

Key aspects of the new 2023 labor reform proposal

The Colombian Government submitted for debate before the Congress of the Republic the proposal containing the new labor reform, which maintains some of the provisions presented in the first proposal, modifying them and introducing new ones.

To facilitate a general and quick understanding of the new labor reform proposal, we describe below the main changes proposed in our opinion and which are of great interest to our business community.

I. REINFORCED LABOR STABILITY

It is intended to elevate the protection of employees with certain conditions or circumstances to a legal category. This legal protection is called “reinforced labor stability” and entails a protection of employees with such conditions, according to which they cannot be dismissed by the employer without fair cause, and only can be dismissed with authorization issued by an administrative or judicial authority.

II. EMPLOYMENT CONTRACTING

It is sought to adopt at the legal level the long – term contracting as a general rule, placing fixed-term contracts as an exception.

III. APPRENTICESHIP CONTRACT

It is proposed to eliminate the non-labor nature of the apprenticeship contract and convert it into a special fixed-term labor contract. This would imply the recognition of fringe benefits, full contributions to the Social Security System.

IV. TELECOMMUTING MODALITIES

The labor reform proposal seeks to establish the implementation of telecommuting, being mandatory 6 months after the entry into force of the labor reform. The implementation must be carried out in a minimum percentage of the total number of employees according to the size of the companies.

V. AUTOMATION PROCESSES AND DECARBONISATION

It is established a labor protection against the impact on employees due to the implementation of automation processes and decarbonization of activities in companies. In the case of the implementation of automation processes that imply employment contract’s terminations, the affected employees would have the right to be reconverted or relocated, and if this is impossible, the employer must request authorization from the Ministry of Labor in the case of collective dismissals.

VI. SEVERANCE FOR EMPLOYMENT CONTRACT’S TERMINATION WITHOUT FAIR CAUSE

It is intended to modify the severance table for dismissals without fair cause by increasing its terms, which would imply an increase in labor costs in the event of termination of employment contracts without fair cause.

VII. CONTRACTORS AND SUBCONTRACTORS

- It is proposed to use the figure of contractors and subcontractors for the development of specialized services.
- It is intended to establish absolute joint liability for all obligations and it will apply in all cases of outsourcing and/or secondment relationships.
- In the events in which the beneficiary company does not comply with the requirements for hiring third parties, when the contractor or the subcontracting party lays off employees, they will have the right to be reinstated in the beneficiary company with the payment of all labor obligations and an additional penalty amount corresponding to 365 days of salary.
- It is established a limit on the use of service contracts with individuals since this kind of contracts may not be entered into for subordinate activities.

VIII. DIGITAL PLATFORMS

The labor reform proposes to establish two working modalities in digital delivery platforms:

- Dependent and subordinate: this involves entering into an employment contract that must be governed by the rules of the Colombian Labor Code.
- Independent and autonomous: non-employment relationship. the provisions contained in the labor reform proposal will be applicable. Exclusivity clauses may not be agreed for the development of activities.

IX. ADDITIONAL OBLIGATIONS FOR THE EMPLOYER

It is sought the obligation to hire or maintain a minimum number of employees with disabilities, depending on the size of the company (the size criterion is adopted according to the number of employees in the company).

X. PATERNITY LEAVE

It is intended to increase paternity leave in a progressive manner until reaching 12 weeks in the 2026.

XI. MATERNITY AND PATERNITY LEAVE FOR SAME-SEX COUPLES

It is established to create a maternity and paternity leave for same-sex adoptive couples. The adopting couple will have to define, on a one-time basis, who will have paternity leave and who will have maternity leave.

XII. TRANSNATIONAL TELEWORKING

It is proposed the figure of transnational teleworking through which employees work from abroad, being the responsibility of the employee to have their regular immigration status and being the responsibility of the employer to have an insurance that covers health care needs in case of accident or illness.

XIII. REMUNERATION AND WORKING HOURS



- The surcharge for Sunday and holiday work is set at 100%; this increase will be made progressively.
- The schedule of day shift and night shift is modified. Day shift is defined as work performed between 6:00 am and 7:00 pm. Night shift shall be work performed between 7:00 pm and 6:00 am.

XIV. COLLECTIVE LABOR LAW

- It is intended to prohibit collective bargaining agreements between non-unionized employees → the benefits established in the agreements must be incorporated into employment contracts after the expiration of the agreements in force.
- Once a strike has been declared illegal, employment contracts may not be terminated.
- The labor reform proposal has the aim to encourage collective bargaining by activity sector.
- It is sought to make strikes in essential public services more flexible.
- The strike is allowed to have an indefinite and indeterminate duration.

XV. DISCRIMINATION

It is established that in those events that an employee claims to have been dismissed for a discriminatory reason, the employer must prove that the dismissal was due to objective or non-discriminatory causes, otherwise, the dismissal will be ineffective.

XVI. STATUTE OF LIMITATIONS

It is proposed to extend the term of the statute of limitations for labor rights and its actions by 5 years, counted from the termination of the employment contract.

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