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Employment

Costa Rica

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Law and Practice

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Contents

1. Introduction p.3
- 1.1 Main Changes in the Past Year p.3
- 1.2 COVID-19 Crisis p.3

2. Terms of Employment p.5
- 2.1 Status of Employee p.5
- 2.2 Contractual Relationship p.5
- 2.3 Working Hours p.5
- 2.4 Compensation p.6
- 2.5 Other Terms of Employment p.6

3. Restrictive Covenants p.7
- 3.1 Non-competition Clauses p.7
- 3.2 Non-solicitation Clauses – Enforceability/ Standards p.7

4. Data Privacy Law p.7
- 4.1 General Overview p.7

5. Foreign Workers p.7
- 5.1 Limitations on the Use of Foreign Workers p.7
- 5.2 Registration Requirements p.8

6. Collective Relations p.8
- 6.1 Status/Role of Unions p.8
- 6.2 Employee Representative Bodies p.8
- 6.3 Collective Bargaining Agreements p.8

7. Termination of Employment p.9
- 7.1 Grounds for Termination p.9
- 7.2 Notice Periods/Severance p.9
- 7.3 Dismissal for (Serious) Cause (Summary Dismissal) p.10
- 7.4 Termination Agreements p.10
- 7.5 Protected Employees p.11

8. Employment Disputes p.11
- 8.1 Wrongful Dismissal Claims p.11
- 8.2 Anti-discrimination Issues p.11

9. Dispute Resolution p.12
- 9.1 Judicial Procedures p.12
- 9.2 Alternative Dispute Resolution p.12
- 9.3 Awarding Attorney's Fees p.12

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1. Introduction

1.1 Main Changes in the Past Year

Some of the main changes in employment law that have been enacted in the last 12 months have been aimed at combating unemployment and achieving economic recovery in the country.

Dual Technical Education and Training

In order to promote dual training in the workplace, the Dual Technical Education and Training Law was approved on 12 September 2019, and the Regulation to Regulate Dual Technical Education and Training on 30 April 2020. These regulations are intended to fill the regulatory gap that, prior to the enactment of this law, existed regarding this type of training.

Vocational Technical Education and Training (TVET) aims to enable students over the age of fifteen to train in two areas of learning, these being:

- theoretical training, through an educational centre; and
- practical training, through a training company, which must be authorised to carry out this form of learning.

The law establishes different requirements and obligations that companies or training centres for employability must meet to carry out TVET. In the same way, it is explicitly established that the legal relationships derived from the TVET Agreement between the student and the company or training centre for employability are not labour-related. On the other hand, as it is a special learning relationship, the company should not register the student with the Costa Rican Social Security Fund, nor would it have the obligation to pay a salary or other types of remuneration to the student.

The foregoing is intended to guarantee legal certainty to the contracting parties, since other contractual links that seek to regulate dual education and training not covered by the law could be subject to an administrative or judicial interpretation to determine if it, is or is not, a form of labour.

Teleworking

The purpose of the Law to Regulate Telework of 18 September 2019, and of the Regulation to Regulate Telework of 20 December 2019, is to regulate and promote telework as a tool for generating employment and modernising both public and private organisations.. These regulations try to establish uniformity of the applicable regulation and fill the normative gap that existed in relation to this type of work, which was already in practice in the public and private sectors.

Same-Sex Marriage

Another of the main legislative changes was in relation to the regulation of equal marriage in Costa Rica. On 8 August 2018, through judgments 12782 and 12783 of the Constitutional Chamber, Subsection 6) of Article 14 of the Family Code, which provided for the impossibility of celebrating same-sex marriages, as well as part of the Article, were declared unconstitutional.

The Legislative Assembly was given 18 months to adapt the current legislation to the provisions of the rulings, since, if the regulations that prohibit the recognition of same-sex couples were not dealt with, they would be repealed to comply with said term. Since the Legislative Assembly did not adopt the actions required by the Constitutional Chamber, as of 26 May 2020, equal marriage is possible in Costa Rica.

Probably the most immediate effect of the 2018-12782 ruling of the Constitutional Chamber was the acceptance of the recommendations of the advisory opinion of the Inter-American Court of Rights OC-24/17 and the recognition of the State's obligation to guarantee that couples made up of people from the same sex have the same rights and access to all existing procedures in the legal system as heterosexual couples.

The main duties that companies need to respect in order to obey the constitutional commandments and to avoid or reduce the possibilities of complaints of discrimination consist of:

- promoting the values of non-discrimination and respect for the gender identity and sexual preferences of staff, through awareness campaigns, newsletters or other means; and
- reviewing and adapting internal policies, granting the same benefits to couples formed by people of the same sex as couples formed by people of different sexes.

