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Porzio Ríos García

Chile: Trends & Developments
Ignacio García, Fernando Villalobos and Fernanda Bravo
Porzio Ríos García

CHILE

Law and Practice

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Contents

1. Employment Terms p.5
1.1 Employee Status p.5
1.2 Employment Contracts p.5
1.3 Working Hours p.6
1.4 Compensation p.7
1.5 Other Employment Terms p.7

2. Restrictive Covenants p.8
2.1 Non-competes p.8
2.2 Non-solicits p.8

3. Data Privacy p.8
3.1 Data Privacy Law and Employment p.8

4. Foreign Workers p.9
4.1 Limitations on Foreign Workers p.9
4.2 Registration Requirements for Foreign Workers p.9

5. New Work p.9
5.1 Mobile Work p.9
5.2 Sabbaticals p.10
5.3 Other New Manifestations p.10

6. Collective Relations p.10
6.1 Unions p.10
6.2 Employee Representative Bodies p.10
6.3 Collective Bargaining Agreements p.11

7. Termination p.11
7.1 Grounds for Termination p.11
7.2 Notice Periods p.12
7.3 Dismissal for (Serious) Cause p.12
7.4 Termination Agreements p.12
7.5 Protected Categories of Employee p.12

8. Disputes p.13
8.1 Wrongful Dismissal p.13
8.2 Anti-discrimination p.13
8.3 Digitalisation p.14

9. Dispute Resolution p.14
9.1 Litigation p.14
9.2 Alternative Dispute Resolution p.14
9.3 Costs p.14

Porzio Ríos García was founded in 1993 as Porzio, Ríos & Asociados, and initially focused mainly on IP law. Owing to the increasing needs of its Chilean and foreign clients, and in order to provide a full range of legal services based on the highest quality standards, the firm has since branched out into different areas of company and business law. Its labour and employment area covers non-contentious matters involving employee benefits, executive compensation, pension plans, redundancies and general employment policy. This encompasses M&A-related labour agreements. Also included are matters relating to labour and employment legislation, such as audits, collective bargaining processes, immigration issues and social security. Litigation at court and line-agency level has remained active and innovative. A new focus in its areas of practice has been internal investigations, criminal assessments arising from employee misconduct and golden-parachute proposals. The team has six members, two partners and four associates.

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1. Employment Terms

1.1 Employee Status

In Chile, there are no distinctions made between blue-collar and white-collar workers, or any other employee distinction based on categories or statuses of workers. A constitutional guarantee of equality before the law is upheld, as recognised in Articles 1 and 19 N°1 of the Political Constitution of the Republic of Chile. The guarantee of equal opportunities and fair treatment in employment and occupation is also acknowledged, and distinctions not based on the qualifications required for a job are prohibited (Article 2 of the Labour Code).

1.2 Employment Contracts

Types of Employment Contract

Considering the duration of the employment contract there are three categories:

- *Employment contract for a specific task or project:* An agreement in which the employee commits to the employer to carry out a specific and determined material or intellectual task, with a defined start and end, the duration of which is limited to the duration of that task (Article 10 bis of the Labour Code).
- *Fixed-term employment contract:* An agreement that defines how long the relationship between the employee and the employer will last. It is regulated in Article 159 N°4 of the Labour Code, which stipulates that the term cannot exceed one year unless it involves technicians or professional employees. In such cases, it can be extended up to two years.
- *Indefinite employment contract:* This constitutes the general rule for the duration of an employment contract, in which the parties do not establish a specific duration for the validity of the employment relationship.

Obligation to Formalise Employment Contract

The employment contract is consensual, but the employer must document it in writing within 15 days from the employee's starting date, or within five days if it is a contract for a specific task, job or service, or if it has a duration of less than 30 days. Failure to comply with this obligation has a negative consequence for the employer: a legal presumption is applied whereby the contract's provisions are considered to be those declared by the employee (Article 9 of the Labour Code).

Required General Terms of the Employment Contract

The required general terms of an employment contract are:

- place and date of the contract;
- identification of the parties, including their nationality, address, and email address if available, as well as the employee's date of birth and starting date;
- specification of the nature of the services and the location where they will be provided. The contract may indicate two or more specific functions, whether they are alternative or complementary;
- amount, period and method of payment of the agreed-upon salary;
- duration and scheduling of the workday, unless the company operates a shift system, in which case the internal regulations will apply;
- contract duration; and
- any other agreements reached by the parties (eg, confidentiality agreement, non-solicitation obligation, exclusivity agreement, among other possible agreements).

