



Labour & Employment

in 42 jurisdictions worldwide

Contributing editors: Matthew Howse, Walter Ahrens,
François Vergne and Mark Zelek

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Contributing editors

Matthew Howse, Walter Ahrens,
François Vergne and Mark Zelek
Morgan, Lewis & Bockius LLP

Business development managers

Alan Lee
George Ingledew
Dan White

Marketing managers

Rachel Nurse
Zosia Demkowicz

Marketing assistants

Megan Friedman
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Joe Rush

Administrative assistants

Parween Bains
Sophie Hickey

Subscriptions manager

Rachel Nurse
Subscriptions@
GettingTheDealThrough.com

Head of editorial production

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Production coordinator

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Jonathan Cowie

Production editor

Jo Morley

Chief subeditor

Jonathan Allen

Senior subeditor

Caroline Rawson

Editor-in-chief

Callum Campbell

Publisher

Richard Davey

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Colombia

Carolina Camacho and Camilo Bernal

Posse Herrera Ruiz

Legislation and agencies

1 What are the main statutes and regulations relating to employment?

Labour relationships in Colombia have been governed by the Colombian Labour Code since 1961, which has been amended by a series of subsequent laws, of which the most important are Decree-Law 2351 of 1965, and Laws 50 of 1990 and 789 of 2002.

Along with the aforementioned regulations, employer-employee relations are also governed by Law 100 of 1993, which regulates the Social Security System, amended by Laws 797 of 2003 and 1122 of 2007.

Furthermore, after the enactment of the Political Constitution in 1991, labour rights became recognised as constitutional rights, granting the highest form of protection. The Constitution guarantees fundamental rights for employees.

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

There is a prohibition on any form of discrimination based on gender, pregnancy, family origin, age, language, ethnicity, religion, disability or sexual orientation.

Moreover, Law 1010 of 2006 regulates all labour harassment matters, in both public and private employment relationships. It defines, prevents, amends and punishes different forms of assault, maltreatment, harassment, abusive treatment and, in general, any insults to human dignity.

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The main governmental entities are the Ministry of Labour and the Ministry of Health and Social Protection. Furthermore, the labour courts may require employers to comply with all their obligations towards their employees.

4 Is there any legislation mandating or allowing the establishment of a works council or workers' committee in the workplace?

There is no equivalent to workers' committees or works councils in Colombia, but the Labour Code and the Constitution allow and protect the right to unionise. Colombian laws establish the possibility for employees to create unions that can negotiate a collective bargaining agreement with employers.

Additionally, labour laws determine that every employer must establish an industrial health and safety committee and a labour cohabitation committee, which both have to be formed with an equal number of employer and employee representatives.

5 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The employer, directly or through a third party, cannot conduct a background check on applicants without a previous and express authorisation of the applicant.

6 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

During the hiring process, the employer must order a medical exam to determine the employee's fitness for the job position. However, the courts have ruled that employers cannot request AIDS or pregnancy tests as a condition for hiring. Additionally, the employer is required to order medical exams during the labour relationship and at the termination of the employment contract.

The employer can refuse to hire an applicant if he or she does not agree to take the medical examination.

7 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

Drug and alcohol testing of applicants is allowed only when the applicants expressly authorises it. If an applicant does not submit to a drug and alcohol test, however, the employer can refuse to hire him or her because the requirements of the application process were not complied with.

Hiring of employees

8 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The Constitution and the Labour Code, among other regulations, protect employees from discrimination on grounds of religion, race, ethnic origin, gender, disability, colour, sex, age, citizenship, etc.

Differentiations are possible only when they are objectively and legitimately justified and such justifications are based on appropriate and necessary grounds. The general prohibitions cover all types of relationships and all aspects of the employment relationship, including working conditions and remuneration.

There are no legal requirements for employers to give preference in hiring to particular people or groups of people.

9 Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

In Colombia, employment agreements are not required to be in written form. In fact, the existence of an employment contract is presumed whenever the elements of a labour relationship are met.