1.2 COVID-19 Crisis

By Decree No 42227-MP-S of 16 March 2020, a state of national emergency was declared across the entire territory of the Republic of Costa Rica due to the health emergency caused by COVID-19 pandemic. The foregoing was followed by other emergency health measures that have since been expanded and which seek to establish, among other things, the closing of borders and immigration restrictions, as well as limitations on the maximum capacity of certain work centres.

Temporary Legislative Measures

The most significant temporary labour legislative measures that have been adopted to deal with the crisis caused by COVID-19 are set out below.

Teleworking
Executive Decree 073-S-MTSS of 10 March 2020, which instructed all public administration institutions to implement teleworking, temporarily and as far as possible throughout the week. In the same way, the private sector was invited to follow the same measures.

Work Hours Reduction Authorisation Law
The Work Hours Reduction Authorisation Law before the National Emergency Declaration No 9832 of 23 March 2020, allowed the temporary reduction of the working day and wages. Through it, companies that have an experience a drop in gross income of 20% or more compared to the same month in the previous year may request a 50% decrease in the working day and wages, and, in the event that the economic effect is 60 % or more, may request a 75% reduction. In the same way, this rule provides, as an additional and substitute measure, an agreement between the employer and the worker, to temporarily interrupt the salaried work while the declaration of emergency is maintained and, subsequently, the time already paid for will be made up within a maximum period of one year once the declaration of national emergency has ended.

The reduction can be implemented immediately by the employer but must be subsequently approved by the Labour Inspectorate of the Ministry of Labour and Social Security.

Law No 9839
Through Law No 9839 of 4 April 4 2020, workers affected by the economic crisis are authorised to access their Labour Capitalisation Fund. Workers can withdraw the accumulated labour savings in their fund when their employment relationship has been temporarily suspended or their ordinary working day has been reduced.

Executive Decree No 42305-MTSS-MDHIS
Through Executive Decree No 42305-MTSS-MDHIS of 17 April 2020, the creation of the Protect Bond is regulated. This state bond is an extraordinary and temporary monetary transfer to contribute to the social protection of households affected by the change in their working conditions and income as a consequence of the national emergency caused by COVID-19. The beneficiaries of the bonus are people who have been dismissed, whose contracts have been suspended or affected by a reduction in working hours, and even informal or temporary workers who have lost their jobs or suffered a decrease in their income. The aid was initially expected to last for three months, but the allocated budget has been insufficient to cover all applicants.

The Costa Rican Social Security Fund
The Costa Rican Social Security Fund, through the promulgation of various guidelines, has tried to support employers, independent workers and insured volunteers in the face of the national emergency caused by COVID-19. Concerning employers, the measures are related to:

- the reduction in the current minimum tax base for health and pension insurance; and
- transitional measures to the regulation of the formalisation of payment agreements for the debts of employers and independent workers with the Costa Rican Social Security Fund and matters of collection management.

Virtual hearings
On 4 May 2020, in order to prevent work in the administration of justice from being paralysed due to the health crisis caused by COVID-19, the Full Court of the Judiciary approved a Protocol for the management of virtual hearings regarding labour disputes.

This guideline establishes the basic requirements for the holding and development of labour trial hearings through a videoconference system. Likewise, procedural requirements are stipulated with which the judge, the parties, and the witnesses must comply. It is, however, provided that virtual hearings are only held with the consent of the parties and that eventually, if the parties cannot connect virtually, either from their home or workplace, the court must give them the option to appear in person at the judicial office.

Permanent Legislative Measures
As for the most significant permanent legislative measures regarding employment/labour that relate to the crisis caused by COVID-19, the following should be noted.

Executive Decree No 42248-MTSS of 20 March 2020, regulated the procedure for the suspension of the employment contract, which procedure has been established by the Labour Code since 1943. It establishes that the suspension is authorised for an extendable month, as long as there is a legal cause motivating it, including that of fortuitous event or force majeure, which applies to the current state of national emergency.

Finally, on 30 June 2020, a reform to various articles of the Labour Code was approved to transfer some of the holidays from the years 2020–2024 to Mondays. This measure aims to encourage local tourism in the country and reactivate the economy in the face of the economic crisis caused by COVID-19.

2. Terms of Employment

2.1 Status of Employee

The Labour Code does not differentiate between blue and white-collar workers. However, there are very specific references to those workers who occupy high-ranking positions in a company, such as managers or administrators, who are considered to be representatives of the employer (Article 5) and "trusted employees". These workers may work an extended working day (Article 143) and are excluded from the group that may declare a strike (Article 382).

There are also dispersed regulations for workers in agricultural and livestock activities, in hiring materials (Article 22), salary (Articles 19, 157 and 166), working day (Article 139), weekly rest (Article 152) and dismissal (Article 82).

2.2 Contractual Relationship

Different types of employment contracts can be used depending on various factors such as the category of worker to be employed and the term within which the work will be carried out. The most commonly used employment contracts include contracts for an indeterminate period and those for a specific period of time, which may be for a periodic term or for specific work (Articles 26 and 27 of the Labour Code).

