



Employment Law in Peru

Insights

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The Republic of Peru, a country in western South America with a population of approximately 30 million people, has an emerging economy with approximately 18 million employees. Among its major industries are petrochemicals, mineral mining, textiles, construction, fishing and tourism. Although the standard of living has increased over the years, currently over 25% of its citizens are believed to live in poverty. The numerous multi-national employers who do business in Peru, or are planning to do so, should be aware not only of the protections afforded employees in Peru, but of the restrictions that exist regarding employing workers from outside of the country. Many of the rights of employees are found in Peru's New Labour Procedure Law, which was enacted in 2010.

Employment Contracts. Employers in Peru may hire workers under a fixed-term or an indefinite basis, depending on the circumstances regarding how a job is performed. In general, jobs such as those in the legal or financial fields may be performed under an indefinite employment contract. Fixed-term contracts must be in writing, and may only be used for a period of up to five years in total. Employers are required to register fixed-term contracts with Peru's Labour Ministry. There are numerous types and subcategories of fixed-term contracts, including temporary, market needs and entrepreneurial reorganization agreements. Employees may be hired for a probationary period of three months to one year, after which time they become entitled to legal rights against unjust dismissal.

Special Issues Regarding Foreign Workers. Employers who are considering hiring foreign employees must be aware that of Peru's Law of Recruitment of Foreign Workers. For example, no more than 20% of an employer's local workforce may consist of foreign employees. Further, there are limitations to the amount of salary an employer may pay to foreign employees. Generally, the amount of the salaries paid by an employer in Peru is not allowed to surpass, in total, more than 30% of the total amount of the compensation paid to all employees (with some exceptions, such as salaries paid to certain technical employees). Further, there are generally different rules regarding the maximum term length of a fixed-term agreement for a foreign employee as compared with similar rules pertaining to Peruvian employees.

Outsourcing Arrangements. Peru adopted rules in 2008 protecting Peruvian employees from "abusive" outsourcing arrangements. Under these rules, employees of a contracting or outsourcing company may bring a legal action to hold the client company jointly and severally liable for statutory labor obligations if the employees of the outsourcing company are working at the facilities of the

client company. These rules are similar to the “co-employment” laws that exist in the United States and elsewhere.

Employment Termination. Unlike in the United States, where most workers are considered at-will employees, workers in Peru are entitled to many legal and procedural safeguards. Employers, however, also have rights under local statutes to take certain employment actions. Some of the key issues related to employment termination are:

Objective grounds for an employer to terminate an agreement. Peru’s labor laws provide several reasons for which an employer may terminate an employment contract on objective grounds, including: the employee’s resignation with thirty days’ notice; the completion of the task or service; the satisfaction of a condition leading to the termination of the contract; the expiration of the contract’s termination; mutual agreement; a worker’s permanent total disability; and the termination of employment on objective grounds, such as an unforeseen event (ex: a natural disaster or an employer’s bankruptcy). A worker whose employment is terminated for objective grounds is entitled to: 1) compensation based upon his or her length of service; and 2) preference for reinstatement.

Collective dismissals. The law in Peru specifically provides that an employer’s dismissal of its workers for economic, technological, or organizational restructuring reasons is considered an objective ground for termination. Employees dismissed for these reasons are entitled to a severance allowance, as well as preferential rights to be reinstatement within a year of the collective dismissal. An employer may terminate employment contracts solely on economic grounds where a minimum of ten percent of the total workforce is affected by a number of required procedures, including consultation with the workers’ representative and notification to relevant public authorities.

Other grounds for terminating an employment contract. In general, where objective grounds as stated above do not exist, under Peruvian employment law there must be a valid reason for ending an employment contract which can be substantiated by the employer, such as an employee’s incapacity, inadequate productivity, or his or her unreasonable refusal to undergo an employment-related medical examination or to follow medical treatment or preventive measures. Employers are also allowed to dismiss a worker based on an employee’s conduct. Some examples of valid reasons for this type of dismissal are:

- serious misconduct such as failure to comply with employment obligations, repeated opposition to work orders, the failure to observe work-related or occupational safety or health regulations, or the appropriation or attempted appropriation of an employer’s assets;
- repeated attendance at work under the influence of alcohol or drugs;
- violent acts, serious breaches of discipline, insults and disrespect addressed to the employer which take place inside or outside the workplace;
- deliberate damage to an employer’s property;
- failure to appear at the workplace for more than three consecutive days, unjustified absence for

more than five days over a period of 30 calendar days or more than fifteen days over a period of 180 days;

- repeated acts of lateness which have been brought to the employee's attention, where disciplinary actions, such as a written warning, have already been provided to the employee; or
- certain criminal convictions.

Illegal Dismissals. Peruvian law lists a number of illegal reasons for involuntary discharge. For example, it is illegal to discharge employees due to their union membership or for being workers' representative candidates. Employees also may not be dismissed for submitting a complaint or taking part in an legal action against the employer, or on account of their sex, race, religion, political opinion, language, pregnancy, or within 90 days of childbirth. There are also circumstances, such as non-compliance with safety procedures and nonpayment of wages (except for force majeure reasons) allowing employees to bring actions for constructive discharge.

Statutory notice procedures. Employees in Peru are entitled to certain notice procedures prior to separation. Generally, an employer must provide an employee a reasonable period of written notice of not less than six calendar days so that the employee can present a written defense to any charges against him or her, or 30 calendar days to prove the employee's performance capability or to correct any error. However, an employer is not required to provide notice if the employee has exhibited serious misconduct under which it would be unreasonable to require the employer to continue the employment relationship. Further, the employer must communicate in writing to the employee, or, as applicable, trade unions or other authorized representatives, its dismissal decision and the reason for the action.

Severance pay. An employer in Peru generally does not owe severance to employees who have been separated due to their conduct or capacity. An employee terminated without cause is, in general, entitled to severance payments for a period of up to twelve months, depending upon the circumstances of the former worker's employment history. There is no specific redundancy pay required under Peruvian law. If a court determines a dismissal to be unlawful because the employer has not provided a valid reason to the worker, or the reason cannot be legally substantiated, the employee usually will be entitled to a payment equal to the average monthly compensation for each year of service, up to a maximum of twelve months.