



Employment Law in Costa Rica: A Country Protective of its Employees and Natural Environment

Insights

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On January 9, 2013 it was reported in thecostaricanews.com that the Costa Rican government has announced a new aggressive policy to attract foreign investment. According to the article, the government of Costa Rican's President Laura Chinchilla Miranda, elected in 2010, stated that: 1) the national economy grew by five percent in 2012; 2) the Monthly Index of Economic Activity, however, predicts a slowdown in Costa Rica's economy in 2013; and 3) in order to protect Costa Rica's economy and its successful foreign investment policy, President Chinchilla and her government will implement an "aggressive campaign and policies to attract foreign investment and international trade." This article will provide a summary of some of the employment laws in that country for multi-national companies who are considering entering into business ventures in Costa Rica, or who are currently conducting business in this country.

Costa Rica, a country with over 4.3 million people, includes one of the most educated populations in this hemisphere. Country officials have stated that nearly 100 percent of its citizens graduate high school and nearly 80 percent graduate college. Costa Rica is also one of the most eco-friendly countries in the world; it is ranked fifth in the world in the 2012 Environmental Performance Index and a frequent vacation spot for tourists from the United States and elsewhere. Article 50 of its Constitution states, "[e]very person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe said right and claim redress for the damaged caused." Costa Rica is also one of the major non-U.S. locations where Americans choose their retirement homes, and is a major tourism and eco-tourism destination for individuals from around the world.

Costa Rica is a unitary presidential constitutional republic. Costa Rica abolished its army in 1949, and, in 2012, became the first country in the American continents to prohibit recreational hunting. Some major industries in Costa Rica, whose capital is San José, are software development, tourism, ecotourism, pharmaceuticals, and agriculture, including coffee. Several multi-national companies have invested in manufacturing facilities in Costa Rica.

Although the main employment law of Costa Rica is Costa Rica's Labor Code, there are numerous other statutes and regulations governing the employment relationship, including the Law Proscribing Discrimination, the Law Against Sexual Harassment, Equal Opportunity Act for Persons with Disabilities, the Law that Promotes Equal Opportunity for Women, and the Worker Protection Act governing employee pensions. Further, Costa Rica's Constitution includes a number of rights for

Act governing employee pensions. Further, Costa Rica's Constitution includes a number of rights for employees and individuals in general, and Costa Rica is a signatory to many International Labour Organization ("ILO") employment and human rights documents.

The following is a short description of a number of employment-related topics which employers in Costa Rica, including multi-national employers, should be aware when either hiring employees in Costa Rica or managing current employees in this country:

Employment Contracts. Employment contracts in Costa Rica must be in writing, signed by both the employer and employee, and are required to include specific information, such as an employee's name, address, gender, hours of work, wages, work location, and the location of where the contract was signed. However, if a written employment agreement does not exist, an employee still may be allowed to contend that an agreement was implied. There are limitations to fixed-term contracts, which may not have a duration over a year and may only exist where the circumstances of the work required to perform would provide an explanation in favor of a fixed-term contract. Employees who work beyond the term of a fixed-term contract, or for over a year, are considered to be working for an indefinite period of time. The law is very much in favor of indefinite term contracts that provide many protections to employees. Employers are allowed to place new employees on a probationary period, but for no more than three months. Probationary periods may not be extended.

Wages, Working Hours and Child Labor Laws.

Minimum Wage Rates. The Costa Rican government, through its Ministry of Labor, publishes its minimum wage rates every six months. There is a chart of minimum wage rates that became effective on January 1, 2013. There is not one minimum wage rate; instead, the rate depends on both the industry in which an employee is employed as well as the job he or she holds. There is a separate chart setting forth the minimum daily wage for an eight-hour regular workday for employees working in the following employment sectors: construction, tourism, transportation, agriculture, industry, manufacturing, electricity, services and commerce, separated into skilled workers, semi-skilled workers, non-skilled workers and specialized workers. These daily rates are in the Colon, the Costa Rican currency. For example, the minimum daily rate for skilled workers in these categories is 9.340,79 Colon. There is also a separate chart for the required minimum monthly rate for numerous worker classifications not covered by the first chart for employees in numerous other worker categories, such as technicians with higher education, domestic employees, skilled workers and university graduates with a bachelor's degree. For example, the required minimum wage for a university graduate with a bachelor's degree is 457.646,94 Colon.

