Squire, Sanders & Dempsey Worldwide Offices

32 offices in 15 countries

*Independent network firm*
Venezuela

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Venezuela
Reduction of workforce

• Prohibition against dismissal
  – Dismissal with cause is the rule
    • After the dismissal the employee can sue the employer for reinstatement (employer has the burden of proof);
    • Before the dismissal a proper authorization is requested by employer to the corresponding labor authority (pregnant employees, fathers, union representatives)
  – Dismissal without cause is allowed only in certain cases and if an indemnity is paid to the employee.
    • 30 days of salary per year of services up to five month of salary
    • Up to three months of notice in lieu of termination
Venezuela
Reduction of workforce

• Prohibition against dismissal
  – Mass layoff
    • (10%) of the workers in a company with more than (100) workers; (20%) in a company with more than (50); or (10) workers in a company with less than (50) within a (3) month period or more at the Labor authority discretion;
  • Reinstatement and back pay
  • Government can take control of the operation and seize the property and premises
Venezuela
Reduction of workforce

• How an employer can reduce personnel in Venezuela?
  – Negotiating voluntary resignations
    • Indemnities
    • Termination bonus
    • Outplacement
  – Paying indemnities for unfair dismissal
Venezuela
Benefits and salary reduction

• Salary and benefits are acquired rights and cannot be reduced at any time (Constitutional Provision)
  – Supreme Court has held that if the salary or benefits are reduced employee has 30 days to claim constructive dismissal
    • Indemnity for unfair dismissal applies or reduction is considered invalid;
  – After the 30 days period the changed has been accepted
    • This criteria is likely to be enforceable in case of managers.
    • Unlikely to be sustained in workers cases.
Venezuela
How companies are reducing labor costs?

• Reducing personnel by negotiating voluntary resignations
• Converting employees into independent contractors
• Reducing salaries and benefits
• Reengineering the compensation packages using non salary benefits with tax effectiveness
• Reducing the working hours
  – Flextime
  – Working at home
Venezuela
New trends

- Cooperatives
- Social Production Companies
- Workers Council
- Community Counsels
- Workers participation in the administration of the company
Reduction of Work Force

The Mexican Federal Labor Law establishes specific rules for layoffs and/or downsizing processes, referred to as a “collective procedures of economic nature”. Such procedures entail a series of steps beginning with the employer’s formal request to the Conciliation and Arbitration Board for authorization to implement the layoff, downsizing or closing down of the business. Further, the employer must exhibit evidence tending to prove its financial situation and the need to implement the requested measures.

The procedure is long and time consuming, therefore rarely used by employers. Most frequently, companies handle the layoff not as a collective matter, but rather as individual terminations with the respective payment of severance.

Severance consists of:

- 90 days’ consolidated salary;
- 20 days’ consolidated salary per year of service rendered;
- Seniority Premium consisting of 12 days’ salary per year of service rendered, capped to twice the minimum wage in force;
- Accrued benefits for the last year of service.
Reduction of Labor Benefits

1) Termination of employment and rehiring with lower salary and benefits. Implies formally terminating employment relationships through the execution of adequate documents. Separation payment would consist of earned benefits only, as opposed to full severance payment. Afterwards, the parties will execute new individual employment agreements clearly stipulating the salary and benefits to which the employee will be entitled as of that date.

2) Amendment of Working Conditions (reduction of supralegal benefits). The reduction and/or cancellation of labor benefits needs to be agreed by the parties in writing, as it implies the amendment of working conditions. In any case, employers must observe the minimum statutory benefits. If employers reduce benefits unilaterally, employees will be legally entitled to either (a) terminate the employment relationship for causes attributable to the employer without liability for the employee (constructive dismissal) and demand payment of legal severance, or (b) demand the recognition and observance of former benefits, requesting the payment of any difference derived from the reduction.
Reducing Labor Costs

• **Salary freeze.** There is no provision in the Mexican Federal Labor Law establishing the employer’s duty to grant salary increases to its employee. The Law provides exclusively that the salary paid to the employee shall never be less than the minimum wage in force. This option applies to both salaried personnel and union workers.

• **Reduction of work shift.** The reduction of working hours needs to be agreed by the parties in writing, as it implies the amendment of working conditions. By reducing the number of working hours, salary will be paid in proportion to the time effectively worked. Changes must be notified to the IMSS for social security dues calculation purposes. We also suggest that the agreements to be signed reducing the work shift be ratified and approved by the Labor Board.

• **Forced vacations.** Workers are obliged to use their pending vacation days or take vacations in advance. Even when vacation days must be paid, other operative costs such as electricity, transportation, cafeteria services, are reduced.
Reducing Labor Costs

- **Technical Stoppages.** The parties agree that employees will not attend work during a certain period of time. Employers may pay them a percentage of their salaries or no salaries at all. Company must be careful to properly document a work stoppage.

- **Possible indefinite suspension of employment relationships.** Under this alternative, employees are not obliged to render services, nor is the employer committed to pay salaries. Prior to the suspension of works though, the employer must request the authorization of the Conciliation and Arbitration Board, subject to the rules of a “collective procedure of economic nature”. The Labor Board, upon authorizing the suspension, will establish the compensation that must be paid to the workers, taking into consideration, among other circumstances, the probable length of the suspension. The referred compensation shall not exceed the total of one (1) month’s salary.
Practical Considerations

• Most likely, companies prefer to negotiate directly with the union and/or with the employees the basis for the cost-cutting measures to be implemented, instead of exhausting the “collective procedure of economic nature”.

• The agreement reached by the parties shall be ratified with the Labor Board for its approval.

• In our view, the downsizing of personnel should be handled as individual terminations. Resignation letters are not recommended in this case, as it would be unlikely to have such a high number of workers voluntarily resigning to a company on the same day. Rather, we recommend executing termination of employment agreements, same that will be ratified before the Labor Board.

• In order to avoid any labor unrest, we recommend not disclosing the information to the employees in advance.

