

Insight

IN-DEPTH DISCUSSION

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Costa Rica's Labor Law Reform: Key Aspects Every Business with Operations in Costa Rica Should Know

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On January 25, 2016, the Labor Procedure Reform ("*Reforma Procesal Laboral*" or "RPL") was signed into law and published in the Costa Rica official gazette known as "La Gaceta." RPL becomes effective on July 25, 2017, and overhauls nearly half of the country's labor and employment laws (collectively "labor laws"). This is the first time the Labor Code has received substantial amendments since it was enacted in 1943.

This article presents an abridged outline of the most important changes under the reform and their potential impact on three fronts: (1) individual labor law governing the employer-employee relationship; (2) collective bargaining; and (3) labor procedures.

Individual Labor Law

Prior to the reform, the Labor Code prohibited discrimination in employment on the grounds of age, gender, race and religion. The RPL added unionization status and economic conditions as protected categories.

In addition, the RPL prohibits employees and recruiters from engaging in discriminatory practices, and makes discrimination by employees grounds for just cause dismissal.

The RPL further establishes a fast-track process enabling labor courts to summarily determine various claims, including those alleging discrimination and unjust dismissal, filed by employees who enjoy "special protection" from termination (such as pregnant employees, alleged victims of sexual harassment, and union workers). Moreover, working mothers alleging a denial of their rights relative to maternity, as well as workers who are minors between the ages of 15-17, can receive legal assistance free of charge to prosecute their claims.

Another important amendment pertains to the dismissal letter that employers must furnish to all employees prior to their dismissal. Under the reform, employers are now required to personally deliver to the employee a dismissal letter, outlining in clear detail the facts forming the basis for the dismissal. For example, if the employee violated a company policy, the dismissal letter should identify not only the particular company policy that the employee violated, but also describe the employee's actions that were deemed a violation of such policy.

If the employee refuses to accept the letter, the employer must deliver the letter to the nearest local office of the Ministry of Labor via certified mail within 10 calendar days of the dismissal.

The dismissal letters will be admissible as evidence in court in any litigation arising from the employment relationship and may limit an employer's arguments when defending against a claim of unjust dismissal. Therefore, employers should seek advice from counsel regarding the appropriate grounds for dismissal and the scope of the dismissal letter, especially in controversial cases.

The RPL also establishes a six-month statute of limitations for claims alleging an unjustified change in the terms and conditions of employment. This amendment is favorable for employers because, prior to the reform, the statute of limitations was unlimited when the claim was presented during the employment relationship, and one year when the claim was filed after the termination of employment.

Collective Bargaining Law

Another significant amendment is that employees now can initiate a strike as long as 35% of the employees vote in its favor and the vote is ratified by 50% of the workforce plus one employee. Prior to the reform, the threshold was a lot higher, which made it difficult for employees to initiate a legal strike.

Further, the reform restricts employers' ability to sanction employees who join illegal strikes. Currently, the law requires unions to follow various steps to initiate a strike. Strikes that bypass the required process are deemed illegal and employers can impose disciplinary or economic sanctions against employees who go on illegal strikes. The reform, however, prohibits employers from imposing such sanctions if the employee returns to work within 24 hours of a strike being declared illegal.

The reform also creates an expedited process by which employees can initiate a legal strike. Prior to the reform, if seeking improvement in the terms or conditions of their employment, employees were required to submit such proposals through the collective bargaining process. The corresponding union could call for a strike only if bargaining was unsuccessful. With the RPL, employees will be able to petition a judge to authorize a strike based on the employer's noncompliance with the Labor Code (for example, with regard to the payment of minimum wage and overtime, work shifts, and rest days), and even based on the interpretation of regulations governing the workplace. This possibility was not present prior to the RPL.

In addition, the RPL prohibits employers from entering into so-called "direct arrangements" ("*arreglos directos*") with "permanent committees" ("*comités permanentes*"), in cases where a union or a workers' committee had already filed a collective dispute in court. Prior to the RPL, employers could avoid negotiating with a union by entering into a direct arrangement with a permissive permanent committee. The RPL seeks to eliminate this practice.

The RPL also expressly authorizes procedures for collective bargaining in the public sector. Although the Constitutional Chamber of the Supreme Court of Justice had, by way of a ruling, authorized these procedures, the RPL consolidated the guidelines from case law, codifying them to enforce their practice.

Labor Law Procedure

Prior to the reform, an employment dispute could be litigated only through written filings and motions and the litigation could linger in the court system anywhere from five to 10 years. With the reform, the proceedings will be held in oral rather than written form, with two hearings.

In the preliminary hearing, the parties will be required to set forth the legal and factual scope of the dispute and submit all evidentiary proof supporting their respective claims. Subsequently, the parties will be required to present their legal arguments in an oral evidentiary hearing, during which the parties will conduct cross examination of witnesses and the court will decide other relevant procedural matters. Once the evidentiary hearing concludes, the judge must issue a ruling immediately. The only exception is that for complex cases, the judge may postpone the ruling for a maximum of five business days.

Likewise, as noted above, the courts can now make summary determinations on claims brought by working mothers and minors alleging discrimination or abuse. Further, under the RPL, parties to litigation will be able to pursue their claims and defenses through private conciliation and/or arbitration forums, as long as employees' minimum employment rights are protected.

Among other significant changes, the RPL also creates specific grounds that can suspend the statute of limitations under which an employee may bring employment claims against an employer. For example, the statute of limitations will be suspended during the time in which an employee seeks to resolve the dispute before the Ministry of Labor or in a judicial or extrajudicial proceeding.

Recommendations for Employers

This recent reform represents a milestone towards modernizing Costa Rica's Labor Code, which had failed to keep up to date with the cultural and technological advances that have drastically changed the modern workplace. However, the changes brought under the reform will mean employers will need to adjust their practices for handling discrimination complaints and properly documenting dismissals. Also, the business community should expect the proliferation of unionization efforts, given the lifting of various restrictions on collective bargaining.

In light of the broad implications of this reform for employers with operations in Costa Rica, employers should consider consulting with employment counsel about their current practices and policies.