Working Hours. The Constitution and Labor Code set forth numerous requirements for working hours, overtime pay and timing of wage payment. One of these requirements is that employees who work on day shift may not work over 48 hours per week or over eight hours a day. However, employees may work up to ten hours a day as long as the work is not dangerous and the employee does not work more than 48 hours per week. In general employees are entitled to special rates of overtime pay for time worked over the standard allowable daily and weekly work hours. The

overtime rates depend upon a number of factors, including whether an employee is paid on a weekly basis or a monthly basis, and whether the time worked is on mandatory holidays.

Child Labor. Costa Rica has established numerous child labor laws limiting the ages at which children can work and the types of employment in they may be engaged. This country's Labor Code makes it unlawful for individuals under eighteen years of age to be employed in hazardous work or in locations where alcohol is served. The laws addressed at protecting children also include several statutes passed in the last few years, such as the law Prohibiting Dangerous Work and Unhealthy Work for Adolescent Workers that make it illegal for adolescents to work at sea or with chemicals.

Holiday and Vacation Benefits. Employees in Costa Rica are entitled to the following paid vacation days: New Year's Day, Juan Santamaria Day (April 11), Easter Thursday and Friday, Labor Day (May 1), Annexation of Guanacaste Day (celebrating Costa Rica's annexation of its Guanacaste Province from Nicaragua in 1824) (July 25), Mother's Day (August 15), Independence Day (September 15) and Christmas Day; and the following unpaid vacation days: Virgin of Los Angeles (August 2) and Cultural Day (October 12). Salaried employees, however, are paid for working on August 2 and October 12 whether or not they work on these days. Additionally, the Costa Rica Labor Code provides vacation benefits that generally entitle employees to one day of vacation for every month of employment, and two weeks of vacation after 50 weeks of work. However, there are certain requirements for vacation benefits, including that vacations may not include paid holidays or weekends, and paid vacations must be given to employees during the fifteen weeks following the completion of the 50 weeks of work. Further, employees in Costa Rica are entitled to a thirteenth month salary at Christmas time called aginaldo, which is based on one month of an employee's salary.

Employment Separation and Procedural Requirements. There are no specific statutory requirements in Costa Rica governing mass dismissals.

Just Cause Allowing Immediate Employment Termination. It is not necessary to have just cause to discharge employees in Costa Rica who are working either on probation or on valid fixed-term contracts. However, just cause is required in order to dismiss employees for an indefinite term without providing the legally-mandated notice (or pay in lieu thereof) and severance pay. Costa Rica's Labor Code provides specific work behavior that constitutes just cause for immediate dismissal without notice and severance. A few of the many examples of workplace and non-workplace behavior that the Labor Code sets forth as just cause include: 1) the refusal by the employee to follow work directions affecting efficiency or the employee's work performance; 2) the disclosure by employees of company confidential information; 3) immoral or slanderous behavior during work hours against the employer or, under certain circumstances, against co-workers, or such unprovoked behavior outside of the workplace that affects the workplace; and 4) an employee's action, at the time the employment contract begins, of misleading the employer about the worker's skills or providing false references to the employer.

Notice or Payment In Lieu Thereof. Prior to separation, employers are required to give employees notice or payment in lieu thereof unless the employee is separated for cause, or is separated while on a valid probation period or the employee is working under a fixed-term contract. The amount of notice varies from seven days for an employee working more than three months but less than six months, to one month, for an employee with more than one year's service.

Severance Pay. Employees who are involuntarily separated without just cause, unless they are on a fixed-term contract or are working under a valid probationary period, are entitled to severance, depending upon their length of service varying from seven days severance pay to 22 days per year of service. However, employees are only entitled to be paid severance for the last eight years of their service, no matter how long they have been employed by an employer.

Harassment and Discrimination. Costa Rica, through its Constitution, numerous employment-related laws and ratification of several ILO Conventions, prohibits discrimination based on race, color, religion, national origin, age, gender, disability and other categories, such as prohibition against making employment decisions regarding applicants because they are HIV-positive. The laws also prohibit sexual harassment in the workplace and educational institutions.

Treatment of Foreign Employees. Unlike many countries outside of the United States, Costa Rica does not currently limit the number or percentage of foreigners who work in that country. In 1999, Costa Rica's Labor Code Article 13, which limited the employment of foreign employees to ten percent in each company, was abolished because the Costa Rican government concluded that this statute allowed illegal employment discrimination against foreigners. Further, Article 68 of Costa Rica's Constitution provides that no discrimination shall be made with regard to wages, advantages, or working conditions between Costa Ricans and foreigners, or with respect to any group of workers. However, under Costa Rican law employers are allowed, under equal conditions, to provide Costa Rican workers preference for jobs.