Additionally, in cases where the employer provides additional benefits such as housing, electricity, fuel, food, or other in-kind benefits or services, these should also be specified in the contract.

If the hiring of a employee requires a change of residence, the place of origin should be indicated in the contract.

Parties may also agree the modality of work: remote, in person or a combination of both. If the parties agree on remote or combined work, specific terms apply to this kind of contract.

The employment contract must be registered with the Labour Authority.

1.3 Working Hours

Currently, the maximum working hours per week are 45 hours for an ordinary working week.

Recently, a 40 Hours Act was approved by the Congress. This reform aims to gradually decrease the standard working week from 45 hours to 40 hours across a span of five years. A reduction of the working week will gradually take effect: 44 hours in the first year, 42 hours in the third year and 40 hours in the fifth year, all counted from the publication in the Official Gazette of the 40 Hours Act, which happened on 26 April 2023.

The daily limit of the ordinary working day is ten hours.

The working week may not be distributed over more than six or fewer than five days per week. When the working week of 40 hours comes into force, the weekly schedule may also be distributed over four days. Companies that on 26 April 2023 already have a working week of 40 hours or less, or reduce it to 40 hours before the term of five years, are allowed to distribute that 40-hour week over four days.

Any work schedule arrangement must comply with the legal requirements for the working week and working day.

A part-time working week may not exceed 30 hours.

Employees may work a maximum of two hours daily of overtime hours, with a maximum of 12 hours weekly considering a work schedule of six days per week.

The overtime hours should be paid at 50% above the regular hourly rate of the employee's salary.

Overtime hours must be agreed upon in writing in an agreement with the employee and cannot exceed three months of duration. Overtime hours also include those hours worked with the employer's knowledge to address exceptional circumstances that occur within the company.

1.4 Compensation

Salaries are typically paid on a monthly basis, while salary advances are traditionally granted every two weeks.

In Chile, salaries must be provided in the local currency, which is the Chilean peso. Any payment in foreign currencies, such as US dollars, is not allowed, except for cases involving foreigners exempt from Chilean social security contributions.

Variable remunerations or commissions cannot be contingent upon a third party's fulfilment of conditions unrelated to the employee's job responsibilities. There is no obligation to pay a 13th salary.

A part of the company's profits should be distributed by it among its employees. There are three alternatives to comply with profit sharing:

- *Statutory profit sharing (Article 47 of the Labour Code):* By distributing once every fiscal year among its employees at least 30% of the net profits earned by the employer during that particular year in proportion to the employees' respective remunerations. This system is usually used by companies with low profits or with losses.
- *Statutory alternative of Article 50 of the Labour Code:* By paying to each employee annually an amount equivalent to 25% of the monthly remunerations accrued during the fiscal year, with a cap of 4.75 minimum monthly remunerations. Under this alternative, the profit sharing is not based on the employer's actual profits and the employer is therefore protected against high payments in profitable years. In general, this system is simpler to apply than statutory profit sharing and is often used by companies that have higher profits.
- *Conventional profit sharing:* By agreeing with its employees another profit-sharing scheme with equal or higher benefits than one of the above-detailed statutory ones.

Currently, the monthly minimum wage for a full-time employee is CLP460,000 (approx. USD540). The base salary of employees who are subject to a work schedule limitation should be at least equal to the minimum salary.

The monthly minimum mage is adjusted annually by law every year.

1.5 Other Employment Terms

Vacation

In Chile, employees are entitled to 15 business days (Monday to Friday, excluding holidays) of annual paid vacation when they complete one year of service. They accrue a portion of 1.25 vacation days per month, up to 15 days in a year. To use this vacation time, the employer and the employee must agree on the dates, preferably during the summer or spring. Employees must take at least ten consecutive days and can divide the remaining five days. The employee must use vacation days and cannot be compensated with money.

Employers can grant collective vacation time and declare the closure of the company or of an

entire section. Individual vacation time cannot be mandated by the employer.

