

## Employment Law in Colombia: Part III

Insights

7.16.15

This article is the third in a series which provides an overview of the basics of employment law in Colombia and will focus on laws governing employment terminations, including just cause reasons for terminating the employment relationship, notice requirements and compensation due at the time of termination.

### I. Termination of the Employment Relationship

A Colombian employment contract can be terminated unilaterally by either the employer or employee or by mutual consent by both parties. When the employer is the party terminating the employment contract, it can do so with just cause or without. The just cause reasons for terminations are those established by Article 7, Decree 2351 of 1965 or as expressly set forth in the employment contract. Just cause reasons for terminating the employment relationship include, but are not limited to, the following:

- Providing false information to the employer with the purpose of obtaining an improper advantage;
- Insubordination;
- Any willful act by an employee to damage the property of the employer or act of negligence that threatens the safety of employees of the company;
- Any act of violence by an employee against the employer or coworkers;
- Any grave violation of the obligations of the employee as set forth in Sections 58 and 60 of the Colombian Labor Code ("Labor Code");
- Any breach of confidentiality by the employee pertaining to the employer's trade secrets; and
- Poor performance by the employee after warning and a reasonable opportunity to improve.

If an employer terminates the employment relationship for just cause or if the relationship is terminated by mutual consent, the employer is not legally obligated to pay the employee severance referred to in Colombia as an "indemnity." However, an employer terminating an employee for just cause should take care to make sure it has evidence and supporting documentation for the just cause reason in case the employee decides to bring an action to challenge the termination decision as unlawful. Unlawful termination reasons and damages available to employees who prevail in a legal action against the employer are addressed in Part II of the series.

If the employer terminates an employment contract without just cause the employer will be required to pay a legal indemnity in an amount specified in Section III of this Article.

## **II. Notice Requirements**

If the employer decides to terminate the employment relationship, it is not required to provide advance notice to the employee of the effective date of the termination unless the employee is being terminated for just cause. If the employee is being terminated for just cause, the employer must provide fifteen (15) days advance notice to the employee in accordance with Article 70 of Decree 2351. Additionally, if there is a fixed-term employment contract, the employer should provide thirty (30) days' notice of the termination decision in order to avoid any automatic renewal provisions that may be present in the contract. All termination notices should be provided to the employee in writing.

## **III. Indemnities and Other Compensation**

At the time of termination, the employer must pay all outstanding mandatory amounts due and owing to the employee, including unpaid wages in accordance with Articles 127 to 156 of the Labor Code, compensation for any earned and unused vacation days in accordance with Article 188 of the Labor Code and any amounts due for contractual fringe benefits in accordance with Articles 193 to 258 of the Labor Code. Additionally, pursuant to Article 64 of the Labor Code and, except in cases where the contract is terminated by mutual consent or for just cause, the employer must pay an indemnity to the employee in an amount calculated in accordance with the Labor Code. The amount of the indemnity varies depending on the type of employment contract at issue and the length of service of the employee. If there is a fixed-term contract, the amount of the indemnity will equate to the amount that would have been paid for the remaining time of the contract. For indefinite contracts, the specific amount set forth in the Labor Code depends on whether the employee was employed for more or less than one year and whether the employee earns a monthly salary that is higher or lower than the Colombian minimum monthly wages.