• Employee consultation processes are not legally required; however, the communication process to employees is an issue that must be carefully planned. Group meetings, power point presentations and sessions for frequently asked questions are of great help.
Termination of Expatriates

• The Mexican Federal Labor Law is applicable to all employment relationships in Mexico, regardless the nationality of the employee, the employer, or the place where the employment agreement was executed.

• Under the above mentioned assumption, any employee rendering services in Mexico will be entitled to the minimum statutory rights stipulated in the Law, including payment of severance upon termination without cause.

• There are no rules regarding the termination of expatriates; the strategy will be determined based on the particularities of each case:
  – if the expatriate was hired and paid by a Mexican entity
  – If the expatriate was hired and paid by a foreign entity
  – If the expatriate has the possibility of returning to his/her original position abroad
  – If there are grounds for termination and evidence to confirm it
  – If there is any special arrangement with the expatriate regarding separation payments
Termination of Expatriates

- Controversy exists as whether the Federal Labor Law can be effectively applied to an employment relationship governed by foreign law and in which the parties involved are non Mexican.

- In any case, we would suggest to execute adequate documentation tending to release the Mexican entity from any employment related liability and to prevent expatriate from filing a labor claim.
Outsourcing

• At first instance, it seems as an effective cost-cutting measure. Manpower companies are responsible for all employment and social security related obligations, including but not limited to salary and benefit payment, social security dues and contributions, as well as tax withholding in conformity with applicable laws.

• However, this strategy is not recommended on the long term, but rather just temporarily and in extraordinary cases, to perform activities which are not inherent to the company’s business (accounting, janitorial, security, IT services, i.e.).

• Further, there is the possibility of considering the manpower company as an “intermediary”. Mexican Federal Labor Law provides that an intermediary is a person (individual or entity) who hires or intervenes in the hiring of one or more individuals for the rendering of services to an employer.
If the manpower company fails to comply with its employment and social security related obligations, the direct beneficiary of the services rendered by the outsourced personnel will be jointly liable with the manpower company for the unfulfilled obligations.

Additionally, the outsourced personnel will be entitled to enjoy the same working conditions and benefits than the direct beneficiary’s employees.
Labor Legal Trends

• On September 2008, the Supreme Court of Justice issued resolution establishing that the secret vote is the only way to guarantee the workers’ free will in union certification processes offered as evidence within union representation claims. The resolution is mandatory for the Conciliation and Arbitration Boards.

• The Ministry of Labor and Social Welfare, has exhorted both union organizations and employers’ chambers to be flexible and cooperative as regards to the implementation of technical stoppages and/or reduction of work shifts in order to preserve work centers and avoid massive dismissals.
Brazil

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Brazil

- Reduction of work force and labor benefits;
- Reducing labor costs;
- Task force reductions;
- Termination or relocation of expatriates;
- Outsourcing;
- General labor legal trends.
Brazil

- Unemployment rate at 8.9% in April
- Down from 9.0% in March
- Temporary shutdowns
- Permanent shutdowns
- Layoffs
- Reduction of working hours
- Salary Cuts
Salary Cuts

- Salaries cannot be reduced in Brazil
  - Constitutional Protection

- Exception
  - Collective Bargaining Agreement

- Use of different Companies
  - Courts have held that termination of employment and re-hire should be interpreted as one single continuous employment and salaries cannot be reduced at re-hire.
Reduction of Working Hours

- Requires agreement by Labor Union
  - Approved by majority vote of employees
  - Employer may seek court approval if Labor Union fails to approve
- Requires registration with Labor Authorities (*Delegacia Regional do Trabalho*)
- Limited to three months, subject to one extension
- Monthly salaries can be reduced up to 25%
- Management salaries must also be reduced
- If Employer fires employees, must re-hire fired employees before hiring new employees within 6 months
Layoffs

- Regular layoffs
  - Outstanding unpaid salary
  - Accrued vacations + vacation bonus
  - Accrued 13th salary
  - Prior Notice
  - FGTS (unemployment fund) payment
  - FGTS 40% / 10% fine
  - Unemployment insurance may be available
Layoffs

• Voluntary layoffs

• Retirement Programs
  – No FGTS 40% / 10% fine
  – No unemployment insurance
  – Other additional compensation
    • Usually:
      – 1 monthly salary per year worked and additional indemnification (tax free)
      – Health insurance for 6 months to 1 year
      – Headhunter costs
Permanent Shutdowns

• Similar to Regular Layoffs
• Employees with stability
  – Pregnant women
  – Union leaders
• Different Court Treatment
  – Indemnify remainder of stability period
  – No special indemnification due
Temporary Shutdowns

• Can be counted towards vacation period
  – Minimum of 10 days
  – Additional compensation must be given

• Requires 15-day prior registration with the Labor Authorities, notice to the Labor Union and the employees

• Employees with less than 12 months of work have proportional vacations

• Employees younger than 18 and older than 50 can only have 30-day vacations and temporary shutdown cannot be applied towards vacations for shorter period
Relocation of Expats

• If Employer is responsible for relocation to Brazil, must remove employee
  – Pay costs for removal

• If Employee acquires visa based on different circumstances -- marriage, Brazilian child – relocation is not mandatory
## Outsourcing

### Summary of labor costs for employer

<table>
<thead>
<tr>
<th>Salary</th>
<th>Social Security System</th>
<th>Social Security Contrib.</th>
<th>FGTS</th>
<th>Prov. for vacation</th>
<th>Prov. for 13th salary</th>
<th>TOTAL:</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD 100.00</td>
<td>20%</td>
<td>8,8%</td>
<td>8,0%</td>
<td>1⅓ / 12</td>
<td>1 /12</td>
<td>222.67</td>
</tr>
<tr>
<td></td>
<td>20.00</td>
<td>8,80</td>
<td>12.00*</td>
<td>15.64†</td>
<td>11.73 †</td>
<td></td>
</tr>
</tbody>
</table>

*The amount includes a provision for the 40% / 10% penalty in the event of a dismissal without cause.