Employees can accumulate up to two annual vacation periods. The excess does not expire immediately; it requires a judicial declaration of expiration.

Employees who have worked for any employer for ten years are entitled to an additional business day of vacation every three years with the same employer. This other vacation can be compensated with money.

Maternity and Medical Leave

In Chile, there is paid maternity leave through a subsidy, which extends from six weeks before childbirth (prenatal) to 12 weeks after childbirth (postnatal), followed by an additional 12 weeks (parental postnatal).

There is also paid medical leave, which has no specific time limit and depends on the doctor's recommended rest period.

Employees' Liability

There are no specific confidentiality or non-disparagement requirements for employees.

However, the employer can regulate these obligations in the company's Internal Regulations for Order, Hygiene and Safety, as well as in each employee's employment contract.

Employees do not have a special liability regime in the employment relationship. In general, the employer is responsible for the actions of its employees in performing their duties concerning other workers and third parties.

2. Restrictive Covenants

2.1 Non-competes

To be legally enforceable, non-compete covenants must adhere to specific conditions, including the following:

- consent from the employee;
- a valid and justifiable reason, aimed at safeguarding the former company's business interests to promote fair trade rather than solely restricting employees' freedom to work;
- a restricted scope, in terms of either the business or geography;
- a reasonable duration; and
- compensation provided to the individual who is bound by the restriction.

These covenants are open to judicial evaluation, and adjustments or modifications may be made as deemed necessary.

2.2 Non-solicits

Non-solicitation covenants are not unusual in the Chilean employment environment, in particular for high-ranking executives. However, such covenants are hard to enforce as proof of damage is necessary to claim indemnity for breach of such agreements.

3. Data Privacy

3.1 Data Privacy Law and Employment

The employer has a legal obligation to maintain the confidentiality of all information and private data pertaining to employees that they have obtained during the course of the employment contract. Moreover, the handling of personal data can only occur when expressly permitted or authorised by the law or the data owner.

In this context, the law defines "personal data" as any information concerning an identified or identifiable individual. Sensitive data includes personal information relating to an individual's physical or moral characteristics, as well as details about their private or intimate aspects, such as personal habits, racial background, ideologies, political opinions, religious beliefs, health status and sexual history. Data processing encompasses any operation or complex technical procedures, whether automated or not, that involve the collection, storage, recording, organisation, development, selection, extraction, comparison, interconnection, dissociation, communication, assignment, transfer, transmission or deletion of personal data, or any other use of such data.

It is important to note that the law does not require authorisation for the processing of personal data that is either collected from public sources or limited to specific records that contain an individual's personal information, such as their occupation or profession, educational qualifications, address or date of birth.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Where a workforce comprises more than 25 employees within the national territory, a minimum of 85% of all employees within the national territory must be Chilean nationals. To determine such proportion, foreign technicians or experts, employees whose spouse, widow or widower or children are Chilean and foreign employees who have resided for more than five years in the country, without considering accidental absences, will be considered Chilean nationals.

4.2 Registration Requirements for Foreign Workers

There is no special registration requirement regarding the use of foreign workers. However, to legally work in Chile, a foreign employee must obtain a temporary resident visa or a special short-term work permit with temporary authorisation to remain.

5. New Work

5.1 Mobile Work

Working remotely entails for the employer the same obligations regarding data privacy, occupational safety and health, as well as social security, as in the case of in-person work.

Remote work can be implemented from the beginning of the employment relationship or agreed upon once it has already commenced. In such cases, either party may revert to in-person mode by notifying the other party with a 30-day advance notice.

For remote workers who are not subject to the 45-hour weekly work limit, a right to disconnect for 12 hours for rest must be guaranteed.

The remote work employment contract must include certain special terms required by law.

There is an obligation to offer remote work to employees who have at least one preschool-aged child when the authorities declare a health alert due to an epidemic or pandemic caused by a contagious disease or when a state of constitutional exception is declared due to a public calamity.

Likewise, if such a state of exception or health alert is declared and the measure of closing edu-

cational establishments is adopted, the employer must offer remote work to every employee with at least one child under 12, when the employee declares that they do not have help for the child's care.

All of the above applies without reduced remuneration and as long as the employee's duties allow remote work.