A fixed-term contract is of an exceptional nature and is justified according to the nature of the service that is to be carried out. Such a contract cannot exceed a period of one year, including extensions made throughout the term of the employment relationship. In the case of services that require special technical input, the maximum term can be extended to five years. However, if at the expiration of a fixed-term contract the causes and the nature of the work that gave rise to the contract persist, the fixed-term contract will be considered to be indeterminate.

A verbal contract can only be made in a limited number of cases (Article 22 of the Labour Code) – eg, agricultural or livestock workers and temporary workers whose term of appointment does not exceed 90 days. Written employment contracts are mandatory in all other cases (Articles 23 and 24 of the Labour Code).

In the event that no employment contract has been agreed, the employer is under a duty to prove the working conditions that a written employment contract would provide proof of (Articles 25 and 478 of the Labour Code).

The minimum content of an employment contract (Article 24 of the Labour Code) includes the following:

- the names, nationality, age, sex, marital status and precise domicile of the contracting parties;
- the document number;
- the working day and schedule;
- the salary or wage to be received by the worker and the time when the salary or wage will be paid;
- the quantity and quality of the materials provided and, if applicable, the tools the employer will provide to execute the work and the times when they will be made available to the worker;
- the place or places where the service should be provided or the work performed;
- other stipulations agreed upon by the parties;
- the place and date of the conclusion of the contract; and
- the signatures of the contracting parties.

2.3 Working Hours

The daily and weekly work limits depend on the type of work (Articles 136 and 138 of the Labour Code).

A daytime shift (between 5am and 7pm) has a daily limit of eight hours, which can be increased to ten hours per day subject to a weekly limit of 48 hours provided that the work is not unhealthy or dangerous.

Night shifts (from 7pm to 5am) are subject to a limit of six hours (which cannot be extended) with a weekly limit of 36 hours.

A mixed day shift (which is one that begins on a day shift and ends in a night shift or vice versa) is subject to a daily limit of seven hours extendable to eight hours with a weekly limit of 42 hours, provided that the work is not unhealthy or dangerous.

In the event that the mixed day is extended by three and a half hours or more, in the portion of the working shift that corresponds to night time work, the daily and weekly limits will be those applying to night shifts.

Article 143 of the Labour Code provides for exceptional weekly and daily working hours for certain workers (eg, managers, administrators, trusted personnel and workers who perform their duties outside the workplace), whose daily limit is 12 hours subject to a weekly limit of 72 hours.

According to Articles 135 and 136 of the Labour Code, the limits to the daily and weekly hours cannot be waived by the worker.

However, it is possible to negotiate flexible conditions regarding the working day. Part-time work is allowed. The working day can be continuous or fractioned (ie, has an uninterrupted rest period of one hour), cumulative (the working week is com-

pressed into five days) or non-cumulative (the ordinary working week is composed of six days). It is also permissible to negotiate terms relating to remote working.

Overtime is counted from the end of the workday. As for remuneration, the pay rate must be 50% more than the ordinary salary. On holidays or weekly rest days, which are paid at double the ordinary rate, the rate for overtime is triple the normal rate (Articles 139, 140, 149 and 152 of the Labour Code).

The only workers exempted from working overtime are adolescent workers (aged less than 18 years).

It is not possible to work overtime when the daily working day is longer than 12 hours, nor is it possible to work when the work to be carried out is unhealthy or dangerous.

2.4 Compensation

Article 57 of the Constitution enshrines the right of the worker to an annual minimum wage. This minimum wage applies from January 1st to December 31st of each year and is set for the private sector by the Salary Council, an organ attached to the Ministry of Labour and Social Security, which is composed of representatives of workers, employers and government officials. This is the sole participation of a government entity in the setting of salaries.

There is no single minimum wage. The minimum wage is set depending on whether the employee is a specialised, qualified or unskilled worker, according to their educational training (bachelor's degree, high school or technical education) and for some specific occupations (eg, domestic servant). For workers with part-time contracts, the salary is proportionate to the minimum wage.

Workers whose hiring salary is higher than the legal minimum are only entitled to an adjustment to prevent them from falling below that minimum; however, it is a common practice to increase wages by the same percentage provided for in the annual minimum wage review.

Additionally, workers are entitled to an additional payment, known as a Christmas bonus, equivalent to one-twelfth of the salary received in the preceding year, which is paid in December.

Whereas the bonuses, incentives or prizes awarded to workers for their performance or productivity are voluntary, they are considered to have a salary nature.

Benefits in kind (vehicle, housing, educational expenses, etc) are also voluntary and most of them are considered as equivalent to salary with certain exceptions (eg, life and medical insurance policies). Their value is calculated at 50% of the salary value unless a different value is determined or agreed upon (Article 166 of the Labour Code).

