

# EMPLOYMENT LAW OVERVIEW

## **CHILE** 2019-2020

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# I. EMPLOYMENT CONTRACTS

## 1. MINIMUM REQUIREMENTS

Chilean legislation provides three categories of labor contracts: individual labor contracts, collective labor contracts, and special contracts.

## 2. INDIVIDUAL LABOR CONTRACT

This is a written contract between an employer and an employee whereby they are mutually bound, the employee to render personal services under ties of dependence and subordination to the former, whereas the employer to pay compensation for those services.

Article 10 of the Labor Code states the minimum provisions that must be included in the individual labor contract, such as date and place of the contract, the identity of the parties, the position of the employee and job description, the place of work, the remuneration to be paid by the employer, the terms of payment (at maximum 1-month intervals), workday, the duration of employment and the benefits in cash or in kind to be provided by the employer.

## 3. COLLECTIVE LABOR AGREEMENTS

Collective labor agreements are agreements executed between employers and employees with the purpose of establish common labor conditions, remunerations or other benefits in kind or money, for a fixed period of time". The Collective Contract must be agreed in writing and must be registered

before the Department of Labor within 5 days since its execution. Legally, such contracts must be executed for a fixed term, which cannot surpass 3 years and may not be less than 2. Also, the law provides the minimum clauses to be included in these instruments.

The Labor Code also allows for the possibility that the employer and one or more Unions freely negotiate a collective agreement, without being subject to a ruled legal proceeding, which is also considered a labor collective instrument.

## 4. SPECIAL LABOR CONTRACTS

The law also provides some other special labor contracts. Each of these contracts have their own characteristics and specifications, e.g. the apprenticeship contract which is restricted to individuals under 21 years of age; farm employees' contracts; contracts for employees on ships or at sea and temporary dock employees and contracts for domestic help.

## 5. SUBCONTRACTOR / TEMPORARY EMPLOYEES

In Chile it is common that large companies subcontract companies to perform specific tasks or render special services such as security and cleaning services, catering, etc. Chilean law provides that if the contractor breaches legal or contractual obligations towards his employees, the main company (usually called client) can be jointly-liable or bear subsidiary liability. This liability is extended to labor and social security obligations, therefore during the term of these contracts the

principal must permanently verify that contractors comply with their obligations unto their employees. Temporary employees supply is permitted only for exceptional circumstances provided by law and for a limited time period.

## **6. FIXED-TERM/OPEN-ENDED CONTRACTS**

The parties may either agree on an indefinite contract or places limits on terms (to the completion of a particular job to be performed by the employee, or else agree on a fixed period of time). In this last case, the contract's term cannot exceed one year, or two years in the case of managers, professionals and technicians. However, local law allows term extension, (which cannot surpass the overall time previously mentioned). If the employee continues rendering services for the same employer after the contract term's expiration, it will automatically become indefinite.

It is also important to consider that on November 2018, certain changes were introduced to contracts for a special job task. Under such agreements, the employee undertakes to execute a specific and determined job or work (either material or intellectual). Therefore its validity is limited to the work itself. The new scheme provides that different tasks or stages of a specific work may not be individually considered as two different successive contracts for it will be legally presumed as indefinite. Also, any contract engaging permanent services will not be deemed as a contract for a specific job. Lastly, these employees are entitled to vacation and a special kind of termination severance if certain requirements are fulfilled.



# II. WORKING CONDITIONS

## 1. SALARY

The law considers as remuneration the cash payments and cash-equivalent benefits in kind that the employee receives from the employer on account of the employment agreement. The remuneration includes base salary, overtime payment, commissions, profit sharing and bonuses. The law further indicates that certain payments or allowances do not constitute remuneration, such as lunch, family allowance for each charge of the employee, transportation allowance, etc.

The remuneration must be paid in the agreed fixed period, which cannot exceed one month. However, in the case of variable remunerations, this variable remuneration or commission is usually paid monthly, bimonthly or quarterly. Other payments which depend on the quarterly or yearly results of the company, i.e. bonuses and profit sharing, are paid at the end of the quarter or business year, respectively.