Nevertheless, fixed-term employment agreements and employment agreements for the duration of the task must be in written form, otherwise they could be construed as being of indefinite term.

Furthermore, certain provisions in the employment agreement, which regulates aspects such as the probationary period, the integral salary, causes for just-cause termination in addition to legal causes, employee's obligations and non-salary extra legal benefits, should be agreed in writing.

10 To what extent are fixed-term employment contracts permissible?

Fixed-term agreements are permissible. The maximum term of duration of fixed-term employment contracts is three years.

There are two types of fixed-term employment contract: contracts whose terms are less than one year and contracts with terms between one and three years.

Fixed-term agreements whose terms are less than one year may only be extended for three equal or lesser periods. If further extensions are required, the duration of the term may not be less than one year for any extensions thereafter.

Fixed-term agreements with terms of between one and three years may be extended indefinitely.

11 What is the maximum probationary period permitted by law?

The duration of the probationary period cannot exceed two months. In fixed-term employment contracts, the probationary period cannot exceed one-fifth of the applicable term.

12 What are the primary factors that distinguish an independent contractor from an employee?

The primary factors that distinguish an independent contractor from an employee are:

- the execution of a liberal profession or activity;
- the contractor's technical and administrative autonomy to perform its job, at its own risk; and
- lack of dependence or subordination of the contractor.

Foreign workers

13 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerical limitations on short-term visas.

It is important to point out in the first place that no short-term visas are required for what Colombian immigration regulations call 'non-restricted nationalities'. This means that a foreigner from a non-restricted nationality does not require a visa to enter to Colombia as a tourist or as a temporary visitor to assist to work meetings, trainings, conferences, etc. Such foreigners can only stay in Colombia for a total of 180 days in a calendar year.

Foreigners from restricted nationalities will require a tourist or temporary visitor visa to enter Colombia. These visas are issued for 180 days.

Work visas are available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction.

14 Are spouses of authorised workers entitled to work?

Spouses of authorised workers obtain a spousal visa that does not authorise them to work in Colombia. If they want to work either as an employee or as an independent contractor, they must process a separate work visa that authorises them to work in Colombia.

15 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

According to article 83 of Decree 4000 of 2004, companies hiring foreigners must require the corresponding work visa, the foreigner's identification and must inform the immigration authorities about the foreigner's entailment to the company. Not complying with these obligations may lead to the imposition of fines to the hiring company up to 15 minimum legal monthly wages and for the expatriate between half and seven minimum legal monthly wages, and deportation. The minimum legal monthly wage for 2013 is 589,500 pesos.

16 Is a labour market test required as a precursor to a short or long-term visa?

No labour market test is required as a precursor to a visa.

17 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Working hours are limited to 48 hours per week, and eight hours per day, distributed across a maximum of six days per week. However, with the proper authorisation, granted by the Ministry of Labour, an employee is entitled to work up to two hours of overtime per day and up to 12 hours of overtime per week.

Employees can opt out of the aforementioned restrictions without the previous authorisation by the Ministry of Labour, when the progress of the company unit has been affected by force majeure, act of god, the threat of an accident or if emergency works are required.

18 What categories of workers are entitled to overtime pay and how is it calculated?

Ordinary employees and employees earning a regular salary are entitled to overtime pay. Employees in positions of management and confidence and employees earning an integral (all-inclusive) salary are not entitled to overtime payments.

Work performed between 6am and 10pm is considered daytime work. Work performed between 10pm and 6pm is considered night-time work.

The following chart describes the applicable surcharges for night-time work and overtime.

Night work	35% surcharge over daytime hour
Day overtime	25% surcharge over daytime hour
Night overtime	75% surcharge over daytime hour
Day overtime on Sunday or holidays	100% surcharge over daytime hour
Night overtime on Sundays or holidays	150% surcharge over daytime hour

19 Is there any legislation establishing the right to annual vacation and holidays?

Yes. The Colombian Labour Code establishes that all employees are entitled to annual holidays for a total of 15 working days per year of service and proportionally for any portion thereof. Employees must take at least six continuous business days of holiday per year. Employees may carry over holidays to the following year and, in some special cases, accumulate and carry them over for up to four years.