2.5 Other Terms of Employment

Vacations

Article 153 of the Labour Code establishes that every worker has a right to paid average wages for annual leave for a minimum of two weeks for every 50 weeks worked. In the event that the worker has not completed 50 weeks' service, he or she will be entitled to at least one day of vacation for each month worked. Because a minimum has already been legally established, the right to paid holidays can be extended by common agreement or a collective agreement between the employer and the employees.

Maternity Leave

Maternity leave is paid for four months (one month before delivery and three months after delivery). During this period, the employer pays 50% of the salary and the remaining part is borne by the Costa Rican Social Security Fund. In the case of multiple births, this period may be extended by one month for each new-born child. In the case of adoption, the period is three months (Article 95 of the Labour Code).

Breastfeeding Licence

Mothers are entitled to a nursing licence with pay for one hour a day; mothers working part-time are entitled to a proportionate rest. The custom is to take this paid leave at the beginning or end of the day. The duration of the licence is maintained as long as a doctor certifies the nursing status (Article 97 of the Labour Code).

Disability Licence

From the beginning of the employment relationship, the employer has an obligation to insure every worker with the Costa Rican Social Security Fund against sickness and maternity leave, as well as disability, old age and death, as well as with the National Insurance Institute with regard to work risks.

During the first three days of disability due to illness or a non-occupational accident, the employer will pay 50% of the salary as a subsidy (Article 79 of the Labour Code) and from the fourth day the Costa Rican Social Security Fund will take over the payment of a subsidy equivalent to 60% of the worker's salary. In case of work risks, the subsidy is paid by the National Insurance Institute from day one.

Medical Appointment Permit

Permission to go to a medical appointment shall be given without pay.

Licence for the Care of Minors and Terminally Ill Patients
Workers who are responsible for terminally ill patients and seriously ill minors may apply for a disability licence from the Costa Rican Social Security Fund for a period determined by the doctor. During this licence, the subsidy will be paid by the above institution (Law No 7756 of February 25, 1998).

Confidentiality
A worker's duty of confidentiality is derived from the principle of good faith (Article 19 of the Labour Code) which need not be the subject of an express agreement, although this is increasingly the case in either the original employment contract or in complementary confidentiality agreements. The worker must refrain from revealing confidential information he or she has acquired from the company in the execution of his or her work to people who are not authorised to receive it. Information that is considered confidential should be detailed. The revelation of technical, commercial or manufacturing secrets is not acceptable and provides grounds for justified dismissal (Articles 71 and 81 of the Labour Code) with no employer liability.

3. Restrictive Covenants

3.1 Non-competition Clauses
The validity of a non-competition clause is not regulated by legal rules. However, the Second Chamber of the Supreme Court of Justice has recognised that, as a requirement of demonstrating the validity and reasonableness of a non-competition clause after the termination of the contract, compensation should be paid.

In a particular case that did not constitute binding jurisprudence, the court held that compensation equal to 50% of the salary that the worker had been receiving prior to ceasing employment was reasonable for the duration of the clause.

Although no claims have been examined as regards sufficiency of compensation, the amount must be reasonable and proportionate to the limitations imposed on the worker.

3.2 Non-solicitation Clauses – Enforceability/ Standards
Non-solicitation clauses are becoming increasingly common in the termination agreements of senior management contracts, with regard to former employees of the company and the company's clients.

Non-solicitation clauses are also included in contracts by companies that provide personnel. In this type of contract companies are prohibited from directly employing such personnel until an agreed time period has elapsed. However, the validity of these clauses has yet to be determined by the courts.

4. Data Privacy Law

4.1 General Overview
Article 5 of the Labour Code establishes that it is necessary to have the informed consent of the worker before his or her personal information can be collected. Employers must inform their workers of:

- the existence of a database for the purpose of data collection;
- the identity of the recipients of that data;
- the treatment of that data; and
- the employee's rights to review, rectify, delete or correct that data.

The employer may only store information that is accurate, truthful and current, both in the recruitment and selection process and during the worker's working life.

5. Foreign Workers

5.1 Limitations on the Use of Foreign Workers
There is no limit to the number of foreigners that a company can hire; the limitations previously contained in Article 13 of the Labour Code were declared unconstitutional.

During the authorisation process for work permits for foreigners, advisory opinions prepared by the Ministry of Labour and Social Security are used to assess whether the hiring of a foreign worker will displace domestic labour (Articles 7.1 and 8 of the General Law of Migration and Foreigners).

Employers can only hire foreigners who hold a work permit and a temporary or permanent residence permit that authorises them to work. In the case of non-compliance with the above, a fine of between two and twelve times the amount of a base salary (between USD1,475 and USD8,850) may be imposed on the employer.

A spouse who is a dependent of a temporary resident worker may also be authorised to work (Article 80 of the General Law on Migration and Foreigners).

