

Argentina¹

Sources of regulation

The Constitution of Argentina² is the primary source of labour law in Argentina. *Art. 14bis* establishes that labour in its several forms shall enjoy the protection of the law which safeguards workers against arbitrary dismissal and stability of public employment. It also provides that trade union representatives will enjoy the guarantees necessary for carrying out their union tasks and those relating to their employment security.

Specific sources of labour law are contained in the 1976 Act No. 20744 governing contracts of employment (LCT), supplemented by Act No. 24013 of 13 November 1991 (National Employment Act, LNE), which was passed to establish programmes and measures of employment promotion. These laws were further amended, in 1995 by Law 24465, in 1998 by Law 25013, and again in 2000 by Law 25250. In addition, Act No. 24467 of 25 March 1995 governs small and medium-sized industries and introduces specific provisions on the termination of the employment relationship, while Decree No. 2072/94 of 25 November 1994 regulates procedures for the prevention of crises and outlines measures to be adopted in the event of collective dismissal.

Professional rules and works rules, collective agreements or awards having the same force and effect (*sec. 1, LCT*), international treaties and case law supplement this body of legislation.

Scope of legislation

The provisions of the LCT do not apply to persons employed by the national, provincial or municipal civil service (except where they are expressly included within its scope or within that of collective labour agreements), domestic servants and agricultural workers (*sec. 2, LCT*).

Contracts of employment

In accordance with *sec. 21* of the LCT, there is deemed to be a contract of employment, regardless of its form or designation, whenever a physical person undertakes to perform actions, tasks or services for the account and under the authority of another person, for a specified or unspecified period and in return for remuneration. The clauses of such a contract, as regards the form of the work and the conditions in which it is to be performed, are subject to the mandatory provisions of the law, to the relevant regulations, collective agreements or awards having the same force and effect, and also to usage and custom.

Sec. 23 of the LCT also establishes that an employment relationship exists whenever a person performs actions, tasks or services for the account and under the authority of another person, voluntarily and in return for remuneration, regardless of the formal basis of the relationship.

The existence of a contract of employment is presumed where services are performed, unless the circumstances, relationships or causes out of which it arose indicate the contrary. There is also such a presumption where the terms used to express the contract are not provided for in labour law, on condition that the circumstances are such that the person performing the services cannot be regarded as an employer (*sec. 23, LCT*).

¹ Updated December 2000.

² Published in the *Boletín Oficial*, 23 Aug. 1994.

The classic form of contract is one of unspecified duration (*sec. 90, LCT*); the LNE confirmed the principle of Unspecified duration² as a primary characteristic of a contract of employment, giving preference to contracts of indefinite or unspecified duration in case of doubt as to the terms and conditions governing employment contracts (*sec. 27, LNE*). This type of contract may remain in force until its termination upon the retirement of the worker (*sec. 91, LCT*). Alternatively, a contract of unspecified duration may be for seasonal work concluded where the relationship between the parties, based on the activities that are characteristic of the normal functions of the enterprise or operation, exists only for specific periods of the year and is liable to be repeated for a given period in the course of each year because of the nature of the activity carried on (*sec. 96, LCT, and sec. 66, LNE*).

Other than these types of contracts, there are contracts for specified periods, which may take various forms, including fixed term, when the duration is expressly fixed or where the nature of the tasks or activities justifies its termination. This type of contract may not be concluded for more than five years (*secs. 90 and 93, LCT*). There also exist casual work contracts, possible in the context of exceptional and temporary requirements whose duration cannot be foreseen at the time of concluding the contract (*secs. 99 and onwards, LCT and secs. 68 et seq., LNE*).

Various forms of special contracts of employment were allowed under the National Employment Act, of 1991. These included fixed-term contracts for the launching of a new activity or for the rendering of services in a new establishment, or on a new production line in an existing establishment; contracts providing initial employment for youths, on-the-job training contracts and fixed-term employment contracts for the promotion of employment of people registered as unemployed² These modalities were, however, abolished in 1998, under Law 25013.

