



# Practical Best Business Practices For Going Global in Chile

## Insights

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Going global in Chile gives employers the opportunity to hire some of the leading professionals and creative talent in Latin American. The official population of Chile is just under 16,000,000, of which over 51% is female. Chilean economic policy is based on the free market principle, and Chile has a wide range of small, medium, and large private companies that have a great production, marketing, and investment capability. Major industries include mining (copper), wine, tourism, chemical (oil, rubber and plastic), agriculture (salmon and forestry) financial services, and tobacco. The Chilean Labor Code (“CLC”) governs labor and employment law.

### **Types of Workers in Chile**

Two broad categories of workers are recognized in Chile - dependent workers and independent workers. The distinction between the two are analogous to employees (dependent workers) and independent contractors (independent workers) under U.S. employment laws. The CLC regulates employment of dependent workers (e.g. employment contracts), but does not regulate or cover independent workers. We will focus on dependent workers, however, please keep in mind that employment contracts of independent workers generally involve performance of technical or professional services with the absence of supervision and generally involves payment of a fee rather than a wage or salary.

### **Chilean Employment Agreements Under the CLC**

Article 9 of the CLC expressly states that an employment agreement can be formed orally or in writing. If in written form, the agreement must be signed within 15 days after the employee starts to render his or her services to the employer or within five (5) days if the employee is hired for a specific task that will take less than thirty (30) days. It is ideal and best business practice to have employment agreements in writing because in the absence of a written agreement, Chilean courts defer to an employee’s understanding of the terms and conditions of employment. Therefore, a written employment agreement should at the very least state and provide the following information:

- the date and place of the agreement
- the complete identification of the parties, including employee’s nationality and date of birth,
- the nature of the job,
- the place of employment,
- the work shift
- the salary or monetary compensation,

- the form and date of payment of salary or monetary compensation, and
- any other terms and conditions of the employment agreement.

(See Article 10 of the CLC)

### **Hiring and Employee Termination Rules and Restrictions**

In Chile, employers must be mindful that companies with more than 25 employees must have a labor force that is at least 85% Chilean, however, specialized and technical employees who cannot be replaced by local employees are not considered as part of this legal requirement.

Employers have the freedom to hire, as long as benefits, minimum wage, work hours, vacation days, holidays, and bonuses are provided to employees in compliance with the law. However, a caveat exists to Chile's freedom to terminate. Article 159 of the CLC provides that an employer and employee relationship can be terminated by: (1) mutual agreement; (2) the conclusion of particular task agreed upon; (3) force majeure (e.g. an unexpected events, for example, a natural disaster); (4) the employee's death; (5) the expiration of an agreed upon term or duration of employment; and (6) resignation by the employee. It is noteworthy to mention that pursuant to Article 161 of the CLC, employers must provide severance pay to employees who are entitled to such pay as required by law. Generally, for all practical purposes, severance amounts equate to one month salary for each year of service, and the employee should be given at least 30 days advance notice.

In the event, the employer wishes to terminate the employment relationship, employers must justify such dismissals based on the following general permissible reasons under Article 160 of the CLC – if and when the employee engages in (1) immoral conduct; (2) sexual harassment; (3) destruction of the employer's property; (4) illegal strikes; (5) material breach of the employment contract; (6) desertion of work; (7) unjustified absence from work; or (8) other serious misconduct or misbehavior. In essence, for all practical purposes, termination of employees in Chile must be 'with cause.'

Given that the reasons permitting employers to terminate employment relationships are quite broad, we have seen an increase in employment claims in Chile. Hence, it is ideal to engage in best business practices to prevent potential unnecessary litigation. Additionally, employers need to be mindful that under Chilean law, the judge rules on the merits of the case and also rules on the payment of attorneys' fees and costs, along with other damages asserted, which give employers even a greater incentive to implement and engage in best business practices.

### **Best Business Practices for Hiring and Firing**

Indeed, the spirit of labor and employment relations in Chile aims for optimal relations between employers and their employees. For best business practice in hiring, it is ideal to have written employment agreements with all dependent workers in compliance with the CLC. Further, it is best business practice to have a termination documents, or "Finiquito," which is a document that states the conditions and reasons for termination, provides notice of termination, and provides an itemization of the social benefits and monetary benefits to be received by the employee as part of the

termination (e.g. compensation, severance pay, indemnification for unjustified firing without prior notice, payment of proportional vacations, etc.). Although the Finiquito is not a mandatory document required by law, the Finiquito is the only legally binding way for an employer to prove the termination of employment and the conditions under which the employment was terminated. If the Finiquito is duly signed by both the employer and employee before a notary public, it constitutes and operates as irrefutable evidence of the parties' obligations and serves as both, a preventive measure and strategic affirmative defense, against claims and lawsuits in Chilean Labor Courts.