Chile[1]

Sources of regulation

As is the case in most Latin American countries, the Constitution of Chile regulates and protects the freedom to work. *Art. 19(16)* of the current version, adopted in 1980, alludes to this concept in general terms.

The main legal source of regulation on termination of employment is the Labour Code (LC), which was completely recast in January 1994, setting out systematically, and in a single text, all the laws amending the 1987 Code (Title V of the Act No. 19010 of December 1990 governs termination of employment).

In addition to the LC, the other sources of labour law are collective agreements, case law and administrative precedents based on legal opinions. Collective agreements may be formal or informal (*sec. 314*, LC). Legal opinions may be issued by the Labour Secretariat, either *ex officio* or at the request of the parties, in order to identify the content and scope of labour law.[2]

Although *secs. 153-157* of the LC establish the obligation to prepare work rules in the case of undertakings employing 25 or more permanent workers, these rules relate mainly to Asafety and health@ standards, which, apart from their contravention and respective sanctions, do not affect termination of employment.

Scope of legislation

The Labour Code (LC) applies to labour and employment relations between workers and employers. It does not apply to Acivil servants employed in centralized or decentralized state administration, the National Congress and Judiciary, or to workers in state undertakings or institutions or workers employed in bodies to which the State contributes, participates or is represented, provided that such workers are governed by a special law Yet, the provisions of the LC apply to aspects not regulated by the special statutes, except where LC provisions are not compatible with the said statutes (LC section 1).

Services rendered by persons who work either directly with the public, or intermittently or sporadically at home, are not considered as involving employment contracts, and therefore fall outside the LC *(sec. 8)*. Graduates of institutions of higher education or professional technical training programmes, for a specified period, are also excluded while they are fulfilling work-experience requirements.

Home work, which is regarded as a dependent or independent relationship determined by the parties themselves, is governed by special legislation (Act No. 19250).

---

1 Updated to January 2001

[2] Legal opinions are binding only upon civil servants. Although not binding on the judiciary, they are taken into serious consideration. If there is a discrepancy between an administrative decision and case law of the court, however, the latter prevails.

Contracts for apprentices, agricultural workers, stevedores, seafarers and casual port workers, and workers in private homes (domestic workers) are covered as special contracts under Title II of the LC.

Contracts of employment

Pursuant to *sec. 7* of the LC, an individual contract of employment is an agreement between an employer and a worker, by which the latter agrees to render services under the supervision and immediate direction of the former, who agrees to pay an agreed remuneration for those services.

Within the scope of the general regulation, temporary, part-time, replacement and other forms of work may be performed, although there is no special regulation promoting such forms of work.

The LC makes no presumption that the contract of employment is indefinite when the corresponding period of service is not expressly specified. However, a fixed-term contract may not be made for a duration of more than one year. Furthermore, a worker who pursuant to two or more fixed-term contracts of employment has performed discontinued work during twelve months or more, over a period of fifteen months, is presumed to have been hired under a permanent contract of employment as from the date of the first contract.

Managers and skilled employees (i.e. employees who hold a technical or professional diploma from superior educational institution) may, however, be taken on under a fixed-term contract of employment for a duration not exceeding two years.

The continued performance of services after the end of a fixed term contract transforms such contract into one of indeterminate duration *(sec. 159)*. The same rule applies after the second renewal of a fixed term contract.

Termination of employment

Termination of contracts of employment, not at the initiative of the employer, may be effected:

- by the mutual agreement of the parties;
- through the resignation of the worker (with at least 30 days= notice);
- through the death of the worker;
- upon expiry of the agreed term of the contract or completion of the service for which the contract was made;
- by unforeseen events; and
- by *force majeure.*

Termination of employment at the initiative of the employer

Chile abolished the concept of *desahucio* (that is, termination without a cause being stated) in 1990 and replaced it by requirements of the undertaking, establishment or service, resulting from streamlining or modernization activities, reduced productivity, changes in market or economic conditions

which impose the need to lay off one or more workers, and the worker=s lack of technical or job skills *(sec. 161(1))*. Nevertheless, *desahucio* has been retained as grounds for the termination of domestic staff; persons occupying positions of trust; and persons representing the employer, such as managers, assistant managers, agents or other types of representatives, provided that they have general administrative competence.