The amount of remuneration can be freely agreed between the employer and the employee. However, the law sets a minimum level, which in the case of the monthly base salary for employees working 45-hour weekly cannot be lower than one legal monthly minimum wage (CL\$276,000; US\$425 approximately), as from January 1st, 2018.

## 2. PROFIT SHARING

Under the provisions of the Chilean Labor Code, if a company earns profits, it must share part of them with its personnel. The law stipulates that companies must distribute 30% of net profit to the employees, calculated in proportion to the employee's salary. The basis used to determine profits is the corporate taxable income (subject to certain adjustments) less 10% of net equity.

However and in lieu of the above obligation, the employer may pay a bonus of 25% of the yearly salary, but the bonus in this case, regardless of the level of salary of the employee, cannot exceed 4.75 monthly minimum wages (at present app. CL\$1.311.000; US\$2,016). The company and the employees may agree on a profit-sharing system different from those described above, provided the payment to the employee is not lower than the two alternatives mentioned above.

## 3. MAXIMUM WORKING WEEK

The normal workweek is limited to a maximum of 45 hours. This maximum must be worked in no less than five and no more than six consecutive days. The normal workday shall not exceed 10 hours. The workday must be divided into two periods, leaving between them at least a half-hour break for lunch, which must not be considered for the purposes of determining the workday. The law also indicates some cases in which the rest period is longer, i.e. restaurants, hotels and club employees. Working hour limits do not apply to employees who work for different employers; to managers or administrators, or to employees who work without immediate superior supervision or outside the working premises, factory, etc. Said limits apply neither to employees who are hired to work outside the office using telecommunication or computing media; nor employees whose activities are not of a steady nature or require only their presence. There is also an exception regarding stores or commercial establishments which, in days immediately prior to Christmas or national holidays, may extend the workday by two hours. In these cases, the hours in excess of the 45-hour maximum will be paid as overtime.

## 4. PART TIME WORK WEEK

The Labor Code regulates a special contract called “part time”. The “part time” week duration cannot exceed 30 hours per week. According to Chilean law, part time jobs are subject to the same provisions applicable to regular jobs, with the following exceptions: i) the maximum profit-sharing payment can be reduced in accordance to the number of hours worked, and ii) the parties are able to agree on different alternatives for workweek distribution, thus allowing the employer to choose between said alternatives and select the one that will be used during the following week or period.

## 5. OVERTIME

Overtime, which is defined as the time worked by the employee in excess of the legal or agreed workday, if shorter- shall be agreed only to take care of necessities or temporary situations of the company, which are all those circumstances that, while not permanent in the company’s productive activity and deriving from occasional events or from unavoidable factors, do imply a greater work demand in a certain amount of time (but not more than 2 overtime hours per day). Overtime work agreements shall be evidenced in writing and be temporarily effective over a period not exceeding three months, renewable by agreement of the parties. However, the permanence of the circumstances that originated them, which by no means shall affect the occasional character of the overtime work, will determine the limit for its renewals. Overtime must be paid with a 50% surcharge.

## 6. HEALTH AND SAFETY IN THE WORKPLACE

Chile provides a public and private medical system for employees including preventive and curative health care. The preventive medical service provides for periodic medical checks. When employees are found to suffer a specific illness, they are granted sick leave. During periods of sick leave the employer cannot terminate the labor contract without cause, but the medical system pays the salary starting on the fourth day of illness or the first day in case of leaves exceeding 10 days. A

monthly cap applies. This system is funded through employees’ contributions.

The Employees’ Compensation Insurance Law established under Law Nr. 16,744 states the obligation for companies or establishments with more than 25 employees to create a Permanent Safety, Hygiene and Risk Prevention Committee (Comité Paritario), comprising representatives of both employers and employees. This committee is responsible for the adoption of all the measures needed to avoid work-related accidents and for recommending the proper use of the safety gear existing in the company. None of the employees’ representatives in this committee can be dismissed while sitting on the committee, without prior authorization of the labor courts.

# III. ANTI-DISCRIMINATION LAWS

## EXTENT OF PROTECTION TO EMPLOYEES WITH DISABILITIES

On 2018 and Law No. 21,015 came into effect. Under it, any company that has 100 or more employees has to hire or keep hired, within the total of its employees, at least 1% of employees (i) with disabilities, or; (ii) assignees of an invalidity pension, regardless of the pension system. This quota is determined on a yearly basis and informed annually to the Department of Labor.