As far as probation is concerned, the first three months of a contract of employment are presumed a probation period, during which the contract may be terminated at any time by either party, provided the contract has been duly registered with the competent authority in charge of labour. Collective agreements may, however, extend probation up to six months. In small enterprises (i.e. enterprises that employ 40 workers or less, and whose billing does not exceed a prescribed ceiling) the probation period is six months, and it can be further extended by collective agreement, up to twelve months in respect to skilled workers.

Termination of employment

Secs. 240 et seq. of the LCT list the circumstances in which employment contracts may be terminated, other than at the initiative of the employer, as follows:

- C unilaterally by the worker;
- C by mutual agreement of the parties;
- C for reasons of *force majeure*;
- C on the death of the worker or employer;
- C on expiry of the agreed term, on account of bankruptcy or liquidation of the employer, and

² One of the main innovations of the LNE is the recognition of the possibility of concluding contracts of specified duration even when they cover or fill posts or tasks of a permanent nature (*secs. 43 and 109, LNE*). Thus, the legal text invokes the principle of employment stability for exceptional requirements which have to do with the promotion of employment.

C on the worker's retirement.

Termination of employment at the initiative of the employer

A contract of employment may be completely terminated before its expiry irrespective of the type of contract concluded, with the payment of a compensatory indemnification to the worker, additional to that due to him or her on the grounds of length of service with the enterprise, and respecting the concept of advance notice of varying duration depending on the length of service completed by the worker (*sec. 231, LCT*).

Either of the parties may terminate the contract of employment if the other fails to discharge his or her obligations under the contract to an extent that is prejudicial to it and if the seriousness of this failure means that the relationship cannot continue. Argentinean legislation, unlike other legislation in the region, opts for an open definition of termination of *Good cause*, without indicating specifically the conduct or acts that will be considered as *Good cause* for firing a worker. Where a challenge arises, the decision is thus left up to the judge who has to resolve the issue taking into consideration the circumstances of the case. Judges assess cases at their discretion, giving due regard to the nature of the relationships established by a contract of employment as provided in the LCT (*sec. 242, LCT*). When an employer decides to dismiss a worker for good cause, notice of the fact must be given in writing with a sufficiently clear indication of the grounds invoked for the termination of the contract. Where the termination is challenged by the other party, no changes in the grounds indicated in the notice are permitted (*sec. 243, LCT*).

A worker's abandonment of his or her work may be regarded as constituting a failure to discharge his or her duties only if he or she is found to be absent after formal notice has been served on the worker instructing him or her to resume work within a period appropriate to the circumstances of the case (*sec. 244, LCT*).

Where a dismissal is ordered for reasons of *force majeure* or on account of a shortage or reduction of work that is duly proved to be beyond the employer's control, the worker is entitled to receive compensation. In such cases the first workers to be dismissed will be those with the shortest length of service (*sec. 247, LCT*).

Where a worker terminates his or her contract on the ground of the employer's fault (*constructive or indirect dismissal*), he or she is entitled to the compensation provided for in the LCT (*sec. 246, LCT*).

Under the provisions of the LCT, no woman is allowed to work for the 45 days before and 45 days after giving birth. A woman worker must notify her employer of her pregnancy and provide a medical certificate stating that her confinement will probably take place within the period indicated. She is to retain her employment during the period indicated and is entitled to the allowances granted by the social security schemes. She must also be guaranteed stability of employment, which will constitute an acquired right from the date on which she notifies her employer of the fact that she is pregnant (*sec. 177, LCT*).

It is presumed, in the absence of proof to the contrary, that dismissal of a female worker is carried out on the grounds of maternity or pregnancy if it took place within seven and a half months before or after confinement, if and when the woman has fulfilled her obligation to notify and prove, through certification, the fact that she is pregnant and, if applicable, the birth of the child. Under such circumstances, she should be paid compensation equivalent to one year's wages in addition to any other compensation required by law (*secs. 177 and 182, LCT*).

The LCT also provides for employment stability in the event of marriage, considering null and void any dismissal which takes place within three months before or six months after a worker's marriage, on condition that the employer has been duly notified of it in the prescribed form. Where an employer fails to comply with this prohibition, he or she must pay compensation equal to one year's remuneration which should be added to any other remuneration prescribed by law (*secs. 180, 181 and 182, LCT*).