5.2 Sabbaticals

In Chile, sabbaticals are not regulated. However, the parties involved in the employment relation can agree on leaves of absence, with or without pay, for the duration they deem appropriate.

If a leave of absence is agreed upon, whether with or without pay, that time continues to count for vacation entitlement and severance compensation.

5.3 Other New Manifestations

In Chile, the emergence of remote work and the ease of balancing care-giving duties with professional development that it provides have led various citizen movements to push for the introduction of bills that establish the right to remote work under certain circumstances. It is foreseeable that now, with the end of the state of emergency due to the health crisis on 31 August 2023, which implies the end of the obligation to offer remote work, these citizen movements will gain special momentum.

6. Collective Relations

6.1 Unions

Participation in labour unions is a matter of personal choice. Individuals have the freedom to form unions, and these unions exclusively advocate for the rights and interests of their enrolled members. It is permissible for multiple unions to coexist within the same workplace.

There are two primary types of unions: Company Unions and Intercompany Unions. These foundational unions, when comprised of two or more Company Unions, possess the authority to establish, affiliate with, or disassociate from larger union federations and confederations, which may also extend to international labour organisations.

6.2 Employee Representative Bodies

Other than unions, there are several other employee representative bodies, namely:

(a) Occupational Health and Safety Committee (*Comité Paritario*): Every company, establishment or office employing more than 25 workers is required to establish an Occupational Health and Safety Committee. This committee's primary role is to develop preventive measures to be presented to the employer.
(b) Joint Training Committee (*Comité Bipartito de Capacitación*): Each company with a workforce of over 15 employees must form a Joint Training Committee. This committee is responsible for collaborating on and evaluating the organisation's training programmes.
(c) Department for Risk Prevention: Companies with 100 or more employees must establish a Risk Prevention Department, led by a qualified Risk Prevention Expert.
(d) Security and Health Management System: When a facility or site has 50 or more employees, including subcontractors' workers, the principal company or user must implement a comprehensive system that includes measures for risk prevention. This system aims to ensure the health and safety of all

employees.

(e) Site-Specific Safety, Order and Hygiene Committee: If a company, establishment or office has more than 25 employees working at the same location, regardless of their department, they must create a Site-Specific Safety, Order and Hygiene Committee. The responsibilities of this committee may be fulfilled by the Internal Safety, Order and Hygiene Committee of the company.

(f) Site-Specific Risk Prevention Department: For companies, establishments or offices with more than 100 employees working at the same location, independently of their department, a Site-Specific Risk Prevention Department must be established. The duties of this department may be taken on by the Internal Risk Prevention Department of the company, led by a full-time professional expert.

6.3 Collective Bargaining Agreements

In general, employers are obliged to engage in negotiations with any union formed by their employees that meets the legal requirements to establish a Company Union. However, there are exceptions: employers that have operated for less than one year or have fewer than eight employees are not required to participate in collective bargaining. Moreover, certain categories of employees, such as apprentices, those hired for specific tasks, temporary workers, managerial staff, employees with hiring or firing authority, and upper-level employees with decision-making power over production or commercialisation policies, are not entitled to partake in collective bargaining, even if they are members of a union.

Collective bargaining primarily addresses issues related to compensation and working conditions. It is not permissible for the parties involved to negotiate any changes that infringe upon employees' fundamental legal rights or to impose restrictions on the hiring of non-unionised workers. Additionally, they cannot impose limitations on the company's managerial and organisational rights, nor can they discuss matters unrelated to the employer's operations. Provisions mandating union membership as a condition of employment or requiring employees to join a union within a specific timeframe after being hired are also prohibited.

Generally, collective bargaining occurs between a single employer and its respective Company Union. Negotiating on a multi-employer or multi-union scale is not mandatory and requires prior agreement from all parties involved. When an employer deals with multiple unions or bargaining groups representing its employees, negotiations typically occur concurrently unless a separate arrangement is reached.

7. Termination

7.1 Grounds for Termination

An employment contract can only be ended for reasons specified in the Labour Code. Broadly speaking, these reasons can be divided into two categories: those that do not entitle the employee to severance pay and those that do. The latter group requires a prior notice of 30 days or the payment of compensation in lieu of prior notice.

The other grounds for termination (eg, by cause, resignation, expiration of the term of a fixed-term employment contract, completion of the specific work or service for which the employee was hired, serious breach of the employment agreement, among others) do not require any prior notice.

