MORGAN & MORGAN
ABOGADOS - ATTORNEYS AT LAW

Maria Teresa Mendoza

What employers need to know about labor regulations in the Republic of Panama

Introduction

Panama's Labor Code, in effect since April 1972, with some changes in the last years, regulates the relationship between capital and labor, based on the principles of social justice established in the Political Constitution of the Republic and it creates a special State protection as a benefit of the employees. The State will intervene to promote employment, create the necessary conditions which ensure that all employees have a decorous existence and to ensure that the capital has an equitable return for its investment, within a scheme that fosters harmonious labor relations that permit permanent growth of productivity.

The provisions of the Labor Code are of public order and they bind all persons, natural or legal, enterprises, undertakings and establishments that are at present established or that may be established within the national territory.

Public servants will be governed by the rules of the civil service, except in those cases in which this Code specifically determines the application of some provisions to them.

Cases not provided for, either in the Code or supplementary legal provisions, shall be decided in accordance with the general principles of the labor law provisions of the Code which govern similar cases or matters, equity and custom.

Immigration and hiring foreign professionals

To legally work in Panama, as general rule, foreigners are required to obtain a Visa and a Work Permit, in separate processes, before the Immigration authorities and in the Ministry of Labor. Some foreigners are exempted to obtain a Work Permit, such as companies that have a multinational headquarters license (SEM Companies), issued by the Ministry of Commerce.

Under Panamanian law there are limits to the hiring of foreign employees. The general rule is that 10% of the workforce can be foreigners and up to 15% if the expatriates are technical or trusted employees. However, there are certain types of visas and work permits which do not apply to these limits.

Terms of employment

All employees are required to sign a written employment contract, that must be sealed before the Ministry of Labor. In the absence of a written contract, facts and circumstances alleged by the employee, will be presumed to be true.

The general rule is that work contracts must be for an indefinite period, except for temporary positions, such as, vacations, sick leave replacement, or specific time for a task.

The parties can agree in the contract a probationary period up to the term of three months. During this period, the employer can terminate the contract without any cause, and without paying a severance.

Wages

Wages in Panama can be fixed by unit of time (month, fortnight, week, day or hour), or by specific job. Any additional payment, such as gratuities, bonus, premiums, commissions, profit sharing, salaries in kind, and any other benefit, due to the employment relationship, are considered as part of the salary.

Wages must be paid to the employees at least twice a month.

Collective agreements

A collective Agreement has the purpose of establishing labor and employment conditions, by an employer and by a union.

All the employers who have employees' members of a union, must negotiate a collective agreement when the union present a request, either directly to the employer, or through a conciliatory procedure proposed in the Ministry of Labor.

Clauses of the collective labor agreement will apply to all categories of employees, unless the agreement expressly indicates the contrary.

The collective agreement cannot be established under conditions less favorable for the employees than those established by law, the contracts, rules or common practices in effect in the respective company.

All collective agreements bind the parties and the persons in whose name they are made or to whom they apply. It also applies to the future members of the employer.

The provisions of individual labor contracts contrary to or incompatible with the collective agreement, shall be ineffective and automatically substituted by the provisions of the collective agreement. The provisions which are more favorable to the employees shall not be considered contrary to the collective agreement.

The duration of the collective agreement shall not be less than two years, not more than four years.

Once the date fixed has expires, it will continue to be in force until a new one replacing has been concluded, without prejudice to the right of the employees to propose a new negotiation.

Pension and benefits
In any case in which, due to delay or omission of the employer, the Caja de Seguro Social is not obliged to recognized the benefits to which such special legislation refers, such benefits shall be paid in full by the employer.

The compensation to which employees are entitled under are as follows:

1. In case of temporary disability for the performance of his usual occupation, the employee shall be entitled to daily compensation equal to his wages during the first two months of disability; and equivalent to fifty percent of the same during the following ten months if the injured person shall continue to be disabled all that time, in accordance with a medical opinion rendered for that purpose. Said compensation shall be paid by the employer on the same days and conditions in which the wages shall be paid, and it shall be fixed at not less than 1 balboa per day; however, when the wage are less than that sum, they shall be paid in full. If after the lapse of one year the temporary disability of the employee has not ceased, compensation shall be governed by the provision related permanent disabilities.