A worker belonging to a board of management or holding representative office in an occupational association with trade union status, in bodies which require trade union representation, or holding political office in the Government, is entitled to automatic leave without pay, and the employer must keep his or her job open and reinstate him or her when he or she ceases to perform his or her duties. The worker is to enjoy security of employment throughout the term of office and for one year thereafter, unless there is good cause for dismissal (*sec. 48, Act No. 23551*).³

Trade union representatives in an enterprise may not be suspended, have their working conditions changed, or dismissed throughout their terms of office and for one year thereafter, unless there is good cause for doing so. Security of employment for trade union representatives begins from the time of his or her candidature for a representative office in a trade union is submitted, and he or she may not be dismissed or suspended without good cause, nor may his or her conditions of work be modified for a period of six months (*secs. 48 and 50, Act No. 23551*).

Where, on expiry of the periods for which work may be interrupted on account of a bona fide accident or illness, a worker is unable to return to work, the employer should keep his or her post open for one year, counting from the expiry of such periods (*sec. 211, LCT*).

Where a worker fulfils the qualifying conditions for retirement pensions and begins the necessary formalities, the employer must maintain the employment relationship until the appropriate fund grants the benefit, for a maximum of one year (*sec. 252, LCT*).

An employer must keep a worker's post open if the latter is obliged to perform compulsory military service because of an ordinary call-up, mobilization or special call-up, and should continue to do so from the date of the call-up and until 30 days after the completion of the service (*sec. 214, LCT*).

Notice and prior procedural safeguards

A contract of employment may not be terminated at the instance of either of the parties without prior notice or, in the absence of such notice, without compensation, which, where the contract is terminated at the instance of the employer, will be additional to the compensation due to the worker because of his or her length of service with the undertaking. Notice should be given by the employer 15 days in advance where the worker has less than three months of service, one month in advance when the worker's length of service is between three months and five years, and two months in advance when the length of service is more than five years, except in small enterprises, where the notice period is never more than one month. Pursuant to the reform of 1998 (Law 25013) the notice period starts one day after the worker has received the notice.

The only formal requirement for dismissal with good cause is the submission of written notice of the fact of dismissal with a clear indication of the grounds invoked for the termination of the contract. There is no legally prescribed time limit for the submission of this notice (*sec. 243, LCT*).

Prior to the notification of dismissals or suspensions on the grounds of *force majeure*, or for economic or technological reasons, the prescribed crisis prevention procedure (as stated in *sec. 98 et seq., LNE*) should be initiated. If no agreement is reached, or if the agreement is not officially approved,

³ Act No. 23551 of 14 Apr. 1988 on trade unions.

the employer must give ordinary notice in accordance with the terms prescribed by the LCT for dismissal without good cause (see above).

Supplementing the provisions of the LNE, Decree No. 2072/94 (plan for enterprises in crisis) of 25 November 1994, states that when the procedure for crisis prevention is initiated at the instance of the employer and affects enterprises employing more than 50 workers, the initial application should, as a minimum, clearly state the measures the enterprise proposes to overcome the crisis or to minimize its effects. In particular, the employer must indicate the measures he or she proposes in each of the following cases:

- C effects of the crisis on the job and proposals for preserving the job;
- C functional schedule and wage mobility;
- C investments, technological innovation, production adjustment and organizational changes;
- C retraining and skills upgrading for the workforce;
- C internal and external reassignment of excess workers and the assistance scheme for reassignment;
- C reformulation of operational conditions, concepts and remunerative structures and content of posts and functions;
- C agreed contributions to the integral system of retirement and pension benefits; and
- C assistance in the creation of productive ventures for excess workers.

Similarly, if the proposal made by the employer to overcome the crisis includes staff reductions, the submission must indicate the number and category of workers to be made redundant and quantify the compensation packages offered to each worker concerned (*sec. 1*, Decree No. 2072/94).

There are also provisions which state that when the termination of a contract results from an agreement reached between the employer and the trade union representing the workers, the Ministry of Labour and Social Security, at the time of approval, should grant increases in the unemployment benefits, in the amounts fixed by regulation, and within the budget resources available (*sec. 4*, Decree No. 2072/94).