† The provision amounts include payments to Social Security System, Social Security Contributions, and Unemployment Fund (FGTS) with the 40% / 10% penalty provision.
Outsourcing

Summary of labor costs for employee

<table>
<thead>
<tr>
<th>Salary</th>
<th>Social Security System</th>
<th>Withholding Tax</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD 100.00</td>
<td>Maximum rate*</td>
<td>Maximum rate</td>
<td>61.50</td>
</tr>
<tr>
<td></td>
<td>11.00</td>
<td>27.50</td>
<td></td>
</tr>
</tbody>
</table>

* The maximum contribution is limited at BRL 334.5
Outsourcing

• Use of Independent Contractors
  – Several companies, especially small sized companies, to avoid labor costs, hire independent contractors.
  – The scheme is favorable to the employees, especially if they incorporate a legal entity to render the services, as they can take advantage of the tax treatment given to legal entities and avoid the withholding of income tax.
  – The scheme is illegal if its only purpose is to avoid labor costs and tax, and if an employment relationship is deemed to exist, the employer will be liable for taxes, labor costs and penalties that will be grossed up over the compensation paid to the employees.

• Subordination
• Services rendered personally
• Compensation
• Habitude
Outsourcing

- As a cost-reducing mechanism
- Only for non-core activities
New trends

• Home Offices
  – Reduced costs
  – No control on worked hours – no overtime

• Discussions on reducing labor costs
1. Introduction
   A. Employer–Employee relations
   B. Salaries
   C. Contributions and Social Security Withholdings
   D. Vacations and other Leaves of Absence.

2. Benefits.

3. Termination of Employment Contracts.
   A. Probationary Period
   B. Employee Resignation
   C. Dismissal
   D. Preventive Crisis Procedure. (Termination for force majeure, economic distress or technological reasons)

4. Conclusions
1.- Introduction

A.1 Employer– Employee relations in Argentina are principally governed by Employment Contracts Law 20.744

A.2 Work Risk Insurance. Law 24.557

A.3 Collective Bargaining Agreements. Law 14.250

A.4 Trade Unions Law 23.551
1.- Introduction

B.1 Salaries.

B.2 Minimum Wage (US$ 331)

B.3 Working Week

B.4 Overtime
1.- Introduction

C.- Contributions and Withholdings.

<table>
<thead>
<tr>
<th>Employer (Approx. 30%)</th>
<th>Employee (Approx. 17%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pension: 10,17 %</td>
<td>Pension: 11,00 %</td>
</tr>
<tr>
<td>Retired Social Services: 1,50 %</td>
<td>Retired Social Services: 3,00 %</td>
</tr>
<tr>
<td>Medical Care: 6,00 %</td>
<td>Medical Care: 3,00 %</td>
</tr>
<tr>
<td>National Employment Fund: 0,89 %</td>
<td></td>
</tr>
<tr>
<td>Family Allowance: 4,44 %</td>
<td></td>
</tr>
<tr>
<td>Labor Risk Insurance: Between 2,00 % – 7,00 %</td>
<td></td>
</tr>
</tbody>
</table>
1.- Introduction

D.- Vacation & other Leaves of Absence.

- Vacations: 14 to 35 calendar days depending on the years of service.

- Short Leave of absence: In the event of marriage, birth, death of a close relative, high school or university examinations.

- Maternity Leave of Absence: 45 days before and 45 after childbirth.

- Absence in the event of an inability to work due to illness or accidents which are not related to work: 3 to 12 months depending on length of services and the existence of a dependent family.
## 2.– Benefits

Usually granted types of benefits.

| Some of Argentina’s Locally-Owned Companies give different benefits to the employees. | Foreing-Owned Companies (mostly US originated) |
| Company Car | Housing |
| Company Credit Card. | Share Options. |
| Bonus | Stock Options. |
| Pension Plan. | Pension Plan. |
| Company Car | Company Car |
| Company Credit Card | Company Credit Card |
| Bonus | Bonus |
3. – Termination of Employment Contracts.

A. Probationary Period
Contracts are signed for an indefinite period of time, the first three months are a trial period.

B. Employee Resignation
The employee may resign at any time and must give the employer fifteen days prior notice.
3.– Termination of Employment Contracts.

c. Dismissal

Prior notice: In indefinite term employment contracts, the employer may dismiss an employee at any time upon giving the employee prior notice.

Severance Pay: The employer is required to make severance payments to the employee based on the employee’s highest ordinary monthly salary accrued during the previous year of employment. The employer must pay the employee one month’s salary for each year of employment or period worked in excess of three months for which the employee worked with such employer.
3. – Termination of Employment Contracts.

Example with different situations.

1. – Employee with 10 year services earning US$ 500 Monthly. Severance Pay: US$ 5,000

2. – Employee with 10 years services earning US$ 10,000 Monthly. Severance Pay: US$ 67,000.

These payments are increased if the employee is not correctly registered or if the employee has to make a claim to receive his/her severance payment.

If an employee is dismissed for a gross misconduct, no severance payment or prior notice is required.
3.– Termination of Employment Contracts.
Compensations in case of dismissal without justified cause.

1. **Severance Pay (Compensation for Seniority)**
2. **Compensation replacing the prior notice notification**
3. **Compensation Proportional to the year worked for vacations not taken.**
4. **Annual bonus (thirteen salary) proportional to the year worked**
5. **Integration of the month of dismissal.**
3.– Termination of Employment Contracts.

D. Preventive Crisis Procedure. (Termination for force majeure, economics or technological reasons)

Whenever terminations affect more than:

15% of the workers of a company with less than 400 workers

10% of the workers of a company with more than 400 workers and less than 1,000

5% of the workers of a company with more than 1,000 workers.