2. In case of partial permanent disability, the employee shall be entitled to a pension for three years computed in the basis of his monthly salary, according to the percentage of disability in accordance with the rules established.

3. In case of total permanent disability, the employee shall be entitled to be paid a pension during three years, once it is established, computed on the basis of 60% of his annual wage; during the following two years to a pension equal to 40% of his annual wage; and two more years at thirty percent.

The pensions established in paragraphs 2 and 3 shall not ne cumulative and the time lapsed under one permanent disability shall be credited to the other in case that a partial permanent disability may change to a total permanent disability.

Injuries which, without producing disability, result in serious mutilation of disfigurement of the victim, shall be considered, for purposes of the corresponding indemnity (compensation) the same as partial permanent disability.

Whenever professional risk causes the death of the employee, the persons who are hereinafter said for shall be entitled to a pension under the following conditions:

1. A pension of 20% percent of the annual wage of the victim during six years for the spouse or surviving member of the marriage or the woman who lived with the employee as a marital partner, or who was divorced, or separated physically due to causes attributable to him, provided the union or marriage had taken place prior to the death on which the professional risk occurred. Whenever the pension corresponds to the husband, the letter shall only be entitled to it if he proves that he is unable to the work. The woman who marries again or who has marital relations with another man, shall loose this right. Said pension shall be increased to 30% of the annual wage if the workman did not have any beneficiaries among those included in paragraph 2 of this article.

2. A pension for minor under 18 years of age and up to that age who were living totally or partially on the expenses of the deceased employee, provided this fact is duly established. Said prove shall not be require when the minors are children of the deceased. In the case other descendants of the deceased employee, including those who may be clearly in possession of such civil status, and of the collaterals up to the third degree inclusive, and are presumed to have lived at the expense of the workman if they lived and were fed and clothed in the same dwelling with him. The afore mentioned pension shall be computed on the annual wage of the deceased workman and shall be:
    a. 15% if there is only one minor;
    b. 25% if there are 2;
    c. 35% if there are 3;
    d. 40% if there are four or more

If there is no beneficiary entitled to the pension which is established in the preceding paragraph, the pension of the children shall be raised to 20% when there is not more than one; to 15% for each of them if there are two or more, with the limitation established in article 313.

3. A pension of 20% of the annual wage, during ten years, for the mother of the deceased workman which shall be raised to 30% of the said wage if there is no beneficiary of those included in clause 2 above.

4. A pension of 10% of the annual wage of the deceased workman, doing ten years, for the sexagenary or incapacity father.

5. A pension of 10% of the annual wage of the deceased workman, during six years, for each one of the ascendants or collaterals, who lived at the expense of the victim, but the total of these incomes cannot exceed 30% of the annual wage of the worker. It is presumed that such persons lived at the expense of the workman if they dwelt in the same dwelling as the latter and if they lacked, partly or completely resources for their support.

In case of professional risk, the employer is required to provide free of charge to the charge to the employee, until he dies, or until he is fully recovered, or until he is declared by medical opinion to be permanently disabled, the following services:

1. Medical and surgical assistance, and medicines, supplies and other pharmaceutical articles.
2. The auxiliary aids of the medical treatment prescribed which serve to ensure its success or to reduce the consequences of the injury or disease.
3. The normal provision, repair and replacement of prosthetic and orthopedic supplies, the use if which is considered necessary in view of the injury suffered.
4. The necessary expenses of transportation, board and lodging of the victim, whenever he must be treated and he must live in a place different from his habitual residence or place of work.

If there should be disagreement between employers and employees with respect to the determination of the sum corresponding to expense of board and lodging, the labor courts shall fix

it at the request of any parties, without any other proceeding and without any appeal whatever against such determination.

From the moment an employee begins working, the employer must deduct the amount of 9.75% from his monthly salary, and the employer will contribute with an additional 12.25%, that will be paid to the Social Security, to provide for health care and retirement, once the minimum requirements are obtained.