In addition, all workers are entitled to rest on state holidays. State holiday days in Colombia are 1 and 6 January, 19 March, 1 May, 29 June, 20 July, 7 and 15 August, 12 October, 1 and 11 November and 8 and 25 December. Additionally, there are five religious holidays on dates specified by the Catholic Church.

- 20** Is there any legislation establishing the right to sick leave or sick pay? If yes, what is the annual entitlement and how does it accrue?

There is no annual entitlement to sick pay or sick leave; employees in Colombia are entitled to the number of days of sick leave ordered by the doctor and for a period not exceeding 180 days, which can be extended once for an additional 360 days.

The Colombian Social Security System reimburses to the employer the sick pay except for the first three days of sick leave.

An employee on sick leave suffering from a general disease or accident is entitled to receive sick pay equivalent to 66.67 per cent of his or her salary during the first 90 days of leave. After the first 90 days of leave the sick pay is equivalent to 50 per cent of the employee's salary.

If the employee's sick leave originated in a work-related disease or accident the employee is entitled to receive sick pay equivalent to his or her full salary.

- 21** In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Maternity leave

Every pregnant employee is entitled to 14 weeks of paid leave, which can begin two weeks prior to the anticipated date of birth. Of the 14 weeks of paid leave, the week prior to the anticipated date of birth is mandatory. In the case of multiple pregnancies, pregnant employees are entitled to 16 weeks of paid leave.

Maternity pay is equivalent to the employee's salary during the leave. The pay during the leave is paid by the employer to the employee, but the Social Security System will reimburse such amount to the employer provided that the employee has been enrolled during the time of the pregnancy. Employment cannot be terminated on the grounds of pregnancy or breastfeeding. A pregnant woman may be dismissed for just cause if it has been approved by a labour inspector.

Paternity leave

The husband or partner of the pregnant employee is entitled to eight working days of paid paternity leave, provided he has contributed to the Social Security System, which will reimburse the paternity leave pay to the employer.

Bereavement leave

Employees are entitled to five working days of paid bereavement leave on the death of a spouse, partner, relative to the second degree of kinship, first degree of affinity or first degree of civil relationship (grandparent, parent, child, sibling, spouse, in-laws, partner), regardless of the type of employment.

Regarding kinship through adoption, relatives to the first degree are included, that is the adoptive parent to the adoptive child and vice versa. Therefore, on the death of an adopting parent or an adopted child, only parents and children are entitled to bereavement leave, but not the other relatives.

The employer company assumes the pay during the bereavement leave.

Licences

There are two types of licence, remunerated or otherwise. In the second case, the employee does not render services and the employer in consequence has no obligation to recognise any compensation.

- 22** What employee benefits are prescribed by law?

Every employer has the obligation to grant to its employees who earn a regular salary, regardless of the duration of the contract, the following fringe benefits.

Severance

Employers must make an annual direct deposit to a severance fund on behalf of every employee, equivalent to one month's salary for every year of service and proportionally for any fraction thereof.

This deposit must be made before 15 February of each year. Upon termination of the employment contract, the employer must pay the employee the accrued severance until the date of termination.

The employer may request the payment of the severance fund in advance if its intention is to use it for housing or education or when the salary changes from an ordinary to an integral salary.

Failure to make the deposits on time generates a penalty of one day's salary for each day of delay during the term of employment until payment is made.

Interest on severance

Equivalent to 12 per cent per annum on the balance of each year's severance owed to the employee as of 31 December of the preceding year, or a proportion if the employee worked less than 12 months during the year, which must be paid no later than 31 January of each year.

Premium for services

Employers must make a payment to their employees equivalent to 15 days of salary for each half-year of service and proportionally for any fraction thereof. The premium for services must be paid in June and in December of each year.