7.2 Notice Periods

In case of termination grounded on business necessities or at will (for employees of special trust or with powers of representation of the employer), the employer must give the employee at least 30 days' advance notice, and a copy of such notice must be sent to the Labour Board.

This advance notice may be waived if the employer pays the employee a compensation equivalent to one month's remuneration up to a ceiling of 90 Chilean Units of Account (*Unidades de Fomento*, or UF) (currently approximately USD3,800).

Termination with cause requires no prior notice period. After the severance of the employee, a formal communication must be issued within three or six days after the employee's severance, depending on the specific reason for termination. The termination must be informed, within the same term, to the Labour Authority.

7.3 Dismissal for (Serious) Cause

Termination for cause is governed by statutory limitations outlined in the Labour Code, and involves specific behaviours such as serious employment breaches, harassment, acts of violence, and unexplained absences. These behaviours are considered detrimental to an employer's operations, as well as the health and safety of the workplace. Typically, a severity threshold test must be met for a termination for cause to be justified. In cases of termination for cause, employees are not entitled to compensation in place of prior notice or severance. However, if the termination for cause is deemed unlawful, the company is obliged to provide compensation in lieu of prior notice and severance, often with a surcharge ranging from 30% to 100%.

Constructive dismissal is also subject to statutory regulations and typically occurs when the company fails to fulfil its obligations as specified in the employment agreement or mandated by statutory requirements. If an authority determines that constructive dismissal has occurred, the termination is treated as a 'without cause' termination, and the company must provide the employee with the severance pay and compensation they are owed.

7.4 Termination Agreements

There are legal guidelines and requirements for implementing both termination for cause and constructive dismissal, which are detailed in the Labour Code, outlining the necessary steps and formalities for carrying out these actions. Termination agreements (*finiquitos*) are required in order to document payment of severance and release of claims. In order for termination agreements to be enforceable, they will need to be authorised before a Minister of Faith (ie, Public Notary, Labour Inspector).

7.5 Protected Categories of Employee

Certain employees have protection from unilateral termination of their employment contracts without prior approval from the Labour Court. These protected employees include:

- Union representatives (during their term and within six months after it ends).
- Non-union employee representatives (during their term and within six months after it ends, unless they have a fixed-term contract).
- Employees involved in forming a union (starting ten days before the election and within 30 days after it, up to a maximum of 40 days).
- Employee representatives on safety committees (*Comites Paritarios*) during their term.
- Pregnant employees (during pregnancy and within one year following maternity leave).

- Employees on birth and death leaves.
- Parents during parental leave.
- Employees involved in collective bargaining (from ten days before proposal presentation to 30 days after contract execution). Non-union directors within the bargaining unit cannot be dismissed from ten days before proposal presentation to 60 days after contract execution.

Additionally, if an employee is on sick leave, their employment contract cannot be terminated based on business necessity or at will.

In these cases, the employer must obtain prior approval from the Labour Court to terminate the employment contract, except in cases of termination due to company closure, which may proceed without court approval for union representatives, non-union employee representatives and safety committee representatives.

If an employer dismisses a protected employee without court approval, it is required to reinstate the employee and pay their remuneration for the period of severance. If reinstatement is not possible, the employer must provide remuneration from the severance date until the expiration of protection privileges and/or compensation in lieu of prior notice and severance pay for years of service, with the latter increasing by 30% to 100% due to wrongful termination.

This is in addition to potential administrative fines imposed by labour authorities and other sanctions or compensations related to unlawful union practices or violations of employees' fundamental rights.

8. Disputes

8.1 Wrongful Dismissal

In the event of an unjust termination, there can be an escalation in the severance pay based on the grounds for dismissal, ranging from 30% to 100%.

8.2 Anti-discrimination

The Chilean Constitution and Labour Code explicitly prohibit discrimination against individuals based on criteria other than their personal qualifications and suitability for the job in question. There are very few exceptions, where the law may demand that an employee be of Chilean nationality or impose specific age limits.

As a result, employers are not allowed to use factors such as race, colour, gender, age, marital status, union affiliation, religion, political beliefs, nationality, lineage or social background as criteria for hiring. Employers cannot request HIV or pregnancy tests, nor can they demand financial or commercial records or certificates, except in certain specific roles where this requirement is permitted.