In order to receive the benefit of a retirement pension, employees has had to contribute with at least 240 monthly payments to the Social Security, and if is a woman, must have reach 57 years old, and men 62 years old.

Worker representation

Prior to the imposition of a disciplinary sanction by the employer, the employee is entitled to be heard and to be accompanied by an adviser, appointed by the trade union thereof.
In all work centers, establishments and businesses with twenty or more employees, a Company Committee shall function, being a joint committee made up of two employer's representatives and two union representatives, designated on an annual basis by the respective labor union. Where there is no labor union, the employees will elect a representative.

The Company committee, at the request of the party concerned, shall have the right of conciliation in the controversies that arise due to noncompliance with obligations by the employee or the employer.

At all times, both parties may look for expeditious solutions before the administrative or judicial labor authorities.

Working time and holidays

Working days are divided into the following shifts or periods: day work, from 6:00 am. to 6:00 pm.; night work, from 6:00 pm. to 6:00 am.; mixed shift, is comprising of working hours in both periods, provided that the period of night shift shall be less than three hours.

The maximum day work is eight hours, and the corresponding week, forty-eight hours.

The maximum night work is seven hours, and the corresponding week, forty-two hours.

The maximum mixed work is seven hours and thirty minutes, and the corresponding week forty-five hours.

The work for seven-night hours and seven and a half for mixed shift, will be paid as eight hours of day shift work.

Working hours shall mean the time which the workman may not use freely because he is subject to the orders of the employer.

Work time, exceeding the limits set forth above, or of lower contractual or legally prescribed limits, constitutes overtime and will be paid as follows:

1. 25% increase in wages when work is performed during the daytime.
2. 50% increase in wages when work is performed during the night period or when the mixed shifts started in the daytime are prolonged.
3. 75% increase in wages when the overtime work shift is an extension of the night shift or the mixed shift, started during the night period.

No more than three hours of overtime per shift are allowed. Working in excess of this limitation, will be paid with an additional increase of 75%, apart from the penalties that may be applied to the employer.

The following are holidays or national days of mourning imposed by law as obligatory days of rest:

1. January 1st and 9th
2. Tuesday of carnival
3. Good Friday
4. May 1st.
5. November 3rd
6. November 10th and 28th
7. December 8th and 25th
8. The day the President elect of the Republic is sworn into office (July 1st, every 5 years)

Work on a legal holiday or day of national mourning shall be paid with an increase of one hundred and fifty percent over the ordinary work day, without prejudice to the right of the workman to be given, as compensation any other rest day during the week. The increase of one hundred and fifty percent includes payment for the rest day.

When the employee provides services on Sundays, in his weekly rest day, or in the day which he would have had free because he had worked on holiday or on a day of national mourning, he will be paid an increase of fifty percent on the ordinary work day.

A 50% increase will be paid for all work performed during the workman's free days in the case of work weeks of less than six days if the work is carried out during the day working hours and a 75% increase for mixed hours or night hours.

Protection against dismissal

Employees with indefinite labor contracts who are dismissed can request that the Conciliation Board or the Labor Courts where the board does not function, to be reinstated to the position he held or that the severance be paid in accordance to what is established in the Labor Code. If during the corresponding process the employer does not prove just cause for dismissal or the prior resolution that authorized the same, the sentencing will recognize the rights requested by the employee, the payment of back salaries, which will be calculated as follows;

1. For up to three months as of the date of dismissal, for those employees who began working after August 1995.
2. For up to five months, for those employees who were employed before August 1995.
3. The labor proceedings in process at the courts before August 1995 which involve payment of services rendered, back salary or compensation will be governed by the norms in effect at the time this law went into effect. Up to one-year salaries.

The sentencing should state that the payment of compensation will be taken from the pension fund quoted by the employer or, in its defect, by the employer directly, who will also have to pay to cost of the process.

In cases were reinstatement is ordered, the employer can terminate the labor relationship, paying the corresponding compensations plus an additional charge which will be calculated as follows:

1. Fifty percent (50%) over the corresponding compensation for those employees who are working in the company after August 1995.
2. Twenty five percent (25%) over the corresponding compensation for those employees who began working before August 1995.