It is also possible to request the temporary residence of executives, representatives, managers and technical personnel of companies already established in the country (Article 68 of the General Law of Migration and Foreigners).

5.2 Registration Requirements

The General Directorate of Migration and Foreigners authorises the entry and stay of foreigners in Costa Rica. It is this body which registers and authorises the permanent or temporary residence of people who intend to work in Costa Rica. The application requirements depend on the applicant's immigration category and whether he or she is seeking temporary or permanent residence.

Companies can register with the General Directorate of Migration and Foreigners and, by so doing, receive special treatment that can see reduced deadlines for the processing of residence applications.

6. Collective Relations

6.1 Status/Role of Unions

Freedom of association is a fundamental right enshrined in Article 60 of the Political Constitution of Costa Rica. This rule enshrines the power of employers and workers to organise freely. Closed shop or union shop clauses are unconstitutional.

Costa Rica has ratified conventions 87, 98 and 135, as well as recommendation 143, of the International Labour Organisation, which guarantee the right to organise and to collective bargaining.

The legislation regulates in detail the organisation of trade unions but does not have similar rules for other forms of non-union representation, such as the so-called "permanent committee of workers", which must be elected by a workers' assembly (Decree No 37184-MTSS of 19 June 2012).

As of 2019, according to data from the Statistical Yearbook of the Ministry of Labour and Social Security, the trade union membership rate was 15.2%. However, while the public sector was 88.1%, the private sector only reached 3.0%.

6.2 Employee Representative Bodies

Article 339 of the Labour Code defines unions as a permanent association of workers, employers or persons of independent professions or trades constituted exclusively for the study, improvement and protection of their respective economic and social interests.

Article 342 of the Labour Code recognises the following types of unions:

- trade unions – those formed by individuals of the same profession, trade or specialty;
- company – those constituted by individuals of several professions, trades or specialties who provide their services to the same company;
- industrial – those organised by individuals of various professions, trades or specialties who provide services to two or more companies operating in the same sector; and
- mixed or various trades – those founded by workers engaged in various or unconnected activities.

A worker can be affiliated to more than one union; preference is not given to a single organisation in the same company or workplace or two or more unions of the same class or of different classes. Such unions can coexist.

Unions require a minimum number of 12 workers (Article 343 of the Labour Code). Meeting in a constituent assembly, they must approve the bylaws and appoint the board of directors; foreigners may not be designated as leaders – a legal and constitutional prohibition that has been questioned by the controlling body of the International Labour Organisation. Unions must be registered with the Department of Social Organisations (formerly the Office of Trade Unions) of the Ministry of Labour and Social Security, whose procedure is normally prompt (Article 344 of the Labour Code).

For its part, and without being exclusive to the organisation of trade unions, permanent workers' committees are made up of a maximum of three workers and must be elected in an assembly in which at least 50% of the workers of the company take part (Executive Decree 37184-MTSS of 19 June 2012). In practice, these committees are constituted exclusively in private companies.

6.3 Collective Bargaining Agreements

Collective bargaining mainly takes place through the conclusion of collective bargaining agreements or, in their absence, through direct arrangements. The union is the only legitimate body that can negotiate a collective bargaining agreement, while both the union and the permanent workers' committees can negotiate a direct settlement.

If a union gathers a number of members equal to or greater than one third of the affiliated workers, the employer must accept the negotiation process otherwise a reason to strike will exist. If a complete agreement is not reached within 30 days, the matters for which there is no agreement may be submitted to a conciliatory process and, if the latter fails, to an arbitration procedure with the consent of the parties (Article 644 of the Labour Code).

A direct settlement can be signed at any time during a strike, or conciliation or arbitration procedure, or at any other time (Article 616 of the Labour Code). However, if a direct settle-

ment is already being negotiated, priority to bargain collectively lies with the union that is able to sign a collective bargaining agreement.

Workers can also exercise the right to strike through the union or by a coalition of workers (Article 372 of the Labour Code). The union may request the certification of the legality of the strike at any time from the start to the end of the strike (Article 661 of the Labour Code).

Trade unions may file lawsuits of collective legal interest before the labour courts without the need for workers to expressly grant them power of attorney (Article 446 of the Labour Code). The same does not happen when it comes to socio-economic conflicts, where a specific power must be granted by the affiliates.

7. Termination of Employment

7.1 Grounds for Termination

The private sector is governed by dismissal at will. An employer can fire a worker without just cause or motivation, subject to the payment of workers' compensation (Article 63 of the Political Constitution and Article 85 Subsection (d) of the Labour Code). In a private company, no prior or due process need be followed prior to dismissal, except in the case of workers subject to special privileges where judicial or administrative authorisation must first be obtained (Article 540 of the Labour Code).