The termination of employment at the expiry of the agreed term of fixed-term contracts requires between one and two months= notice if the contract had been concluded for more than one month. Contrary to that which occurs in other situations, failure to give notice may not be covered by compensation in lieu of notice, but will incur the consequence of transformation of the contract into a contract for an unspecified period (*sec. 94*, LCT).

The employer is not required to give prior notice of termination of contracts for casual work (*sec. 73*, LNE).

Severance pay

In the absence of notice, or if insufficient notice is given, the employer must pay the worker compensation equivalent to the remuneration corresponding to the periods of notice prescribed by law (see prior procedural requirements, dismissal without good cause, above).

An employer who orders a worker's dismissal without good cause, either with or without notice, must pay the worker compensation equal to one month's wages for every year of service and every fraction of a year greater than three months, taking as a basis for the calculation the highest monthly remuneration normally and regularly received during the last year or during the period for which the services were performed, whichever is less.

The amount of such compensation should not exceed the equivalent of three times the monthly sum resulting from the average of all remuneration provided for in the collective labour agreement applicable

to the worker at the time of his or her dismissal in respect of a legal or agreed day's work, excluding length of service.

In the case of workers who are not protected by collective labour agreements, the limit established in the preceding paragraph will be the one corresponding to the service agreement applicable to the establishment where the work is being performed, or to the most favourable agreement, where more than one exists.

In the case of workers paid on commission or with variable remuneration, the service agreement to be applied should be the one pertaining to such workers or applicable to the enterprise or establishment where they are performing services, whichever is the more favourable. The amount of such compensation should in no circumstance be less than two months' wages (*sec. 245, LCT, and sec. 153, LNE*).

Where an employer orders the dismissal of a worker with good cause and, in the judge's estimation, can provide justification for the decision, the dismissal will proceed without entitlement to compensation (*secs. 242, 243 and 244, LCT*).

Where a dismissal is ordered for reasons of *force majeure* or on account of a reduction of work that is duly proved to be beyond the employer's control, the worker is entitled to receive compensation equal to half that provided for in cases of dismissal without good cause (see above) (*secs. 247 and 245, LCT and sec. 153, LNE*).

If the worker can prove that his or her withdrawal from the employment contract was based on good cause, he or she will be entitled to compensatory indemnification (*secs. 232 and 233, LCT*) and to severance pay (*sec. 245, LCT*) (see above).

Under Law 25323 (*Official Bulletin* of 11 October 2000) the amount of severance pay and compensation in lieu of notice is paid at twice the base rate (i.e. a 50 per cent increase) when the employer had failed to register the employment relationship. This measure has been adopted to fight against undeclared employment, which in 1999-2000 affected more than one third of all wage earners.

In fixed-term contracts, an unjustified dismissal which occurs before the expiry of the contract will give the worker the right, apart from the compensation corresponding to the termination of the contract in such circumstances, to damages in accordance with ordinary law.

When a contract is terminated after due notice has been given and after the contract has been fully performed, the worker is entitled to compensation prescribed for cases of dismissal without good cause, on condition that the contract has been in force for at least one year (*secs. 95 and 250, LCT*).

There will be no entitlement to compensation where the employment relationship ceases as a result of the termination of the work or task assigned, or the cessation of the grounds giving rise to the contract (*sec. 73, LNE*).

Avenues for redress

Litigation of individual legal disputes, regardless of who the parties are (including the Government), through claims or counter-claims based on contracts of employment, collective labour agreements, awards having the effect of collective agreements, legal provisions or labour law regulations, and actions between employers and workers relating to an employment contract, although based on provisions of ordinary law applicable to it (*sec. 20, Act No. 18345⁴*), fall within national labour regulations.

Under the provisions of *sec. 105* of Act No. 18345, final rulings and all decisions which put a partial or complete end to the action are subject to appeal, since such rulings and decisions are not

⁴Act on the organization and procedure in national labour regulations.

subject to appeal when the value they seek to challenge on appeal is equivalent to four times the sum of the minimum living wage in force at the time the action was brought (*sec. 106*, Act No. 18345). When the ruling or decision against which the appeal is made is due to disciplinary reasons, no payment will be required (*sec. 108*, Act No. 18345).