However, it is important to note that distinctions, exclusions or preferences based on an individual's experience, technical qualifications or professional requirements for a particular job are not considered discriminatory under Chilean labour laws.

When a termination is discriminatory or violates constitutional rights, there may be additional payments equivalent to six to 11 months' wages, without any specified limits. If there is a serious breach of an employee's fundamental rights, the employee may even be reinstated. Furthermore, it is worth noting that claims for moral damages are not excluded in such proceedings and can

be pursued in conjunction with, and in addition to, the six to 11 months' remuneration.

Furthermore, all convictions relating to the violation of fundamental rights of employees are made public and documented on the Labour Board's website and in public records. Companies found guilty of such infractions also face a two-year prohibition on entering into contracts with the Chilean state.

8.3 Digitalisation

With the end of the health alert due to the COVID-19 pandemic, labour disputes are returning to in-person proceedings. However, this is regulated and allows for the parties to request remote appearances for hearings held in court (preparatory and trial hearings). This request must be made in writing at least two days before the hearing, and the judge may grant it if it does not result in a disadvantage; the party specifies the means of communication and ensures they have the necessary means to connect remotely.

In any case, witnesses, confessional evidence and expert witness statements must always be conducted on the court premises.

Processing by electronic means is the general rule, without prejudice to the fact that it must always be requested to the judge and granted by the court.

9. Dispute Resolution

9.1 Litigation

Under the current labour procedure, claims for unlawful dismissal, infraction of fundamental rights and collection of unpaid benefits follow the rules of the general labour procedure stated in Articles 446 et seq of the Labour Code. This procedure contemplates two hearings: preliminary hearing and trial hearing.

In its first decision, the Labour Court (a specialised tribunal) summons the parties to a preliminary hearing in which both the plaintiff and defendant offer the court all the evidence that will be submitted in the trial hearing. All evidence must be offered to and must be accepted by the court at that time (the documents should be materially exhibited in the preparatory hearing to be admitted in the trial hearing). After the preliminary hearing, the judge sets a date and time for the completion of the yrial hearing, where the parties will have the opportunity to actually submit, materially, all the evidence offered at the preliminary hearing.

The court will give its judgment at the conclusion of the trial hearing or within fifteen days following its completion. Remedies (ie, annulment) may proceed against the corresponding decision.

In general, parties must be represented in court by attorneys. Class claims are not allowed under the labour procedure.

9.2 Alternative Dispute Resolution

Arbitration or pre-dispute arbitration agreements for dispute resolution in employment matters are not enforceable.

9.3 Costs

A prevailing employee/employer can be awarded attorney's fees and/or costs of proceedings.

Trends and Developments

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Introduction

In 2019, Chile experienced a significant social movement that sparked widespread protests, disrupting the previously stable social and political landscape of the country and causing upheaval in the administration of former centre-right leader Sebastián Piñera. Responding to this political crisis, the centre-right government, led by Sebastián Piñera, along with most Congressional political parties, proposed a renewal of the constitution as a potential solution. The drafting of this proposal was entrusted to a constitutional convention, which was dominated by a far-left majority.

Amidst these developments, Chile saw the election of its youngest-ever president, 36-year-old Gabriel Boric, in 2021. However, support for Boric has seen a rapid decline, particularly following the resounding rejection of the far-left coalition's proposed new constitution by 62% of voters in a plebiscite.

Despite this setback, the major political factions opted to give constitutional reform another opportunity. They established a more balanced process for drafting the new constitution, which included an expert commission and a constitutional council, both representing a diverse political spectrum. Nonetheless, public enthusiasm for the reform has significantly waned. It is plausible that, regardless of the results of the upcoming plebiscite scheduled for 17 December 2023, Chile will exhibit clear signs of restored stability.

Against this backdrop, Chile has recently enacted laws that have brought about notable changes in the job market. These changes have compelled employers to undertake substantial adjustments to their employment frameworks, potentially causing profound impacts on their business operations within Chile. Likewise, employment courts have issued case law that may force employers to make significant changes to their employment structures and may deeply affect the way they do business in Chile.