The Labour Code also has a list of grounds for disciplinary dismissal that are individual (Article 81) and collective (Article 369), for which no compensation should be paid. Conversely, Article 254 of the Labour Code contemplates dismissal due to the fault of the employer for health reasons derived from work risks and when relocation of the worker is not possible.

There are no regulations pertaining to dismissal for objective reasons nor are there limitations on the execution of collective dismissals.

7.2 Notice Periods/Severance

Except in the case of workers that fall within a special jurisdiction, there is no necessity to follow a prior administrative or judicial authorisation procedure.

Indefinite Contracts

When a worker is dismissed without just cause in contracts for an indefinite period of time, the employer must give advance notice and pay severance compensation to the employee (Articles 28 and 29 of the Labour Code). If the employee resigns, he or she must give the employer advance notice.

Both notice and severance are payable upon completion of the probationary period. If the notice cannot be delivered on time, it can be made subject to compensation in money. During the notice period, the employee is entitled to a licence for one day per week with pay in order to seek out new employment. With the agreement of both parties, these licences may be taken cumulatively. According to Article 28 of the Labour Code, the only formality is that the notice must be communicated in writing or, if the employment contract was agreed verbally, it must be presented before two witnesses.

If during the period of notice the employee commits a serious breach, the employer may sanction that breach by way of immediate dismissal.

The duration of the notice varies according to the seniority of the employment relationship (Article 28 of the Labour Code). If the employment relationship has existed for more than three but less than six months, one week's notice must be given; if the employment relationship has existed for more than six months but less than one year, 15 days' notice must be given; and if it is after one year, one month's notice is required.

The amount of severance pay depends on the seniority of the worker (Article 29 of the Labour Code). If the employment relationship has existed for more than three months but less than six, the employee must be given seven days' severance pay. If the employee has been employed for more than six months but less than one year, 14 days' severance pay. After one year, the following scale is applied:

- year one – 19.5 days per year worked;
- year two – 20 days per year worked or a fraction greater than six months;
- year three – 20.5 days per year worked or a fraction greater than six months;
- year four – 21 days per year worked or a fraction greater than six months;
- year five – 21.24 days per year worked or a fraction greater than six months;
- year six – 21.5 days per year worked or a fraction greater than six months;
- year seven – 22 days per year worked or a fraction greater than six months;
- year eight – 22 days per year worked or a fraction greater than six months;
- year nine – 22 days per year worked or a fraction greater than six months;
- year ten – 21.5 days per year worked or a fraction greater than six months;

- year 11 – 21 days per year worked or a fraction greater than six months;
- year 12 – 20.5 days per year worked or a fraction greater than six months; and
- year 13 and following – 20 days per year worked or a fraction greater than six months.

Fixed-Term Contracts
In a fixed-term contract either party may terminate without cause before the end of the term or upon the conclusion of the work, provided that compensation is paid. The employer is responsible for two indemnities: one for the damages caused and another that is fixed according to the duration of the contract. In the case of the worker, he or she will only have to pay damages.

The first indemnity is calculated according to specific damages and losses. The valuation criteria reflect the duration of the contract, the importance of the function being performed and the difficulty that the worker has in procuring equivalent employment (or for the employer to find a substitute). The parties usually establish a compensatory sum by mutual agreement.

The second indemnity is set in proportion to one day's salary for every seven days of continuous work performed, subject to a minimum of three days' salary. However, if the contract had a term of six months or more – or the execution of the work, due to its nature or relevance, should last that term or longer – the compensation may not be less than 22 days salary.

7.3 Dismissal for (Serious) Cause (Summary Dismissal)

Articles 81 and 367 of the Labour Code define the reasons that are considered serious enough to justify disciplinary dismissal. The courts have determined that the serious cause must "be so serious that it does not allow the continuation of the employment relationship" (Second Chamber of the Supreme Court of Justice, Vote No 113-1991).

According to the Second Chamber of the Supreme Court of Justice, to invoke disciplinary action on the basis of a serious fault the company must be able to establish the damage caused and the attribution or link between the action of the worker and that damage – eg, direct (property damage, etc) or potential (damage to the image of the company, etc). The above must have been aggravating factors in his or her relationship with the company, which takes into account intention, repetition of behaviour and the cost of the damage, etc.

In general, there is no procedure that must be observed prior to dismissal for a serious offence; however, the employer must provide the employee with the following documents:

- a letter of dismissal, which details the facts that support it (which are also the only ones that may be discussed in court); and
- a certificate that states the period of employment and the work performed and, if the employee requests, the cause of termination (Articles 35 and 500 of the Labour Code).

Exceptions to this rule include cases of sexual harassment, whereupon an investigative commission composed of three people of different sex must investigate the complaint within a period of three months. The National Directorate of Labour Inspection must be informed of the beginning of the procedure and its result. Both the accused and the complainant may take their own legal advice (Law No 7476 of 3 February 1995).