In those cases the PCP must be accredited before the Labor Ministry, at the request of either the employer or the Union representing the affected employees.
4.– Conclusion

- Labor relationships are highly regulated by mandatory laws
- Legal assistance is usually required by Human Resources when commencing, managing or terminating an employment relationship
- Therefore, it is strongly recommended to seek legal advice when drafting and negotiating employment agreements or when any matter related to employment is at stake.
Chile

Toro & Co.
Attorneys and Counselors at Law

Cristián Sandoval
How to reduce work force in Chile
LEGAL CAUSES TO EFFECT DISMISSAL OF EMPLOYEES

- Upper managerial positions
  - “Desahucio” cause
- Rest of the work force
  - “Company needs” (CN)
- Grounds to apply CN
HOW TO EFFECT TERMINATION

• NOTICE TO EMPLOYEE
• SEVERANCE PAYMENT
• SETTLEMENT
• WHAT IF EMPLOYEE DOES NOT AGREE WITH TERMINATION?
MATTERS TO TAKE INTO ACCOUNT BEFORE IMPLEMENTING WORK FORCE REDUCTION

• CHECK THAT SOCIAL SECURITY OBLIGATIONS WERE DISCHARGED

• EMPLOYMENT IMMUNITY

• CHECK THAT GROUNDS FOR DISMISSAL ARE BACKED WITH APPROPRIATE EVIDENCE
  – Outcome of trials in 2009

• LANGUAGE ON THE SETTLEMENTS

• TIMING FOR SIGNING THE SETTLEMENTS
REDUCTION OF LABOR BENEFITS

• BENEFITS GRANTED BY LAW
  – i.e. Limitation of working hours per week, maternity immunity, overtime, annual vacations, child care facilities, maternity leave, etc.

• BENEFITS AGREED UPON IN THE EMPLOYMENT CONTRACT OR IN THE COLLECTIVE CONTRACT
HOW CAN COMPANIES REDUCE LABOR COSTS

• FIXED TERM AGREEMENTS / CONTRACTS FOR SPECIFIC TASK OR PROJECT

• OUTSOURCE SERVICES

• TERMINATE WITH THE ABUSE OF OVERTIME

• TIME LIMITATION FOR BENEFITS

• MAKE USE OF CERTAIN BENEFITS INCLUDED IN A LABOR BILL SOON TO BE TURNED INTO LAW

• TEMPORARY PERSONNEL SUPPLY

• IF PLANNING A LAY OFF PROGRAM, IMPLEMENT IT NOW
SPECIFIC ISSUES RELATED TO THE TERMINATION OR RELOCATION OF EXPATRIATES

- DEPENDS ON PERMIT UNDER WHICH EMPLOYEE PERFORMS.
  - **TEMPORARY WORK PERMIT**
    - Travel expenses (Who pays?)
  - **RESIDENCE SUBJECT TO EMPLOYMENT CONTRACT.**
    - Travel expenses (Who pays?)
    - Transfer of pension funds
    - Unemployment insurance
    - Immigration authorities
    - Income tax payment
THE FUTURE OF OUTSOURCING IN CHILE

• WHO OUTSOURCES IN CHILE?

• WHAT KIND OF SERVICES ARE OUTSOURCED?

• WHAT IS THE FUTURE OF OUTSOURCING IN CHILE AS OF LATE 2009?
GENERAL OVERVIEW OF THE LABOR LEGAL TRENDS IN CHILE

• 30 AUGUST 2009
  – Increase in litigation
    • Cost
    • Statistics
    • Courts - Stricter scrutiny
  – Increase in payments by employer if defeated in court
  – True protection of employees’ constitutional rights
Dominican Republic

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How to Deal with the Economic Downturn in the Dominican Republic
Labor Law Evolution

• 1844 – 1951 Civil Code, Commercial Code and various specific statutes


  - Introduced the main principles contemplated by the International Labor Organization (ILO) for the protection of employees, among other advances.
Constitutional Principles

1. The Dominican Constitution recognizes as social and individual liberties a series of principles and general rules that have an impact on salaried work (Art. 8, numeral 11):

   a. Freedom of employment;

   b. Freedom of employees and employers to organize unions;

   c. Freedom of employees and employers to hold strikes;
General Principles and Characteristics of the DR’s Labor Laws

- Territorial character of labor laws;
- Labor rights shall be performed, and labor obligations discharged in good faith;
- Prohibition of any form of discrimination;
- In case of doubt, the most favorable legal or contractual provision to the employee shall prevail ("indubio pro operario");
- Preeminence of reality over the written form of labor agreements;
- Protection of maternity;
- Protection of minors;
- Special court system for labor conflicts.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

- An Employer-Employee relationship may be terminated at will at any time, provided that the following requirements are met:
  - The Employer delivers to the Employee a formal letter informing the latter of the Employer’s decision to terminate the labor relationship.
  - The Employer must notify the Department of Labor of its decision to terminate the labor relationship within 48 hours of such occurrence.
  - The Employer has then 10 days from the termination of the employment relationship, to pay the corresponding severance payments.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• The severance payments to be made to the Employee will vary according to the following scale:

  - Employees with fewer than 3 months of service are not entitled to severance pay.

  - Employees with 3 to 6 months of service are entitled to 6 days of severance pay.

  - Employees with 6 to 12 months of service are entitled to 13 days of severance pay.

  - Employees with 1 to 5 years of service are entitled to 21 days of severance pay for each year of service.

  - Employees with 5 or more years of service are entitled to 23 days of severance pay for each year of service.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• When terminating a labor relationship, it is important to give the Employee the pertinent prior notice, in accordance with the following scale:

  - Employees with 3 to 6 months of service are entitled to receive 7 days of prior notice.
  - Employees with 6 to 12 months of service are entitled to receive 14 days of prior notice.
  - Employees with more than 1 year of service are entitled to receive 28 days of prior notice.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

- If the corresponding prior notice is not given, the Employer will be compelled to compensate the former Employee, in accordance with the following scale:
  - For employees with 3 to 6 months of service: 7 days of salary.
  - For employees with 6 to 12 months of service: 14 days of salary.
  - For employees with more than 1 year of service: 28 days of salary.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• In addition to the previous payments, Employers are required to pay all (if any) acquired rights that an Employee has accrued during the course of the labor relationship. Pursuant to DR law, an employee's acquired rights are the following:

- Earned but unpaid salaries.