The law provides alternative options to comply with this obligation either by (i) executing services agreements with other companies (contractors) that have complied with the hiring quota, or else (ii) making money donations to foundations projects aimed to train, rehabilitate and promote people with disabilities hiring. Either of these options must be chosen if the direct hiring quota is impossible to fulfill (although employers are not required to fill them until 2020).

The Department of Labor has determined that in the event that the company partially complies with the 1% contract required by law, the difference can be complemented by any of the alternative means of compliance mentioned above. The foregoing is based on the interpretation that said alternative measures of compliance can supply part of the obligation as well as its whole.

Lastly, it is important to say that this law also provides that companies with 200 or more employees must fulfill the minimum hiring quota (or any alternative measure) as of April 1st 2018, whereas companies between 100 and up to 199 employees are legally bound to fulfill the hiring quota as from April 1st, 2019.

# IV. AUTHORISATIONS FOR FOREIGN EMPLOYEES

## 1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

The law states that regarding Companies with 25 or more employees hired, at least 85% of them must be Chilean citizens. To determine this ratio, the law excludes technicians. For these purposes the law deems the following persons as Chileans: (i) foreigners whose spouse or civil partner or whose children are Chilean, including widows or widowers of a Chilean spouse; and (ii) foreigners who have resided in the country for more than five years, not considering accidental absences.

## 2. TAXES

### A. NATIONAL EMPLOYEES

Remunerations of employees are subject to a monthly Second Category Income tax, under a progressive tax scale to be deducted at source by the employer. This tax is payable by the company to the Treasury within the first 12 days of the month following that of the deduction. Currently, the tax brackets range from exemption to a 35% tax rate.

### B. FOREIGN EMPLOYEES

Foreign employees rendering services in Chile and also domiciled or residing in Chile are likewise subject to the Second Category tax as explained above.

As a general rule, foreigners neither domiciled nor residing in Chile and working in Chile are subject to a flat 35% Additional Income tax to be deducted by the company that employs them in Chile upon payment of the salary or fee, and the

tax is payable to the Treasury within the first 12 days of the month following that in which the tax was deducted. However, the rate for said additional tax shall be 20% in case the foreign employee with no residence or domicile in Chile receives remunerations from a Chilean source, originating in the provision of scientific, cultural or sports services. Likewise, the tax rate shall be 15% if such employee is remunerated by a Chilean source, originating from the provision of services deemed to be professional or technical.

The tax law does not contain a definition of domicile, and in the absence of such definition the general provisions of the Civil Code apply. Under these provisions, domicile is acquired whenever sufficient evidence exists that the foreigner is coming to live in Chile for a reasonable period of time, i.e. if he is hired under a labor contract for one year or more, assumes an executive position in the company, brings his family, etc.

In the case of residence, the Tax Code does provide a definition, indicating that residence is acquired when the foreigner stays in Chile for more than six continuous months in any single year or more than six months, whether uninterruptedly or not, in any two consecutive tax years.

In the case of foreigners, during their first three years of residence in Chile they must pay taxes as indicated above only on their Chilean source income and this three-year term may be extended by the tax authorities. After the three-year term or its extension is over, the foreigner must pay taxes on worldwide income.



# V. TERMINATION OF EMPLOYMENT CONTRACTS

## 1. GROUNDS FOR TERMINATION

The Labor Code establishes provisions regarding the termination of the labor contract and employment stability. Under this statute the labor contract may only be terminated by agreement of both employer and employee, by the employee's resignation, by the death of the employee, by the expiry of the fixed term agreed upon in the contract, by the completion of the work for which the employee was hired, by an act of God or circumstances beyond the control of the parties (force majeure) and upon dismissal by the employer.

## 2. SEVERANCE PAY

If the employer dismisses the employee based on the general grounds known as "company's needs," such as changes in economic conditions, downsizing of the company, or in case of termination at will (when law permits it), the following severance compensations will be awarded to the employee:

- i) Severance compensation for years of services: amounting to one month's remuneration for each year or fraction thereof in excess of six months spent in the service of the same employer, with a limit of 330 days' worth of remuneration. However, for the purposes of calculating this severance compensation, the law stipulates that the basic monthly remuneration cannot exceed a maximum of 90 "Unidades de Fomento" (approximately US\$3,655), which cap may be waived by the parties;
- ii) If the dismissal notice is not given 30 days in advance, the employee will be entitled to receive a severance compensation equivalent to one month's remuneration (same cap above applies).