Transportation aid

The employer must pay to employees a monthly supplement for transportation expenses (for 2013, it is 70,500 pesos) whenever the employee is paid a salary equal to or less than twice the minimum legal monthly wage.

Dress and footwear

The employer has to provide one pair of shoes and one set of work wear three times a year to every employee, appropriate to the task to be performed thereof. Employees are entitled to this benefit when they earn up to twice the minimum legal monthly wage and have been employed for at least three months.

- 23** Are there any special rules relating to part-time or fixed-term employees?

There are no special rules regarding part-time work; these employees are entitled to the same labour rights applicable to full-time employees.

Post-employment restrictive covenants

- 24** To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Post-employment non-compete clauses are not valid, and therefore cannot be enforced before a Colombian court.

Parties may agree on such post-employment restrictive covenants as non-solicitation of customers, employees or suppliers, but it is very difficult to prove non-compliance with such clauses and they are therefore difficult to enforce.

- 25** Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Some companies offer payments to former employees while they are subject to post-employment restrictive covenants to create an incentive for former employees to voluntarily comply with the restrictive covenants.

Liability for acts of employees

26 In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer may only be held liable for the acts or conduct of its employees when such acts or conduct are performed in the exercise of their duties or while representing the employer.

Taxation of employees

27 What employment-related taxes are prescribed by law?

As per the current regulations, employers are required to withhold income tax from payments made to employees in accordance with a progressive set of rates, which varies depending on the employee's income level. Withholding taxes apply on labour income such as salary, benefits, overtime, holiday pay.

Employee-created IP

28 Is there any legislation addressing the parties' rights with respect to employee inventions?

According to Article 539 of the Code of Commerce, unless otherwise agreed, all employee inventions produced during the term of a research employment agreement belong to the employer. The same rule applies when an employee has not been hired for research purposes but has used data or means that are known or used to carry out his or her tasks.

Additionally, there is a legal presumption stating that, unless indicated otherwise, industrial property rights over such employee inventions are assigned to the employer, on condition that the employment contract is written (article 28 of Law 1450 of 2011).

Article 23 of Decision 486 of the Andean Community states that in the case of inventions made in the course of an employment relationship, the employer may transfer the economic benefits deriving from the innovations to the employee inventor in order to promote research activity.

Data protection

29 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

Law 1581 of 2012 (Habeas Data Law) regulates the protection of personal data, including employee privacy and personnel data. The main aspects with respect to employee privacy and personnel data protection are as follows.

- Applies to any personal data disclosed in any database that can be accessed and treated by any public or private employer.
- The employer responsible for handling personal data must obtain prior authorisation from the employee for use of such personal data, inform the employee about the treatment, destination and purpose for collecting such personal data, explain to the employee his or her rights, and provide the employee with the contact information so he or she can track the use of his or her personal data. The employer responsible for handling personal data must also keep proof of the prior authorisation obtained from the employee of the personal data, and it is solely responsible for assessing the admissibility of such personal data.
- The employer responsible for the data has the obligation to:
 - guarantee the adequate exercise of the habeas data rights of its employees at all times;
 - request and maintain a copy of the corresponding authorisation obtained from the employees;

- inform its employees about the purpose of collecting information and their rights;
- maintain the information under the necessary security measures in order to avoid tampering, loss or unauthorised and unlawful use or access of the personal data;
- ensure that the information to be provided to the entity in charge of the treatment is truthful, complete, accurate, updated, verifiable and understandable;
- provide information that has prior authorisation;
- update and rectify the information, as required;
- request that the entity in charge of the treatment comply with security and privacy provisions related to personal information provided by the employees at all times;
- report to the entity in charge of the treatment when information has been disputed by the employee;
- allow access to the information in the database only to authorised personnel as instructed by the party responsible for the treatment; and
- meet other obligations required by local regulations.

Business transfers

30 Is there any legislation to protect employees in the event of a business transfer?

There is legislation to protect employees in the event of a business transfer. Whenever there is a change of employer, the enterprise continues, and the employee remains under the same employment contract, an employer substitution can take place.

