republic
+1 809 542 2424
www.sys.do

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
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.