

## LATAM: RECENT LEGAL UPDATES 2024

In this Update, we look at recent key employment law changes from across the LATAM region.

We cover:

- the major employment reforms which have taken place in **Argentina** and **Colombia**;
- recent judicial decisions in **Brazil**;
- important legal updates on workplace harassment in **Chile**; and
- the new obligations for employers to be aware of in **Mexico**.

### Argentina

On the June 27<sup>th</sup>, 2024 a new law included comprehensive changes in the legal regime for public employment, the promotion of registered employment, and Labour Modernisation reform.

The main aims of the changes are (1) reducing the current inefficiencies of the labour market, (2) promoting job creation and (3) encouraging the registration of employees in the informal market.

#### Promoting job creation:

- The trial periods for indefinite-term employment contracts has been extended to 6 months. This can be extended to 8 months for employers with 100 or fewer employees, and up to one year for employers with 5 or fewer employees.
- Seasonal agricultural workers are now subject to a trial period and can be hired through agencies as temporary workers, with the obligation to hire from the union pool removed.
- The registration process for new employees has been simplified. Registration by a third party, even if it is not the primary employer, is now considered sufficient.

#### Encouraging the registration of informal employees:

- Employers can now register informal employment relationships that started before the new law came into effect, without paying penalties or fines, or being included in the register of sanctioned employers, and, subject to limitations, without paying a substantial part of the social security debt for the employee.

#### Severance and fines:

- Certain regulations have been removed to reduce labour costs, specifically costs arising at termination. All of the extra severance costs for deficient registration of the employment contract were eliminated.
- Through a collective agreement, employers and legally recognised unions can agree to substitute the legally required severance payment with a special fund or system. This can include payment for separation by MTA.
- Reinstatement as a remedy has now been entirely removed. Increased severance is now the sole remedy for discriminatory dismissal.

#### Other measures:

- There is no longer a presumption of an employment relationship when hiring professional services, so long as the contracts and payments comply with the applicable regulations.
- The process for withholding payments from third parties (contractors and sub-contractors) who have breached their obligations has been simplified.

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- Pregnant women are now allowed to work until 10 days prior to giving birth, thus extending the period of leave after the date of birth.

### Measures not yet implemented but expected:

- limitations on the right to strike;
- restrictions on union dues;
- modifications affecting the validity of agreements waiving employment rights;
- the principle of the most favourable law to the employee; and
- a cap on the interest rates applicable to employment law claims.

## Brazil

Recent judicial decisions in Brazil have changed several areas of employment law.

### Alternating Work Shifts:

The standard working shift is 8 hours per day, which was applied universally. 'Alternating work shifts' – where an employee alternates between working night and day – are limited to 6 hours per day. A recent Supreme Court decision ruled that employers and unions can now negotiate alternating work shifts of 8 or more hours.

### Changes to Commission Payments:

Commissions for sales made in instalments must be calculated on the total value of the sale, including interest and any financial charges, unless there is an agreement to the contrary.

### Union Contributions:

CBA's can now impose that a mandatory contribution is to be deducted from the employees salary, provided that it also guarantees the employees right to refuse to pay their union contribution.

## Chile

The 'Karin Law' – named after a high-profile work place harassment case – came into effect in August. The Law aims to ensure a workplace that is entirely free from all types of violence and harassment. The Law has:

- expanded the obligations of employers relating to the prevention, investigation and punishment of workplace harassment, sexual harassment, and violence at work.
- broadened the concept of workplace harassment.
- created and regulated the new category of workplace violence, defined as conduct carried out by third parties unrelated to the employment relationship that affects workers in the performance of their duties.
- imposed new obligations on the prevention of harassing behaviours, meaning employers now need to have prevention protocols in place. This protocol must be included in employers' Internal Regulations of Order, Hygiene, and Safety (RIOHS).
- introduced the need for employers to have an investigation procedure for cases of sexual and workplace harassment, and workplace violence. This procedure must also be contained in the RIOHS.

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### Colombia

Colombia has seen major employment law reform in 2024. The main changes are:

- The Reduction of Working Time has come into effect providing for a working week 46 hours.
- Changes to Pension rules. There have been significant changes, including a new 'Comprehensive Social Protection System for Old Age' which guarantees a basic 'solidarity income' for elderly people in conditions of extreme poverty and requires all workers to contribute to the public pension system. The majority of provisions will not come into force until July 2025.
- Flexible working hours must now be provided for employees who have care responsibilities.
- Employers are now required to use indefinite-term employment contracts as the general rule when hiring a new employee.
- Improvements have been made to provisions on paid leaves of absence. Paternity leave has been extended to 6 weeks. Paid leave for medical appointments, school obligations as a parent or guardian, and legal or administrative duties (such as jury service) have been introduced.
- Indemnity for dismissal without just cause has been established, the amount depends on the type of the employment contract.
- The definition of workplace harassment has been widened. Employers must create internal prevention policies and a reporting mechanism for sexual harassment.
- Maternity provisions have been strengthened, with maternity leave increased to 14 weeks, and further protection from dismissal granted.

### Mexico

- In 2021 outsourcing was prohibited in Mexico – except for the contracting of specialized services that are not part of the company's corporate purpose or its main economic activity. The Registry of Providers of Specialized Services or Specialized Works (REPSE) system was established for the registration of providers of specialized services to other companies. The registration is valid for three years, as such the process to renew REPSE registrations has begun for the first time. Providers of specialized services must renew their registration according to the schedules set forth by the Labour Ministry (at least three months prior to their expiration) in order to continue providing services.
- The Mexican Federal Constitution mandates that every employee is entitled to participate in the company's profits each year, provided that they comply with certain requirements. This is currently 10% of each employer's business pre-tax earnings. The Supreme Court of Justice ruled that it is constitutional for profit sharing plans to set a maximum limit of three months of the employee's salary or the average of the profit sharing received in recent years, whichever is more favourable to the employee. This will impact the calculation process to determine the amounts to be paid as profit sharing to employees, which must be made May 31<sup>st</sup> each year.
- Fines have been established for employers who do not comply with their obligation to make mandatory contributions to the National Workers Welfare Fund.
- Updates to Human Trafficking laws have been published, which have effect on employment law. The law states that forcing employees to work hours that exceed the limits established by the Federal Labour Law is considered a violation that can constitute the crime of labour exploitation. Stricter penalties for employers who force their employees to work beyond the legally allowed hours have been introduced. These penalties include prison sentences ranging from 3 to 10 years and fines.

**This is a high level general update only. Legal advice should be obtained on specific circumstances.**