The effect of the employer's substitution is the continuity of the existing employment contracts, considering the fact that they are not terminated, discontinued or modified during the business transfer. Both the former employer and the new employer may enter into private arrangements to regulate the economic effects deriving from the employer substitution.

Termination of employment

31 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

In Colombia, an employer is able to dismiss an employee without 'just cause' or for no reason, and the employee will be entitled to an indemnification payment.

According to article 62 of the Labour Code, the employer can terminate an employment contract with cause in the following circumstances:

- having been cheated, or been subject to deception by the employee through the presentation of false certificates for admission or with the purpose of getting undue benefits;
- any acts of violence, insults, poor treatment or serious indiscipline carried out by the employee, during the performance of his or her duties, against the employer, his or her family members, high-level personnel or fellow co-workers;
- any serious acts of violence, insults or poor treatment carried out by the employee, while not performing its duties, against the employer, his or her family members, representatives or partners, heads of workshops or security personnel;
- any material damage caused intentionally by the employee against the buildings, works, machinery, equipment, raw materials, instruments and any other objects related to work, and any serious negligence that jeopardises the security of persons or objects;
- any immoral or delinquent acts by the employee performed in the workplace or during the performance of his or her duties;

- any serious breach of obligations or prohibitions pursuant to articles 58 and 60 of the Labour Code, or any serious fault considered as such in collective bargaining agreements, arbitration decisions, individual employment agreements or regulations;
- the arrest of the employee for more than 30 days, unless it is subsequently absolved of any charges (jurisprudential restrictions have to be considered to apply this cause);
- the disclosure of technical or commercial secrets or matters that are confidential, causing damages to the company;
- the poor performance of an employee given his or her abilities and in comparison with the average performance of similar positions, and the employee does not improve his or her performance within a reasonable time, despite being requested to do so by the employer;
- the systematic breach of the employer’s legal or conventional obligations without valid reason;
- any habits of the employee that disturb the discipline of the establishment;
- the employee’s systematic refusal to accept the preventive, curative or healing procedures prescribed by the employer’s doctor or health authorities in order to avoid illness or injury;
- the employee’s ineptitude in carrying out his or her duties;
- the fact that the employee is granted a retirement or disability pension while in the service of the employer; and
- chronic or contagious illness of the employee that is not work-related, or any other illness or injury that has not been cured within 180 days (jurisprudential restrictions have to be considered to apply this cause).

Under Colombian law the employment contract can also terminate as a consequence of the death of the employee, mutual consent of the parties, the expiration of the term, the completion of the work or task hired, the closing down or winding up of the business, a suspension of activities for 120 days or more, a judge’s decision, and the employee not returning to his or her position after a leave or licence.

32 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Notice of termination must be given 15 business days prior to dismissal in the events set out in sections 9 to 15 of article 62 of the Labour Code mentioned in answer 31. In the event the employer does not comply with the prior notice, the employee will be entitled to pay in lieu equivalent to 15 days of salary.

In fixed-term agreements, the employer must give notice of its decision of not renewing the agreement within at least 30 days prior to the expiration date of the term.

In other events of termination, no prior notice of termination is requested.

33 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

When an employment contract is terminated without cause, no notice or payment in lieu is required. Additionally, in the events in which an employer may dismiss an employee for a cause listed in sections 1 to 9 of Article 62 of the Labour Code, no notice or payment in lieu is required.

34 Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The Labour Code establishes the right to severance pay upon termination of employment without cause. The severance pay varies depending on the type of contract, the employee’s salary and seniority within the company.

In fixed-term contracts, severance will be equal to the salaries

corresponding to the period of time remaining until the completion of the term.

In contracts whose terms are defined by the time it takes to complete the work, severance will be equal to the salaries corresponding to the time remaining until the completion of the duty or the hired work; however, severance may not be less than 15 days of salary.