Article 414 of the Labour Code establishes a limitation period of one month for the commencement of disciplinary measures, which must be accounted for from the date of the breach or from when the breach became known to the company. In cases where, by decision of the company or otherwise, a formal investigation procedure must be followed, the worker must be informed within one month of the beginning of the same.

7.4 Termination Agreements

Termination agreements are permitted subject to Article 86 Subsection (c) of the Labour Code. A termination of a labour contract by mutual agreement must include the amount agreed and a breakdown of the rights included therein, which may include workers' compensation and other rights such as holidays and a proportional Christmas bonus.

These agreements can be made in three ways: privately before witnesses in the same company, before the Ministry of Labour and Social Security or in private centres for alternative dispute resolution authorised by the same ministry.

When made privately before witnesses in the same company, the agreement may be subject to judicial review in its entirety. If any of the other options are used, the agreement will only be revised with regard to inalienable rights, such as the payment of salaries, vacations and bonuses.

An employee would only require the presence of a lawyer or a union representative in an alternate dispute resolution centre if he or she is affiliated with a union, which is rare in the private sector.

Labour terminations by mutual agreement have become increasingly common, thereby reducing litigation.

Waivers of legal, contractual and conventional rights in employment contracts are null (Article 11 of the Labour Code), includ-

ing waivers regarding the filing of judicial or administrative claims during and after the validity of the employment contract (Second Chamber of the Supreme Court of Justice, Vote No 363-2006).

7.5 Protected Employees

Some categories of employees are protected from dismissal unless the employer can prove the existence of a serious offence, which must be demonstrated before a third party (eg, a judicial or administrative authority as the case may be) and only if a resolution authorising the dismissal is obtained.

The categories of workers who are subject to this due process include:

- women who are pregnant or breastfeeding (Article 94 of the Labour Code);
- workers who form a union, union candidates, representatives freely chosen by the workers (Article 367 of the Labour Code) and those protected by any other provision of union jurisdiction (Article 540 of the Labour Code);
- persons who have complained of sexual harassment (Law against Sexual Harassment in Employment and Teaching); and
- workers participating in a collective conflict of an economic and social nature (eg, a conciliation, arbitration, strike or other process in the case of a failed collective agreement) (Articles 394 and 620 of the Labour Code).

The first three types of cases must be pursued before the National Directorate of Labour Inspection. The last type must be pursued before the judicial or administrative authority that is in charge of handling the conflict or that has the means to resolve it. In the case of the National Directorate of Labour Inspection, the Constitutional Chamber of the Supreme Court of Justice has set a maximum processing period of three months, but this is regularly exceeded.

The expression "representatives freely elected by workers" refers to members of the Permanent Committee of Workers and although Article 367 of the Labour Code establishes that the number of representatives depends on the number of unionised workers (one for the first twenty unionised workers in the respective company and one for every twenty-five additional unionised workers, up to a maximum of four) the courts have provided broader protection. Union leaders and representatives are appointed without a numerical limit.

In the case of "persons reporting sexual harassment", the maximum term of protection after the conclusion of the investigation process has yet to be defined.

A special case is that of adolescent workers aged between 15 and 18 (Article 91 of the Code of Children and Adolescents), whose dismissal without employer responsibility must be authorised by the National Directorate of Labour Inspection. In the case of dismissal with employer responsibility (ie, severance pay), however, the Ministry of Labour will review the indemnities to be paid.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

Most of the judicial proceedings before the labour courts come from workers who challenge the way in which their employment was terminated. The most common reasons for challenge include that:

- the grounds alleged in the disciplinary dismissal, while true, were not serious enough to justify dismissal or that the behaviour attributed to him or her was not true;
- the dismissal, with or without cause, was void because it constituted a discriminatory act;
- the dismissal, with or without cause, was void because it did not comply with the due process previously authorised by an administrative or judicial authority; or
- the resignation filed by the worker was with employer responsibility (ie, with severance pay) because the employer seriously breached the employment contract.

Where it is alleged that the dismissal is void, either because it is discriminatory or due to failure to comply with due process, the employee may seek reinstatement and the payment of salaries and bonuses no longer received from the date of termination up to the point of reinstatement, the moral damage caused, interest, indexation and costs.

Where the dismissal is contested or has been waived with employer responsibility, the worker's claim consists of severance pay according to the type of contract, compensation for the moral damage caused, interest, indexation and costs.

8.2 Anti-discrimination Issues

Article 33 enshrines the principles of equality and non-discrimination. Specifically, Article 57 regulates equal pay and Article 68 prohibits discrimination at work. Costa Rica has also ratified Agreements 100 and 111 of the International Labour Organisation, which are fully applicable.