When reinstatement has been ordered, the employee who has been dismissed without sufficient reason must be reinstated in his position immediately, or within the second working day following the execution of the respective resolution within the same conditions existing before the dismissal.

In case of reluctance on the part of the employer, with or without request of the interested party, the Judge shall order physical arrest, as guilty of contempt of court.

The right of the employee to place a claim for unfair dismissal prescribes in sixty working days as of the date of dismissal, plus payment, in both cases, of back salary. When the claim is only for the compensation due to unfair dismissal and other compensations derived from the termination of the labor relationship, the same prescribes one year after the date of the dismissal.

Redundancy and restructuring

The employer cannot terminate the labor relation for an indefinite period, unless there is a justified cause provided for by the law, and according to the formalities of the latter.

Economic Nature:

1. Insolvency or bankruptcy of the employer;
2. The closing of the business or definite reduction of work due to a noticeable and evident lack or profitability in the exploitation or depletion of the raw material object of the extraction activity; and
3. Definite suspension of inherent work in the employee’s contract or an obvious reduction in the employee’s activities, due to a serious economic crisis, partial failure to cover costs of operations, due to reduction in production or innovations in the processes and manufacturing equipment, or revocation or expiration of the administrative concession,

cancellation of order or purchase orders or sales, or any other similar reason, properly established by the competent authority.
In these cases of dismissal due to economic crisis, the following rules will apply:

a) The first employees will be those with the least amount of time within the respective categories;
b) Once the preceding rule has been applied, in deciding which employees are to be kept on the staff, preference shall be given to the Panamanian employees over foreigners, labor union employees over those who are not, and the most efficient in respect to the less efficient.
c) Pregnant women, even if they are not preferentially covered by the previous rules, shall be dismissed last and only if necessary and after all the legal formalities have been fulfilled.
d) In equal circumstances, after having applied the previous rules, employees protected by the labor union privilege shall have preference over other in remaining on the job.

When the cause of dismissal is one of those mentioned above, the employer must give evidence of the cause before the administrative authorities of labor.

In these cases, the dismissal that does not comply with the requirements mentioned in the above subparagraph, will be deemed unfair.

However, if at the time of expiration of the term of sixty calendar days, the administrative authorities have not resolved the request, the employer can proceed with the dismissal, which will be deemed completely justified and will be obligated to pay the severance established in the Labor Code.

Buying or selling a business
Any alteration in the judicial or economic structure of the business, or the substitution of the employer, shall be governed by the following rules:

1. The alteration or substitution will not affect the existing labor relationships to the detriment of the employees;
2. Without prejudice to the legal responsibility between both, in accordance with common law, and in the event of a change of employer, the outgoing employer shall be jointly and severally liable with the new employer, in all the obligations derived from the contracts or the law, arising before the date of substitution and up to the term of one year, as of the date of the notice referred to in the next paragraph. Upon expiration of this term, liability will rest solely with the new employer.
3. The respective employees and labor unions shall be notified of the substitution in writing no later than 15 days following the date of the substitution.
4. Failure to give notification shall maintain the joint responsibility of the employers until said notification is given.
5. In no event will the rights or actions of the employees be affected, nor will it alter the unity of the employer, the economic fractionating of the company where they render services, nor the contracts, agreements or commercial combinations which tend to decrease or distribute the responsibilities of the employer.

6. If the patrimony of the business has been transferred to a third party by an arbitrary, judicial or any other kind of act, which later is declared illegal or unconstitutional, it will neither affect the continuity of the company, nor substitutions of the employer, and the beneficiary of said act will be solely responsible for the judicial consequences derived from the acts, contracts or the law which took place between the date on which patrimony was transferred and the date on which the same was returned to its legitimate owner, except in the cases of simulation and fraud for the benefit of the person who transferred said patrimony.

The beneficiary of the arbitrary act will respond to the satisfaction of the debts incurred during the corresponding time period the patrimony was held or produced after the start of the transactions with the shareholders and directors, if any.