- Earned but unpaid Christmas Salary (1/12th of an employee’s regular salary). Employees who have worked for an Employer for less than a year receive a pro-rated bonus, based on the length of their employment.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• Earned but unpaid profit sharing bonus. The Profit-Sharing Bonus is only payable if the Employer has earned any profits during the previous fiscal year. This bonus must be paid to all Employees, within 120 days of the closing of the fiscal year, in accordance with the following scale:

- Employees with 0 to 1 year of service are entitled to their monthly salary multiplied by the result of taking the number of months worked and dividing it by 12 x 1.5.

- Employees with 1 to 5 years of service are entitled to 45 days of ordinary salary.

- Employees with more than 5 years of service are entitled to 60 days of ordinary salary.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

- Earned vacation time that has not been enjoyed. In this case, the Employer will be required to compensate the Employee, according to the following scale:
  - Employees with 5 months of service 6 days of salary.
  - Employees with 6 months of service 7 days of salary.
  - Employees with 7 months of service 8 days of salary.
  - Employees with 8 months of service 9 days of salary.
  - Employees with 9 months of service 10 days of salary.
  - Employees with 10 months of service 11 days of salary.
  - Employees with more than 11 months of service 12 days of salary.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• Common mistakes made by Employers in the DR:
  – “Terminate” the Employee’s services before the ending of each quarter.
  – “Terminate” the Employee’s services each year on the yearly anniversary of the date of the Employee’s hiring.
How to deal with the economic downturn in the DR: Terminating an Employer-Employee Relationship

• Special case of Free Zones Enterprises (Law No. 187-07):

  - Severance payments made on a yearly basis until January 1, 2005 will be considered as final payment of the Employer’s severance obligations.

  - Labor agreements terminated as of January 1, 2005 will be deemed extinguished by the law.

  - This law was recently challenged before the Supreme Court on constitutional grounds and was deemed to be consistent with the constitution.
How to deal with the economic downturn in the DR: Reducing or eliminating an employee’s benefits?

- Employers in the DR may not reduce or eliminate an employee’s earned salary, acquired rights or other benefits contemplated by the DR’s labor laws.

- If an Employer does so, the Employee is entitled to file a claim seeking to declare extinguished the labor relationship as a justified resignation (Dimisión).
How to deal with the economic downturn in the DR: Reducing or eliminating an employee’s benefits?

• If a court rules in favor of the Employee, the Employer will be compelled to pay:

a. The corresponding severance payment (*auxilio de cesantía*)

b. Compensation for insufficient notice (*preaviso omitido*)

c. A complementary Indemnification consistent of an amount equal to all salaries that the employee would have earned, if he/she would have continued to work for the employer, from the date in which the action was served until the date in which a final decision is rendered by a court. This indemnification will in no case represent an amount that exceeds six months of the employee’s ordinary salary.
How to deal with the economic downturn in the DR: Reducing or eliminating an employee’s benefits?

• Many contemporary authors believe that Employers may reduce the salaries to be earned in the future by their employees and other rights to be acquired, provided that:

  a. They obtain the employees’ consent and;

  b. That such reduction respects the minimum thresholds contemplated by the labor laws.
How to deal with the economic downturn in the DR: Reducing or eliminating an employee’s benefits?

• Some authors disagree with this position.

• A 1975 Supreme Court ruling states that the non waiver of rights principle includes both the legal and contractual rights that have been afforded to the employee in it’s labor relationship.

• In conclusion, it is not clear whether an employee can validly agree to reduce the amount of salary to be earned or the rights to be acquired pursuant to a labor relationship.
How to deal with the economic downturn in the DR: Setting aside the effects of the Labor Agreement

Employers may be authorized to set aside the effects of a Labor Agreement, in any of the following circumstances (Art. 51 numeral 8 of the Labor Code):

a. Lack or insufficient stock of raw materials, as long as this lack or insufficiency is not due to the Employer’s fault or lack of foresight;

b. Lack of funds to continue the normal operations of the business, as long as the Employer justifies the inability to secure additional funding.

c. Excessive production.

d. Non-viability of the business.
How to deal with the economic downturn in the DR: Setting aside the effects of the Labor Agreement

• The effects of an employment agreement may also be set aside by both parties’ mutual consent.

• Formalities to set aside the effects of an Employment agreement:

  a. If by the Employer’s decision:

     - Request a formal authorization from the Department of Labor (if the suspension has already been executed by the Employer, it shall communicate the same to the authorities within 3 days of such occurrence).
How to deal with the economic downturn in the DR: Setting aside the effects of the Labor Agreement

- Communicate the decision to set aside the labor agreement to the Employee.

- The Labor Department will then issue an administrative resolution authorizing or disapproving the request.

b. If by both parties’ decision:

- There are no formal requirements, although it is advisable to execute this type of agreement before a notary public or before the labor authorities.
How to deal with the economic downturn in the DR: Future Trends

- The Doing Business 2009 report, a publication by the World Bank and the International Finance Corporation, has ranked the DR in the 88th place in the firing costs index.

- Possible reduction of severance payments to be made to Employees?
Immigration to the US

Gregory Wald
gwald@ssd.com
SSD’s Immigration Practice

- All aspects of employment-based immigration
- Employment Verification (I-9) Compliance; Immigration Related Discrimination
- US immigration teams in Miami, LA and San Francisco
- Global migration capabilities via SSD, affiliates, and contacts
Immigration and RIFs

- Separation from employment will invalidate nonimmigrant status
  - no grace period
  - Must find new sponsor, change status or depart US
- H-1B – extra obligations
  - Upon termination, employer must notify CIS/DOL
  - Failure can result in claim for back wages and sanctions
- May be obligated to offer reasonable return transportation for H, O, P visa holders
Immigration and RIFs

- If green card pending (Adjustment of Status), may be portable to another company or even as independent contractor.