The Labour Code reform of 2016 further reinforced this protection and, consequently, discrimination is prohibited on grounds of "age, ethnicity, sex, religion, race, sexual orientation, marital status, political opinion, national ancestry, social origin, affili-

ation, disability, union affiliation and economic situation" and also for "any other similar form of discrimination", which is a generic criterion that may involve the jurisprudence of the courts (Article 404 of the Labour Code). Furthermore, the Constitutional Chamber of the Supreme Court of Justice has established a prohibition on differentiation at work without an objective and reasonable basis, including dismissal of workers for health reasons (Vote No 2005-13205).

Anyone who claims to be discriminated against or made subject to discriminatory dismissal must demonstrate clear and precise evidence that their right to equality was violated (Article 409 of the Labour Code). Once the complainant demonstrates the basic requirements, the employer carries the burden of proving that its decision was objective, reasonable and unrelated to discriminatory treatment.

In the event that a worker has been subject to discriminatory dismissal, he or she can go to court within the year following the dismissal through a summary process alleging discriminatory dismissal. He or she may seek the nullity of the same and request, as a precautionary measure, his or her reinstatement with the company (Articles 540 and 542 of the Labour Code). Such precautionary measures are regularly granted without further analysis. The company's response must be ready in five days, although in practice (despite this being a summary process) this could take approximately 18 months.

If the claim is rejected, the wages already paid as a result of the precautionary measure cannot be recovered; if the claim is accepted, the employee can renounce his or her effective reinstatement and claim only damages, which may include salary not received prior to the (proposed) reinstatement date and compensation for moral damage.

9. Dispute Resolution

9.1 Judicial Procedures

There is a special labour jurisdiction composed of labour courts and tribunals which are responsible for resolving individual and collective labour disputes and issues related to social security. In the social order of the jurisdiction, the competent bodies to hear labour matters are: the Second Chamber of the Supreme Court of Justice, the Courts of Appeal, the Conciliation and Arbitration Courts and the Labour Courts (Article 429 of the Labour Code).

In the main cities of the country, Labour Courts are solely dedicated to addressing these issues; in the rest of the country, they are served by mixed courts. The Appeals Courts are also mixed, except in the capital. The Second Chamber deals with work issues as well as family and other matters.

Lawsuits are resolved in two ways. If the amount claimed is less than USD8,900, the final judgment will be delivered by the Court of Appeals. If it is a greater amount, the Second Chamber of the Supreme Court of Justice will decide the case.

Trade Unions can file class action lawsuits (Articles 446, 600, 602, 618 and 635 of the Labour Code).

It is not necessary to have a lawyer to file a lawsuit. As of July 2017, workers can request that the state provide them with a lawyer for free (Article 454 of the Labour Code).

The statute of limitations for a worker to claim his or her rights is one year, counted from the date of termination of the relevant contract (Article 413 of the Labour Code).

9.2 Alternative Dispute Resolution

An employment contract may provide for arbitration both during the term of the contract or at the end of the same, but this will not preclude the worker from seeking the protection of the courts (Article 41 of the Political Constitution).

Article 43 of the Political Constitution of Costa Rica recognises that everyone has the right to resolve their economic differences through arbitrators, even if litigation is pending. This arbitration can be carried out in the administrative headquarters of the Ministry of Labour or in the judicial headquarters of the Labour Courts or in the centres for alternative dispute resolution (Law on Alternative Dispute Resolution and Promotion of Social Peace, Law No 7727 of 9 December 1997 and Article 456 of the Labour Code).

9.3 Awarding Attorney's Fees

A judicial decision will normally include a ruling on legal fees and other procedural expenses. Legal fees, if granted, can be set in two ways (Article 562 of the Labour Code):

- by a percentage of between 15% and 25% of the amount granted; or
- by a fixed sum in case the value of the claim cannot be ascertained.

Procedural expenses (for copies, certifications, notes, testimonies and documents that are requested from Public Registries, expert opinions, etc) must be demonstrated with proof of payment.

Where the worker has contracted particular legal advice at his or her own expense, the lawyer usually claims the costs him or herself.

If the worker has applied for free representation paid by the state, Article 454 of the Labour Code provides that the lawyer's expenses will be distributed as follows: 50% for strengthening of the specialised section of the Department of Public Defenders of the Judiciary and 50% for the Support Fund for Alternative Dispute Resolution.

Bufete Godínez y Asociados is a leading boutique firm specialised solely in the diverse obligations that derive from labour and employment law, including aspects related to social security and health and safety law. The firm was founded in 2000 and since then has been serving the needs of national clients (in both the public and private sectors) and multinational companies. A highly specialised team is able to manage highly complex projects and offer the best legal and organisational solutions. The firm's services are divided into five main areas: litigation, consulting (both in the fields of social audit and human management), collective bargaining, social research and corporate social responsibility. Bufete Godínez y Asociados currently advises clients, including some of the key market players, in the following sectors: food, retail, distribution and logistics, banking and finance, telecommunications, insurance, real estate, technology, hospitality, tourism and leisure, education and research, advertising and vehicle dealership.

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