Resolution of employment disputes
Individually, every employee has the right to present a claim to the Ministry of Labor authorities, claim that will produce a conciliatory procedure trying to resolve the dispute with an agreement. Same right have the unions to present claims on behalf of the employees, either to produce a conciliatory procedure, or to propose a petition list accusing the employer for not complying to with the labor law or to the collective labor agreement.

Employees that considers their dismissal were produced without a justified cause, as established in the Labor Code, have the right to propose a suit in the Conciliatory and Decision Board, where the hearing will take place. Both parties have the right to present an appeal to the Board decision, to the Superior Labor Court, which will produce the final and definitive resolution.

Claims for payments of accrued rights that are higher of $2,000.00 are proposed in the regular labor courts. Any appeal will be heard in the Superior Labor Court, and the final and definitive decision can go all the way to the Supreme Court.

Other statutory rights
All employees are entitled to an annual pay rest (vacation).

The right to vacations exists even though the contract does not require that the workman work all the hours of the ordinary work day or on every day of the week.

The duration of the remuneration for vacation shall be governed by the following rules:

1. Thirty days for every eleven continuous months of work, at rate of one day for every eleven days in the service of his employer.
2. Payment of one month’s wages when the remuneration is agreed on by the month, and four weeks and one third, when agreed on per week. In these cases, if the wages include bonuses, commissions or other variable sums, or of the workman has received an increase in wages, the average ordinary and overtime wages accrued during the last eleven months, or the last basic wage, will be paid, whichever is more favorable to the workman.
3. In the case employees are paid by the hour or by the day, the total ordinary and overtime payment that the workman has received during the last 11 months of service shall be divided by the number of ordinary working hours served, or less time served, in case of

proportionate vacations, and this quotient shall be multiplied by the number of annual rest days to which he is entitled. If the basic salary accrued during the last month is more than the average, the vacations shall be paid in accordance with the former.

4. For the purposes of computation of time served which entitles the employee to a vacation, the duration of the weekly legal holidays or national mourning and sick leave, as well as other interruptions expressly authorized by the employer, will be counted.
5. The sum that the employee must receive will be computed and paid to him three days in advance of the date on which he may begin to enjoy his annual rest (vacation).
6. If the labor relationship is terminated before the employee has the right to the complete vacation period dealt with in this article, he will be paid in cash the proportional vacation days to which he is entitled at the rate of one day for every 11 days of work, and
7. When the vacation period has been completed, the employee is entitled to be reinstated in his position.

When the employee receives part of his wages in kind, the payment in kind or its equivalent in money must be added to remunerations, according to that which is established in the Labor Code.

Every employee working in Panama is entitled to a special benefit considered as a thirteen-month bonus, which represents one-month salary, to be paid in three equal parts during the months of April, August and December.

From the start of the contract, the employee will begin to establish a sick leave fund, which will be twelve hours for every twenty-six shifts worked or one hundred and forty-four hours a year, which he may use as a whole or in part while receiving full pay, in case of illness or a non-work related accident. This fund is accumulative for two years and can be used in whole or part during the third year of service.

When the employee does not have the right to Social Security benefits and the sick leave fund runs out, he will have the right to have the leave time extended by having the time deducted from his accumulated vacation time. If the Social security benefits are not recognized due to late payments or fault of the employer, the later must pay the corresponding subsidy.

Certificates of incapacity must be issued by medical professionals, be numbered, contain the registration number given to the medical professional by the General Health Office, the complete name of the doctor, address, telephone number and name of the public institution, be it the Social Security Hospital or Ministry of Health, or private clinic where the medical professional works.

The certificate of incapacity that does not comply with these requirements will not be valid, unless for reasons of the place where it was issued it was impossible to comply with any one of these items. The medical professional must maintain, in the employees' file, a copy of each certificate with the diagnosis or motive of incapacity.

Discrimination

Discrimination in Panama is forbidden. According to the provisions of Panama's Constitution, there shall not be privileges or discriminations because of race, birth, disability, social class, sex, religion or political views.

The law prohibits job advertisement requiring a certain age of the candidate.

Employment of children and young persons

It is unlawful to employ:

1. Minors under fourteen years of age.
2. Minors up to fifteen years of age who have not completed their primary school education.