In indefinite-term contracts, severance is calculated as per the following rules:

- employees with salaries less than 10 times the legal minimum monthly salary (for 2013, 5,895,000 pesos):
 - for employees who have worked for one year or less, 30 days of salary; and
 - for employees who have worked for more than one year, 30 days of salary for the first year, plus 20 additional days for each subsequent year and proportionally for fractions thereof;
- employees with salaries equal to or greater than 10 times the legal minimum monthly salary:
 - for employees who have worked for one year or less, 20 days of salary; and
 - for employees who have worked for more than one year, 20 days of salary for the first year, and 15 additional days for each subsequent year and proportionally for fractions thereof; and
- employees who have worked for 10 years or more as of 27 December 2002 receive 45 days of salary for the first year and 40 additional days for each subsequent year and proportionally for fractions thereof.

35 Are there any procedural requirements for dismissing an employee?

When the employer wishes to terminate an employee’s employment with just cause, it must comply with the procedural requirements to give the employee the opportunity to provide explanations and present defence arguments.

In the case of pregnant employees, employees on maternity leave, and employees with a disability, the employer must obtain a prior authorisation from a labour inspector before dismissing the employee.

Additionally, in the case of union leaders, a prior authorisation given by a labour judge is requested.

36 In what circumstances are employees protected from dismissal?

Union representatives hold a right to employment security, and consequently they may not be dismissed or relocated by their employer without due cause or prior judicial authorisation. Employees with disabilities, pregnant employees and employees on maternity leave also hold similar rights of employment security.

37 Are there special rules for mass terminations or collective dismissals?

Colombian labour regulations establish a restriction on collective dismissals or mass terminations of employees. As per the applicable labour regulations, collective dismissals or mass terminations are construed as such when the following number of employees are unilaterally dismissed in the following terms within a time frame of six months:

Number of employees in the company	Percentage of employees dismissed
More than 10 but less than 50	30%
50 or more but less than 100	20%
100 or more but less than 200	15%
200 or more but less than 500	9%

Number of employees in the company	Percentage of employees dismissed
500 or more but less than 1,000	7%
1,000 or more	5%

In collective dismissal scenarios, the employer will be required to obtain a prior discretionary authorisation from the Ministry of Labour in order to be legally able to unilaterally terminate the employment contracts. In any case, the employer must pay the legal indemnification for termination of the employment contract without just cause to all employees dismissed, except where the employer has a taxable net equity under 1,000 minimum legal monthly wages, in which case the indemnification payment will be equal to 50 per cent of the legal indemnification.

38 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Class or collective actions are allowed in Colombia. Employees may assert labour and employment claims on a collective basis.

39 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

There is no mandatory retirement age for private employees. Private employers cannot impose a mandatory retirement age.

Colombian labour regulations establish a mandatory retirement age of 65 years for public employees.

Dispute resolution

40 May the parties agree to private arbitration of employment disputes?

In the employment contract, the parties may not agree to private arbitration of employment disputes, except when it is agreed in a collective agreement or collective convention. During the execution or after the termination of the employment contract, the parties may agree to private arbitration of employment disputes.

41 May an employee agree to waive statutory and contractual rights to potential employment claims?

Employees may only release claims regarding disputable waivable and uncertain rights. The release should be free, voluntary and expressed (in writing). In these cases, it is advisable to release claims before a labour authority, which is able to confirm that the employee's release was indeed free and voluntary.

42 What are the limitation periods for bringing employment claims?

Labour rights have a statute of limitations of three years that can be suspended once with a complaint and reinitiated for three additional years. As such, an employee may file a claim with the employer to seek indemnification from any labour rights during the past three years, counted as of the date of filing of such complaint. Notwithstanding the foregoing, rights relating to the General Pensions System have no statute of limitations.

Posse Herrera Ruiz

Carolina Camacho
Camilo Bernal

carolina.camacho@phrlegal.com
camilo.bernal@phrlegal.com

Carrera 7 No. 71-52, Torre A piso 5
Bogotá
Colombia

Tel: +571 325 73 00
Fax: +571 325 73 13
www.phrlegal.com

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