- For labor certification sponsorship (PERM)
  - May be denied unless notify and consider:
    - potentially qualified terminated employees (other than for cause)
    - In same/related occupation and area of employment
  - Could prevent filings up to 6 months after RIF
Economic Impact on Immigration Adjudication

• Scrutiny of Employers
  • Ability to pay wages
  • Solvency

• Scrutiny of Foreign Nationals’ qualifications

• Legislation/Policy
  • Economic Stimulus Act - prohibitions from H-1B sponsorship for TARP recipients
  • Proposed H-1B and L-1 Visa Reform Act
Common Business Visas

- The Alphabet Soup
- Business Visitor (B-1, Visa Waiver)
- Intra-company transferees (L-1A, L-1B)
- Treaty Traders and Investors (E-1, E-2, & E-3)
- Professionals (H-1B, H-1B1, TN, O)
- Trainees (J-1, H-3)
- Students on Practical Training
Visa Requirements

- General rule: Everyone needs a Visa
- Exceptions are limited:
  - Canadians (other than Landed Immigrants)
  - Nationals of Visa Waiver Program Countries (8 CFR Section 217.2(a) for list of exempt countries), or visit:
B-1/2 and VISA WAIVER

- **B-1** --- Nonimmigrant visa which is used by foreign nationals entering US for **short-term business purpose** on behalf of foreign employer

- **B-2** --- Nonimmigrant visa which is used by foreign nationals entering US for **short-term pleasure/tourism**

- Period of authorized stay up to one year
  - In practice, only a period of stay for the time sufficient to conduct business
  - usually less than three months for B-1, six months for B-2
B-1/2 and VISA WAIVER
(Cont.)

Procedures and requirements for B-1/2

• Application to a US embassy or Consulate which must show:
  • Entering US for a limited amount of time
  • **Intention to depart US** at expiration of the authorized stay
  • Maintaining a foreign residence with no intention of abandoning
  • Has adequate financial resources to support stay in, and departure from US
  • Will **engage solely in authorized activities** related to business or tourism
  • Will not receive remuneration from a US source
VISA WAIVER

- Definition and Requirements of Visa Waiver
- Visa Waiver Program authorize the admission of qualified B-1 visitors without making application for a visitor’s visa at US Embassy or Consulate
- Currently 35 participating Countries, including:
  - Japan, United Kingdom, France, Switzerland, Germany, Australia, Italy, the Netherlands and many more
- Admitted up to 90 days
- New online registration clearance (ESTA) required
Common Limitations on Work Visas

• Coming to the U.S. temporarily
  • H-1B (6 years), L-1B (5 years), L-1A (7 years)
  • Dual Intent

• Stay is tied to employer/position/location
  • Changes must be pre-approved by gov’t
  • Must obtain permanent residence before stay expires
L-1 VISA: INTRACOMPANY TRANSFER

- Corporate Relationship:
  - Parent, Branch, Affiliate or Subsidiary
  - Prior Employment: 1 Out of Past 3 Years

- Qualifying Capacity:
  - Managerial / Executive (L-1A)
  - Specialized Knowledge (L-1B)

- Duration: L-1A=7 years, L-1B=5 years
- Spouse eligible for work authorization
- Dual Intent visa
- L-1 Blanket Petition advantageous for larger multinationals
New Office
( Newly established Subsidiary or Branch)

- US entity has been doing business for less than one year
- Visa will only be issued for one year
- US entity must be formed, business location and evidence of financial resources
- To extend beyond one year must establish US entity has been engaged in actual business activities, show growth, revenues
Prohibition against L-1B Outsourcing

• L-1B ineligible if:
  • Primarily at work site of unaffiliated employer, &
  • Control & Supervision by non-affiliated employer entity, or
  • If placement is essentially an arrangement for labor for hire
E-1/E-2 – Treaty Trader/Investor

- E-1 - Nonimmigrant treaty trader visa
- E-2 - Treaty investor visa (E-2)
- Available to nationals of countries with which the US has signed a “treaty of commerce and navigation” regarding trade and/or investment
  - Treaty countries include Argentina, Bolivia, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama (E-2) Paraguay, Suriname
- Visa issued for a 5 year period
- Each entry admitted for 2 years – no max
- Spouse is eligible for work authorization
H-1B Specialty Occupation

- For “specialty occupation”
  - Minimum job requirements require attainment of at least a **bachelor’s degree** or **equivalent** in a professional field (such as engineering, sciences, law, architecture, accounting, business specialties, teaching, etc.); or requires a license
  - Up to six _years_, in three year increments
    - Can extend beyond if green card commenced no later than one year prior to end of 5th year
  - Dependants in H-4 status are not work authorized
H-1B Cap Issues

- Congressionally mandated cap at 65,000 per USCIS fiscal year
  - 20,000 additional visas allocated to US Advanced degrees
  - 6,800 additional visas allocated to US-Singapore and US Chile Free Trade Agreements
- USCIS fiscal year begins 10/1 and ends 9/31
- Earliest filing date six months prior to FY which is April 1st of each year for employment start date of 10/1 of the same year
  - FY 2006 cap reached on 8/10/2005
  - FY 2007 cap reached on 5/26/2006
  - FY 2008 cap reached on 4/2/2007
  - FY 2009 cap reached on 4/1/2008
  - FY 2010 cap reached?
Country Specific Visas

- Singaporean & Chilean H-1B1
  - Similar to H-1B w/o petition
  - 6800 annual cap

- Canadian TN-1

- Mexican TN-2
  - No petition, but must apply for visa
  - NAFTA schedule of occupations
  - No visa cap

- Australian E-3
THANK YOU
Juan Carlos Varela leads the Caracas Labor Practice. He focuses his practice on labor and employment law, executives and workers’ compensation, employment tax, labor litigation matters and alternative dispute resolution, including labor arbitration. He is actively involved in the international labor practice of the firm. In 2009 he was noted for his labor expertise in *Latin Lawyer* 250.

He counsels clients in negotiating and drafting collective bargaining agreements, focusing on oil and gas areas and the pharmaceutical industry.