The employer may dismiss a worker for misconduct (*sec. 160*, LC) or on the grounds of failure to meet the requirements of the undertaking (*sec. 161*, LC). The contract of employment may be terminated without entitlement to compensation in the following instances:

- dishonesty, acts of violence, insult or serious immoral behaviour duly proven;
- negotiations conducted by the worker within the normal functions of the enterprise and which might have been expressly forbidden, in writing, within the terms of the contract made with the employer;
- unjustified absence from work for two consecutive working days, two Mondays within a period of one month or a total of three days within the same period; similarly, absence which is unjustified or without advance notice by a worker responsible for a process, task or machine when such absence entails disruption in the rest of the service or production process;
- abandonment of work by the worker, which is defined as: leaving the workplace without proper notice or valid reason during working hours, and without authorization from the employer or his or her representative; and unjustified refusal to perform the assigned task under the agreed terms of the contract of employment;
- acts, forgetfulness or carelessness seriously affecting the safety or operation of the establishment, safety or activity of the workers, or their health;
- deliberate material damage to the plant, machinery, tools, work implements, goods or merchandise; or
- serious breach of the obligations under the contract of employment.

The LC prohibits dismissal without just cause and subjects the dismissal of women on the grounds of maternity to prior authorization of a judge. This protection covers the period from conception up to one year after post-natal leave, and renders dismissal of a female worker during this period null and void.

Notice and prior procedural safeguards

Termination without a cause being stated (*desahucio*) of persons with capacity to represent the employer, or domestic staff, must be notified in writing, 30 days in advance, and copied to the relevant labour inspectorate. Advance notice is not required if the employer pays the worker cash compensation equivalent to the last monthly remuneration earned.

Written notice of justified dismissal should be delivered to the worker, personally or by registered letter, to the domicile stated in the contract. Such notice needs to state the reasons for dismissal, the facts on which dismissal is based, and the status of social security contributions (*sec. 162*, LC), and must be copied to the labour inspectorate. The letter must be sent within three working days following the removal of the worker (six days if the termination is due to *force majeure*).

If the reason is, as stated in *sec. 161* of the LC, based on the Arequirements of the undertaking@, the worker must be given notice, copied to the relevant inspectorate, at least 30 days in advance, except if compensation is paid corresponding to the last monthly pay earned. Furthermore, the notice must precisely indicate the total amount to be paid in accordance with the provisions of *sec. 163*.

Failure to comply with the abovementioned requirements (*sec. 162*, LC) will nullify the dismissal, without prejudice to the prescribed administrative sanctions.

Judicial authorization is required for the dismissal of persons entitled to trade union immunity or women entitled to maternity protection.

In the case of dismissals made on the grounds of the requirements of the undertaking, there is no requirement for prior consultation with trade unions or for administrative intervention.

Severance pay

In the case of the requirements of the undertaking (*sec. 161*, LC), compensation is payable (unless an individual or collective agreement is made with more favourable terms) equivalent to 30 days of the last monthly remuneration earned, for each year of service worked and fraction greater than six months. The upper limit is 330 days for workers with a contract in force for one year or more (*sec. 163*, LC).

If a dismissal for misconduct or for the requirements of the undertaking is declared unjustified, unfair or unlawful, the abovementioned compensation is increased by 20 per cent (which may be further increased by up to 50 per cent in specific cases if there is deemed to be no plausible reason for dismissal).

There is the possibility for an agreement to be made on a compensatory indemnity, from the beginning of the seventh year of employment up to the end of the 11th year of the employment relationship. (For persons hired after 14 August 1981 the limit of 11 years is set; there is no limit for persons hired before this date. Under these agreements, a contribution of 4.11 per cent to 8.33 per cent of the remuneration is deposited in an insured pension fund (*sec. 164*, LC).)

Regardless of the cause of the termination of employment, workers in private homes are entitled to compensation paid by the employer in an amount equivalent to that which has been previously described (see above).

Avenues for redress

A worker who feels his or her dismissal is unjustified or improper may bring a claim before the Labour Court within 60 working days (*secs. 170-171*, LC).