If the employer does not pay the above severance to the employee, some increases may apply up to 150%.

Nevertheless, if the employee is dismissed for cause, i.e. serious breach of contract by the employee, material misconduct, etc., no right to severance compensation arises for the employee. However, the employee may contest the dismissal before the Labor Courts and if the Courts rule in favor of the employee, the company will be obliged to pay the severance indicated above plus an additional penalty of up to 100% of the above-calculated severance compensation, depending on the termination cause invoked.

According to article 162, 5th paragraph, of the Labor Code, if at the time of dismissal the social security contributions are not duly paid, the dismissal will not result in terminating the labor contract. Consequently, the employer could be forced to pay the remuneration and other payments established in the labor contract to the employee until these social security contributions are finally duly paid.

## 3. SETTLEMENT AGREEMENTS

Labor release settlement agreements must be made available to the employee within 10 work days after him/her separation.

# VI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

## RIGHTS AND IMPORTANCE OF TRADE UNIONS

Unions are regulated by the Labor Code, which recognizes the autonomy of these organizations. Under the law, their main purposes are to represent the employees in exercising their rights, foster integration between employers and employees, check compliance with social security and labor legislation, help their members, promote education and improvement of safety in the work place and provide non-profit services to the members. Employees are free to join a union or refrain from these organizations. Employees may join only one union in a single company. Under the law, more than one union may exist in each company.

# VII. EMPLOYEE BENEFITS

## 1. SOCIAL SECURITY

In 1980 the Government introduced a major change in the Chilean Social Security system, making a transition from Government-administrated pension and managed healthcare systems, to contributions made to funds administrated by private entities subject to overall Government control.

Under Decree Law N° 3,500 of 1981, old-age pensions are financed exclusively by the employees through contributions that are accumulated in individual accounts at entities known as Administradoras de Fondos de Pensiones (AFP). For these purposes, employees must contribute 10% of their monthly remuneration up to a maximum of 79.3,7 Unidades de Fomento (currently approximately US\$3,500). In addition, employees must contribute a 7% of their monthly remuneration for medical care, also up to a 79.3 UF cap. Finally, the employers must contribute between a 1% and 1.5% of the employee's remuneration for disability and survival insurance (SIS).

For purposes of labor and social security legislation, work may begin, as a general rule, at the age of 18 and retirement may occur at the age of 65 for men and at the age of 60 for women. Nevertheless, the Social Security System contains provisions which allow for early retirement in certain cases. In Chile, retirement is not a legal cause of termination.

## 2. HEALTHCARE AND INSURANCES

The Social Security system covers all employees, including independent employees. The latter are legally obliged to contribute to a mandatory insurance that covers old age, disability and survivorship insurance.

### A. FOREIGN EMPLOYEES

In the case of foreign employees, as a general rule, they must also pay social security contributions as indicated above. However, Law N° 18,156 grants exemption from social security contributions to foreign technician employees and the company that contracts them, provided that certain conditions are met:

- 1) The expatriate subscribes to a social security system outside Chile covering at least illness, pension, disability and death.
- 2) The employee expressly declares in his employment agreement that he will remain affiliated and paying the foreign social security system.

### B. ACCIDENTS OR PROFESSIONAL ILLNESS

Insurance for accidents or professional illnesses provides for medical and dental attention, hospitalization and medicine as well as indemnities (depending on the type of disabilities suffered) and related expenses.

### C. UNEMPLOYMENT INSURANCE

Unemployment insurance is financed on a tripartite basis, as the contributions are paid by the employer, the employee (2.4% and 0.6% of the employees' taxable remuneration up to a maximum of 119 UF, respectively) and the government. This insurance is mandatory for every employee hired after October 1st, 2002, whereas it is discretionary for those employees hired before said date. In the case of fixed-term contracts, the entire contribution (3%) is exclusively financed by the employer.