Mr. Varela also advises on employment planning and structuring of employee compensation packages, rewards and merits. He designs and implements employment structures for expatriates and conducts labor audits. In addition, Mr. Varela assists in the determination of labor benefits for termination of employment, counsels in mass layoff processes and represents employers in labor trials and labor administrative claims.

Mr. Varela represents a major international corporation in Venezuela and Latin America, helping them to deal with complex labor issues, preventing them from assuming liabilities, and structuring the best labor scheme necessary to reduce costs by complying with the laws.

He is a labor law professor at the Universidad Católica Andrés Bello. He has written numerous articles on labor-related issues and is regarded as one of the best labor attorneys in Venezuela.

Languages: Spanish, English
CURRICULUM VITAE

NAME: Juan Carlos de la Vega Gómez
DATE OF BIRTH: September 20, 1967
PLACE OF BIRTH: Mexico City, Mex.

PROFESSIONAL STUDIES:
1.- Attorney at law degree obtained at Universidad Iberoamericana, A.C. (1985 to 1989), obtaining as final grade 9.93.

Professional exam presented on June 7, 1990, receiving “Honor Award” for the thesis “The Concept of Salary and its Integration”.


4.- Specialty in Corporate and Economic Law at Universidad Panamericana, A.C. in Mexico City (1994).

PROFESSIONAL EXPERIENCE:

Member of the Labor and Employment Practice Group of the Santamarina y Steta, S.C. law firm from 1986 to this date, devoted to collective bargaining, labor planning, employment litigation and consulting services regarding employment, labor and social security laws.

Representative of such firm rendering services at the Litigation Department of Baker & Botts in Houston, Texas, during 1992.

Partner of Santamarina y Steta, S.C. from January 1, 1997, as responsible of the Labor and Employment Practice Group of the Monterrey office.

Speaker in several national and international events on Mexican labor and employment aspects, including the National Colleagues and Universities Association (NACUA), the American Bar Association, the National Retail Federation, among others. Acted as expert witness on Mexican employment law in U.S. Courts.
Considered as one of the best Mexican management labour and employment attorneys in 2004 and 2005 by the magazine WHO’S WHO LEGAL.

PROFESSIONAL ASSOCIATIONS:


LANGUAGES:

Spanish and English
Salim Jorge Saud Neto's transactional and advocacy practice is centered on energy, business and corporate law. Having practiced both in Brazil and the United States, he has experience in various areas of the law including contracts, real estate, mergers and acquisitions, securities, general corporate, information technology, labor and employment, antitrust, intellectual property and arbitration. Mr. Saud has worked on domestic matters in the United States and Brazil, as well as cross-border transactions involving Brazil, Argentina, Bolivia, Canada, Cayman Islands, Chile, China, Colombia, Ecuador, France, Germany, Luxembourg, Italy, Jamaica, Japan, Mexico, the Netherlands, Panama, Peru, Spain, United Kingdom, Uruguay and Venezuela.

Mr. Saud has represented companies investing and operating in Brazil and Latin America in several projects in the energy sector, specifically various phases of gas and renewable energy projects, from construction contracts to the formation of consortia, financing the project to the maintenance and operation of the facility. Mr. Saud has assisted clients with arbitrations and counseled clients on the regulation of financial markets as well as on intellectual property matters. He has prepared and reviewed agreements related to intellectual property and information technology, and has taken active roles in project financing and operational projects in the oil and gas industry. Mr. Saud has assisted clients with mergers and acquisitions as well as with company restructuring, and has worked in and led deals valued from US$1 million to US$1 billion.

Mr. Saud has presented seminars in various parts of the world, on information technology, arbitration, labor and employment, and oil and gas contracts. In addition, he acted as counsel to the United Nations on contractual matters and is the author of several articles, ranging from energy to arbitration, published in Brazilian and US legal and business publications.

He is a member of the American and British Chambers of Commerce in Rio de Janeiro and American Bar Association International Law Section. In addition, Mr. Saud serves as deputy chair of the Brazilian Bar Second Chamber of Mediator and Arbitration in
Representative Experience

- Representing a world-class provider of engineering, construction and operations solutions to global water, environmental, transportation and facilities markets in the US$340 million sale of its power transmission line business in Brazil to the leading Italy-based electric transmission company.

- Representing a world-class provider of engineering, construction and operations solutions to global water, environmental, transportation and facilities markets in the sale of its water business in Brazil in a transaction involving more than US$50 million in price and assumed liabilities.

- Representing a Brazil-based concessionaire of water services in the renegotiation of a US$50 million contract with governmental authorities.

- Advising on the divestiture of one investor’s equity participation in the Bolivia and Brazil gas pipeline.

- Counseling in the US$800 million sale of one of the largest Brazil-based mining companies.

- Providing counsel in a dispute resolution and renegotiation of a US$300 million power plant construction contract in Brazil.

- Advising on a US$20 million greenfield ethanol project in Jamaica.
Providing counsel in the acquisition of various jet fuel distributors and FBO operators in several jurisdictions within the United States totaling more than US$70 million.

Advising on a US$30 million acquisition of a textiles manufacturing plant in Brazil.

Counseling on a US$10 million divestiture of the local subsidiary of a US-based health care and fire fighting company with assets in Argentina, Bolivia and Brazil.

Advising in the contractual and corporate restructuring of the South America-based operations of a global leader in the leisure and entertainment industry.

Counseling on the contractual and corporate restructuring of the South America-based operations of a global leader in the software industry.

Representing international and local clients in several arbitrations.
EXPERIENCE

- Member of Sociedad Argentina de Derecho Laboral (Argentinian Association of Labor Law)
- Member of the Legal Department at Universal Assistance (2003-2006)

ACADEMICS & HONORS

- Labor Law Specialization Universidad de Buenos Aires (currently attending).