40-Hour Act

In spite of the economic stagnation resulting from social turmoil, the pandemic, and constitutional deliberations, along with the worrisome decrease in business productivity witnessed over the previous five years, the newly established administration opted to persist in pushing for a highly debated reform. This reform aimed to gradually decrease the standard working week from 45 hours to 40 hours across a span of five years. The primary components of this reform are outlined below:

Gradual reduction of ordinary weekly hours from 45 to 40 hours per week

The daily limit of the ordinary working day of ten hours has not been modified. Reduction of the working week will gradually take effect: 44 hours in the first year, 42 hours in the third year, and 40 hours in the fifth year, all counted from the publication of the law in the Official Gazette. The changes in the new legislation may not entail a decrease in remuneration.

4x3 work schedule

The weekly schedule may be distributed between four and six days. Previously, it was only distributed between five and six days. This change will come into force five years after the publication of the law in the Official Gazette. However, companies that on the date of publication already have a working week of 40 hours or less, or that reduce it to 40 hours before the end of the validity period indicated in point i. above, are allowed to distribute that 40-hour week over four days.

New cycles of up to four weeks with weekly averages of 40 hours

- Two non-consecutive weeks within a four-week cycle can be as long as 45 hours;
- A weekly alternative "menu" can be agreed. The company may choose the alternative one week in advance;
- The company's union(s) must also accept the proposed alternative when it affects unionised employees;
- Overtime plus regular hours cannot exceed 52 hours per week; and
- With union agreement, two non-consecutive weeks within a four-week cycle can reach up to 52 hours.

Compensable overtime

Today the law only allows compensation in cash for overtime. However, the new law allows the compensation of overtime by up to five business days of additional holidays per year, at the rate of one and a half hours of holidays for each extra hour, if there is an agreement between the company and the employee. Holidays must be used within six months of the cycle in which the overtime hours originated, for which the employee must give notice to the employer at least 48 hours in advance. If holidays are not used within six months, they must be paid with the remuneration corresponding to the respective period. These changes will come into force one year after the publication of the law in the Official Gazette.

Lunch break

The new law keeps the rule stating that lunch break is not taken into account when determining the working day limitation.

Reduction of the range of employees who may be exempt from the working day limitation

The new law only allows the following to be exempted from the working day limitation: managers, administrators, attorneys with powers of administration and all those employees who work without immediate superior supervision due to the nature of the work performed. This will come into force one year after the publication of the law in the Official Gazette.

Those employees hired by more than one person are no longer subject to the working day exemption

The same goes for those employees who work from their home or from a freely chosen location; commission and insurance agents and travelling salespeople; collectors; and other similar employees who do not perform their functions on the premises of the company. These employees will now be subject to the working day limitation.

Flexibility regarding the time of entry and exit for parents caring for a child (younger than 12 years old)

The new law allows a band of two hours to anticipate or delay the beginning or end of the working day by up to an hour. The employee must request this right to the employer to make it enforceable. If both parents are workers, only one of them may exercise this right, at the choice of the mother. This right does not apply to companies that work according to a schedule that does not allow the anticipation or postponement of work, or if the employee's services have a nature that does not allow this modality, or if the services require that the employee is actually at work at a specific time, eg, emergency service functions, shift work and security guard services, among others. This will come into force

one year after the publication of the law in the Official Gazette.

Exceptional working week authorised by the Labour Department

If so authorised by the Labour Department, the average working week may be up to 42 hours, instead of 40 hours. This change will come into force five years after the publication of the law in the Official Gazette.

Economic and Environmental Crimes Act

The Law on economic and environmental crimes – recently put into effect – has generated an intense debate in the political and business world due to its profound effects on business and on local and foreign investment. The purpose of this legislation is to impose strict requirements on individuals and legal entities and their internal compliance systems, which includes company directors and managers.

Although many of these crimes were already sanctioned in other laws, now they will be considered economic crimes, and not only the individuals who engage in the prohibited conducts but also their employers and the companies of which they are a part may be held responsible.

Some specific effects that this new law will have in labour matters are the following:

Regarding remuneration and job security

The new law introduces a crime consisting in the payment of remuneration that is “manifestly disproportionate” and lower than the minimum monthly income, “seriously abusing the situation of need, the inexperience or inability of discernment of the worker”.