### 3. REQUIRED LEAVE

#### A. HOLIDAYS AND ANNUAL LEAVE

Sundays and days legally established as holidays shall be nonworking days, except for activities authorized by law to be performed on those days, companies exempted from the above prohibition must compensate their employees with a paid day off in exchange for worked Sundays or holidays. However, in certain activities, at least two rest days in the month must be granted on Sundays. When more than one paid day off is accumulated in one week, the parties may agree on a special distribution or on a special remuneration mechanism. In this last case, remuneration for the compensated rest day has a surcharge that cannot be less than 50%.

Employees who have worked for more than one year have the right to an annual paid vacation of 15 working days. After working ten years, continuously or not, for the same or different employers, vacations are extended by one working day for every three years of service. In case of employees who work in the 11th and 12th Regions of the country and the province of Palena, the basic vacation period is 20 days.

#### B. MATERNITY / PATERNITY LEAVE

Female employees are entitled to six weeks leave before (prenatal leave) and twelve weeks after (postnatal leave) the birth of a child, on full pay. This payment is made by the Social Security system and not by the employer. In addition, women cannot be dismissed during pregnancy and for a period of one year as from the end of the postnatal leave, other than with prior authorization of a labor court. Additionally, to the referred postnatal leave, exists a supplementary permit that as a general rule, provides a 12 weeks' permit after the end of the postnatal dispensation of the mother, on full pay. Nevertheless, the mother entitled to this benefit may choose to return to her job in a part time schedule, in which case the parental permit and subsidy is extended to 18 weeks. In this case, the subsidy granted by the Social Security System is reduced to 50% of its salary and the employer must pay, at least, 50% of the remuneration set forth in the labor agreement and all variable remuneration to which she is entitled. Likewise, the mother may benefit the father of the child by granting him part

of the parental leave. In this case, the subsidy will be paid according to the salary of the father.

When the health of a child under one year of age requires attention at home as a result of a serious illness, which circumstances will be demonstrated through a medical certificate issued by the services in charge of the infant's health, the employee mother will be allowed to an employment leave and subsidy allowance in cases of prenatal, postnatal and paternal postnatal leaves, during the period prescribed by the health service. If both parents are under a labor agreement, either one of them, at the mother's choice, will be able to use this permit and will be entitled to the corresponding subsidy allowance. However, the father will be entitled to these rights in case the mother of the child is deceased or if the legal custody has been granted by a judicial ruling.

Additionally, the employee who has been entrusted by a court of law with the personal care of a child less than one year old, as a protection measure, shall also be entitled to such leave and subsidy allowance. This right shall be extended to the spouse or civil partner mentioned above.

Establishments with more than 20 female employees, regardless of their age or marital status, must provide a nursery service for children under 2 years old. Employers may contribute to an external nursery school to provide such service. While the women are feeding their babies, they must be granted one hour a day for this purpose.

#### C. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

In the event of the death of a child, spouse or civil partner, every employee shall be entitled to 7 calendar days of paid permit, in addition to the legal vacations to which the employee is entitled to. In this case, the employee shall also be entitled to labor protection or immunity for one month, as from the date of death, thus entailing that said employee cannot be fired unless a labor court has previously authorized such dismissal. However, regarding employees hired for a fixed term or for a specific task or service, labor privilege shall favor them only during the effective term of the corresponding employment contract if said term is less than one month, without requiring the court's

authorization. This permit shall amount to three business days in the event of death of a child during pregnancy, as well as in the event of death of the worker's father or mother, albeit without granting the benefit of labor privilege or immunity.

## **4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED**

Indemnities are granted in the form of a pension to the injured employee or to his/her spouse and dependent children in case of death of the employee. The Employees' Compensation Fund is funded through a base contribution (made by the employer) of 0.95% of the employee's salary (with a cap of 75,7 U.F. per base salary), plus an additional payment, which must be borne by the employer exclusively depending on the activity and level of risk of the company (additional rate from 0% to 3.4%).

## **5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS**

Employers have no legal obligation to provide fringe benefits, other than benefits which may be voluntarily agreed in individual or collective contracts or agreements. Pension and sickness benefits are covered by the Social Security system. There is no legal obligation to provide catering facilities and meals.

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