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Workplace Leave

Argentine labor legislation grants several paid workplace leaves of absences, applicable to all employees under the scope of the Labor Contract Law No. 20,744 (“LCL”). Nevertheless, collective bargaining agreements or special statutes may grant more favorable licenses to the employees under their scope, in which case these will apply.

To begin with, the LCL sets forth paid non-labor related sick leave. An employee who is absent from work due to an accident or an extended illness not related to work is entitled to collect a normal salary while away from work. The employee may receive the normal salary for up to 3 months of illness if they have been working for the same employer for less than five years or up to 6 months if they have been working for the same employer for more than five years. If the employee has family in charge these periods are respectively extended to 6 months and 12 months. The employer may cease paying the employee’s salary after the above mentioned periods have elapsed.

If, however, the illness continues beyond such periods, there is an additional period (the “*Reserve Period*”) of up to one year without payment of salaries, during which time the employer must reserve a right for the employee to return to the previous employment position. After the termination of the Reserve Period, either party may terminate the contract of employment without it being necessary to pay any compensation for the termination of the labor relationship.

The LCL also includes annual paid vacation days. The number of vacation days depends on the length of service of each employee considered as of December 31 of each year. From 6 months to 5 years, the employee is entitled to 14 calendar days; from 5 to 10 years, to 21 calendar days; from 10 to 20 years, to 28 calendar days; and over 20 years to 35 calendar days. If the employee has worked less than half a year, they are entitled to one day of vacation per every 20 days worked.

It is important to bear in mind that the LCL does not allow the employer to make special payments as compensation for the lack of vacation grants. The only exception to this rule is that, upon termination of the labor relationship for any reason whatsoever, the employee is entitled to receive a compensation for pending vacation days as of the termination date.

Furthermore, the labor legislation establishes statutory holidays (such as New Year's Day and Labor Day) and non-workable days (like Maundy Thursday). During statutory holidays, employees are not required to work but still receive their regular salary. If an employee is requested and accepts to work on any of the holidays listed above, they will receive double of their regular rate of pay for all hours worked on the holiday. As to non-workable days, in terms of practice, many employers consider them as holidays and, thus, close their offices. Such is the case of Maundy Thursday. However, others do work on those days. In order to reduce the risk of discrimination claims, it is advisable that the treatment given to Maundy Thursday be consistent with the Jewish and Islamic religion non-workable days.

Moreover, the LCL provides for special paid leaves of absence in certain specific circumstances. Events which allow special leaves of absence include the birth of a child, maternity leave, marriage, death of a relative, and high school or university examinations. In such a case, the employer will pay the employee the usual salary during such leaves of absence.

The LCL also sets forth a special unpaid leave of absence for female employees after their maternity leave is over. They can opt for unpaid extended leave from 3 to 6 months, informing the employer by reliable means.

The LCL does not mention any special unpaid leave of absence. However, the employee, at its discretion, may grant the employee with this unpaid leave. During this type of leave, the employee does not provide services and the employer neither provides work nor pays the employee's salary. Although some collective bargaining agreements include the possibility of granting this type of leave (and the conditions for this), as mentioned, they are not expressly contemplated in the LCL, so the general regime does not provide for any type of regulation and, in principle, its granting and extension is at the employer's discretion.

If the employer decides to grant the employee an unpaid leave of absence, during its duration, the benefits of the parties are suspended (to give work and pay the salary by the employer, and to perform tasks by the employee), but the employment relationship will continue. This means that the rest of the rights and obligations remain in force.

Moreover, when calculating the employee's tenure, the period or periods in which they have been granted this leave should not be considered. Therefore, such term would not be considered for the calculation of the 13th salary, the employee's vacation days or for the amount of the severance pay. However, some case law and legal scholars interpret that the period of unpaid leave of absence, when accepted by the employer, does not damage the rights that the employee acquires based on their tenure, so we cannot rule out an employee's claim stating that such period should be counted as worked days.

As already mentioned, in the absence of service, the employee does not earn a salary. Consequently, the employer should maintain the same conditions as the employee had before beginning the unpaid leave.

During the unpaid leave of absence, as the employee does not earn a salary, no withholdings and contributions are received. Thus, the employee does not benefit from the payment of family allowances and healthcare provider. Nevertheless, the employee may maintain their healthcare provider if they comply with the relevant withholdings and contributions.

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