Minor prison sentences are established in any of its degrees (61 days to five years), without prejudice to the fact that higher sentences may be imposed in one degree, when the damage exceeds a given threshold or affects a considerable number of people.

Those crimes relating to negligence against people, which are committed by reckless imprudence or culpable negligence, are incorporated as economic crimes. In particular, this norm will have severe implications in the area of occupational safety, since accidents at work could eventually also be considered economic crimes if it is proven that there was a violation of the duties of care and/or a lack of prevention mechanisms.

Social security contributions

The new legislation penalises the appropriation or diversion of money from social security contributions.

The crime committed by the employer who, without the consent of the worker, omits to withhold or pay the social security contributions of an employee, or under-declares to the social security institutions in order to pay a contribution based on a taxable income lower than the real one, is also contemplated.

The new regulation contemplates that the penalties applicable for this crime will be calculated based on the amount defrauded, an amount that can range from 1 UTM (1 UTM = CLP63,199) up to and beyond 40 UTM. In this sense, the applicable penalties range from minor imprisonment in its minimum degree to minor imprisonment in its maximum degree (61 days to five years) and fines that can range between 5 UTM and 15 UTM.

Second category crimes
All these labour or social security transgressions will be considered as 'second category' crimes. This means that, to be included in the category of economic crimes, they must be committed in the exercise of a function or position in a company, or they must be executed for economic benefit or of another nature for the latter.

Severity of sanctions
There are several rules that may have highly concerning effects, since they could imply a violation of constitutional guarantees. This is because the infringers of this law may have imposed upon them as a sanction their suspension or disqualification from the exercise of their profession, which could translate into an infringement of their freedom to work.

Likewise, the fines that already existed for this type of crime have been increased considerably: the fine can range from one to 300 day-fines, depending on the degree of the custodial sentence. The value of the day-fine corresponds to the average daily net income of a person during the previous year, which considers remunerations and other income.

How to prepare for the new scenario
The new law will bring complexities and very significant challenges, which will force companies to strengthen their procedures involving payment of remuneration and social security contributions, as well as take extreme care in terms of occupational safety protocols. For this, it will be necessary to adapt their internal regulations in order to prevent the occurrence of these events, establish renewed control systems and ensure that their administration, workers and union organisations are adequately informed and trained about said protocols and procedures.

Recent Case Law

- *Administrative Case Law of the Chilean Labour Department promoting inclusion, comprehensive care and protection of the rights of people with autism spectrum disorder (Ruling No. 501/19, 4 April 2023).* The ruling establishes the meaning and scope of Law No. 21,545, published on 10 March 2023. It states that employees who are parents of children with autism spectrum disorder may leave their workplace without notice to their employers, in order to attend emergencies occurring in the educational institutions of their children. These departures may not be considered untimely or unjustified by their employers, and the time spent attending these emergencies will be considered as worked for all legal effects.
- *Judicial Case Law from the Chilean Supreme Court, stating that the principal company in a subcontracting relationship is not liable for the compensation applicable in the event of violation of the fundamental rights of the contractor's employees (Ruling No. 25-387-2021 dated 7 August 2023 from the Chilean Supreme Court).* The Fourth Chamber of the Supreme Court ruled that the joint and several liability from a principal company in a subcontracting relationship cannot be extended to the penalty compensation that applies in the case of a conviction for violation of the fundamental rights of the contractor's employees.
- *Judicial Case Law from the Chilean Supreme Court, stating that the Labour Courts have the power to grant or deny the petition for dismissal of a pregnant employee with dismissal privilege, even if the claimed ground of termination is verified (Ruling No. 10059-2022 dated 28 March 2023 from the Chilean Supreme Court).* In the context of a lawsuit requesting the dismissal of a pregnant employee with dismissal privilege, the Court of Appeals of

Puerto Montt stated that it is possible for the Court to demand, as an additional requirement for dismissal of the employee with dismissal privilege, that the employer proves the appropriateness of the dismissal and the necessity of the services. The Supreme Court rejected the plaintiff's appeal against this ruling, stating that the Law establishes a faculty or power for the Labour Courts, and they may consent to or deny the employer's request to terminate the employment contract of a pregnant employee with dismissal privilege. This faculty or power may be exercised whether subjective or objective grounds for exemption are invoked.

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