ACADEMICS & HONORS

- Assistant Professor of the subject “Labor Legal Practice” and “Labor Law” given by Professor Yannibelli. Universidad del Salvador.
- Speaker at the Rotary Club Minnesota Conference regarding “Political Economy and Society in Argentina” USA (2003)
EDUCATION

University of Michigan  Ann Arbor, Michigan
In preparation to sit for the New York State Bar Examination

Northwestern University School of Law  Chicago, Illinois
LL.M. (Master of Laws)  2001-2002

Universidad Adolfo Ibáñez School of Law  Santiago, Chile
MASTERS IN BUSINESS LAW  1999-2000

Universidad Andrés Bello School of Law  Santiago, Chile
L.C.J.S. degree (J.D. equivalent)  1991-1996
Admitted to Bar in Chile  May 18th, 1998

EXPERIENCE

TORO Y DEPOLO ABOGADOS  Santiago, Chile
Partner  1999 – to date
- Advised leading snack and pet food US producer on employment, corporate, real estate and consumer protection matters. Litigated in product liability and consumer protection trials.
- Provided legal advice to US pharmaceutical corporation on corporate and employment matters.
- Counseled world’s major PC manufacturer on corporate, employment, consumer protection and life sciences (clinical trials) matters.
- Advised Canadian corporation specialized in the development, production, and marketing of yeasts and bacteria for the wine and brewer industry on corporate and employment matters.
- Advised Dutch animal health pharmaceutical corporation on employment and corporate matters.
- Advised Dutch pharmaceutical corporation on employment and corporate matter.
- Advised U.S. pharmaceutical corporation on life sciences matters.
- Provided legal advice to Canadian title insurance company on setting up of a subsidiary in Chile.
- Represented controlling shareholder of Chile’s mayor retail group before the Superintendence of Securities and Insurance on insider trading proceeding.
- On behalf of UK controlling shareholder, served as alternate Director and Secretary to the Board of Directors of controlling corporation of a local water and sewage utility company located at Chile’s 5th Region (until 2003).
- Advice to major UK insurance broker on corporate, regulatory, employment and other matters connected with operation of its local subsidiary.
- Counseled fortune 500 American reinsurer on its registration with the Chilean Superintendence of Securities and Insurance. Same kind of services as the foregoing rendered to Swiss reinsurer.
- Provided legal advice to foreign reinsurers and reinsurance brokers on all aspects related to keeping in force its registration with the Chilean insurance regulator.
- On behalf of domestic and foreign insurers, represented major insured corporations in product liability, professional malpractice, corporate vicarious liability, and consumer law trials.
- Provided legal advice to Lloyd’s of London syndicate on domestic insurance and litigation matters. On behalf of said syndicate, litigated on liability trials.

AUTOMÁTICA Y REGULACIÓN S.A.  Santiago, Chile
Attorney  1998-1999
- Represented client on collection proceedings and employment trials.

ADDITIONAL INFORMATION

Languages  Spanish (Native), English (Fluent).
Interests  Reading, swimming, skiing, and traveling.
Gabriel Dejarden González focuses his practice on corporate and financial services including mergers and acquisitions, and banking and financial regulation. Mr. Dejarden also provides ongoing advice on labor, litigation and real estate-related matters.

Mr. Dejarden is a member of the Legal Committee of the American Chamber of Commerce of the Dominican Republic, the Latin American Council for the Study of International and Comparative Law, the Willem C. Vis Moot Alumni Association and the Alumni Association of Georgetown University.

Languages: Spanish, English, French (Moderate)

Representative Experience

- Providing counsel in the acquisition of a Dominican Republic-based packaging company by a major US-based packaging manufacturer.
- Providing counsel to a non-Dominican entity for the establishment of an offshore financial center in the Dominican Republic.
- Assisting non-Dominican corporate and individual clients in the acquisition of real estate in the Dominican Republic for tourism development and personal leisure purposes.
- Representing Fortune and Global 500 companies in agency and distribution issues including the drafting, negotiation and enforcement of agreements under the DR-CAFTA Treaty and Dominican Agent/Distributor Protection Law No. 173.
- Providing counsel to a diplomatic delegation and various Fortune 500 companies concerning social security and labor law matters.
- Representing a Fortune 500 investment bank in connection with various securities and banking law matters in the Dominican Republic.
Gregory A. Wald's experience includes representing multinational and Fortune 500 companies and individual clients in all aspects of immigration law including non-immigrant visas, and immigrant matters regarding multinational executives and managers, individuals of extraordinary ability and professionals.

He has appeared before the US Department of Homeland Security (DHS), the US Department of Labor, the US Department of Justice Executive Office for Immigration Review and various federal courts.

From 1997 to 2000, Mr. Wald was an assistant district counsel for the US Immigration and Naturalization Service (INS) in the Miami and San Francisco districts. In this role, he advised the INS on multiple aspects of immigration, naturalization, criminal and civil law. As a member of the Employer Sanctions Team, he provided analysis and consultation to special agents on the legal sufficiency of Notices of Intent to Fine regarding Form I-9 audits, compliance and worksite enforcement operations.

Mr. Wald is a frequent speaker on business immigration and compliance matters. He has presented in seminars and conferences of the American Immigration Lawyers Association, ILW.COM's Technology Immigration: Update From The Trenches, as well as client seminars regarding the latest trends in employment-based immigration and government enforcement actions.

Mr. Wald is an executive member of the board of the Northern California Chapter of the American Immigration Lawyers Association. In 2009 he was nominated as one of California's leading practitioners in the field of corporate immigration and listed in Who's Who Legal: California. He is AV rated by Martindale-Hubbell, the highest rating for ability and ethics.

Languages: English, Spanish (Moderate)
Representative Experience

- Providing counsel and defending against government audits by the US Department of Labor, DHS and the US Department of Justice in matters relating to H-1B dependency, Form I-9 compliance, employer sanctions and immigration-related discrimination.

- Representing the INS and individuals before the Immigration Court throughout the administrative and appellate process.

- Providing *pro bono* representation or volunteering as a mentor to other lawyers for asylum applicants in custody and removal proceedings.
Labor Law in Latin America