Those who are under 18 cannot work in those jobs which due to their nature or the conditions under which they performed, are dangerous to the life, health or morals of the person who carry them out, especially the following:

1. Work in clubs, bars and other places where alcoholic beverages are retailed.
2. Transportation of passengers and goods by highways, railways, airplanes, inland water ways and work on piers and in warehouses;
3. Work related to the generation, transformation and transmission of electrical power.
4. Handling of explosives or inflammable substances;
5. Underground work in mines, stone queries, tunnels or sewers.
6. Handling of substances, devices or apparatus which exposes them to the effects of radioactivity.

What is provided in numbers 2,3,4 and 5 of this article will not be applied to the work of young persons vocational schools, provided such work is approved and supervised by the competent authorities.

In farming and cattle establishments, minors between 12 and 15 years of age may be employed only in light work and outside the hours prescribed for school education.

Likewise, those who are under 18 cannot work:

1. In night work from 6 p.m. to 8 a.m.
2. Overtime hours on Sundays, legal holidays or days of national mourning.

Contracts concerning the work of those who are under 18 must be entered into with the participation of the father or legal representative of same. If they have no father or legal guardian, the contracts will be executed directly by the minors in question, with the approval of the labor administrative authority.

To determine the hours of work, the school requirements of minors will be taken into consideration, and the hours of work cannot exceed:

1. Six hours per day and thirty-six per week, with respect to those who are under 16; and
2. Seven hours per day and 42 per week, with respect to those who are under 18.

Outsourcing and personnel supply

An intermediary is any person who engages, or intervenes in the engagement of, the services of other persons to perform some work in favor of the employer.

Contractors, subcontractors and other established undertakings which engage employees for the execution of jobs, for the direct benefit of third persons, with capital, equipment, management, and other elements owned by them, will not be considered as middlemen, but as employers.

Notwithstanding, the direct beneficiary of the services rendered, or jobs performed, shall be jointly and severally liable with the contractor, subcontractor and other established undertakings for the fulfillment of the pending obligations in favor of the employees, in the case of the jobs or operations inherent, related to or connected with the line of activities of the beneficiary, even if the subcontract is expressly prohibited in the juridical act entered into between beneficiaries and contractors.

In any event, the contractor shall be jointly and severally liable with all the subcontractors of the obligations that these may have pending with the workmen.

In undertakings which execute jobs that are exclusively or principally for the benefit of another undertaking, the latter and not the former shall be considered the employer of all the employees who render services for the former, but both will be jointly and severally liable for all the services and indemnities to which the workmen may be entitled.

Also, is considered to be an employee the person who periodically sells or in any way delivers articles, materials, effects, or any kinds of assets, to an individual who lacks his own organization, the latter reselling or distributing them, provided that the resale or distribution is made in accordance with certain routes, itineraries, norms or directions, or that his main means of support be derived from such activity.

With the prior authorization of the Ministry of Labor, the operations and undertakings which dedicate themselves to providing their own employees to perform services for the undertakings that require them provisionally, for periods that do not exceed two months, under their intermediate direction and in accordance with the following rules, is permitted:

1. The minimum wage that must be received by the employees shall be at the highest rates specified for the respective district.
2. The undertakings that use the services of the employees shall be jointly and severally liable with the employing undertaking, for the wages, benefits and indemnities corresponding to the period to which, in each case, their services are employed.
3. Acts of the person or undertaking making use of the services, detrimental to the employee, shall be considered acts of the employer for all legal purposes.

The Ministry of Labor is empowered to regulate this provision and to ensure that the provisions concerning the placement of employees are not flouted by these undertakings.

Employee rights protections
Basic rights established by law, cannot be negotiated. Such rights are: minimum salary, maximum day and week shift, mandatory weekly rest day, vacations, 13th month bonus, sick leave, and any other benefit included in the respective employment contract or created by law.

Employees have the right to be included in the Social Security system, which allows them to health protection, and collect the retire fund, when age is completed.

Employees have the right to be members of a union and to negotiate a collective agreement with the employer.

Employees have the right to work and to maintain their job. They can only be dismissed if a disciplinary cause is committed, but the employer must prove in court the specific cause or causes.