

Legal Update

Recent labour developments in the migratory sector

September 11, 2018

Criteria for complying with immigration obligations and the sanction procedure implemented by the Special Administrative Unit of Migración Colombia

Resolution 1238 of 2018 establishes new rules regarding the implementation of the Information System to Report Foreigners (*SIRE*), parameters for the fulfillment of immigration obligations and the sanction procedures to be followed in case of breaches. Following you will find the main aspects to be considered:

- For the employer:

Natural or legal persons hiring foreign employees, are subject to immigration verifications and have the obligation to keep reporting through the Information System to Report Foreigners (*SIRE*), in particular the starting or termination of the foreigner's contracts. Additionally, any changes in the foreigner's visa category must also be reported.

The economic sanctions for the omission in the reports carried out before the *SIRE* or in case of surpassing the dates for the reports, were increased. The Resolution establishes that depending on the nature of the fault committed (slight or moderate) the economic sanction could vary between half and 40 legal monthly minimum wages.

- For the foreign:

The foreigners under an irregular permanence in Colombia, could request to leave the country voluntarily, through the previous execution of a memorandum and the issuance of a safe-conduct up to 5 days issued by the immigration authority.

The Resolution enshrines the irregular permanence of a foreign in the country, as well as some other conducts, as serious infraction. The penalty for these actions consist in the deportations of the foreigners, unless there is a constitutional guarantee under threat, case in which it would be possible to apply an economic penalty.

In case there is serious fault, the Resolution establishes that the foreign could be discretionally expelled of the national territory.

It is important to bear in mind that in Colombia the education for the children and the teenagers, is a fundamental right and a public service. Therefore, the provision of said service must be granted regardless of the immigration situation. The educational institution must do the respective report of foreign students through *SIRE*.

However, the child or teenager and their legal tutors must regulate their immigration status in Colombia.

Finally, please consider that this Resolution is valid since May 16, 2018.

- http://legal.legis.com.co/document?obra=legcol&document=legcol_8377b1a9ba68415d85b99fb2a55c1c01

For more information, please contact either of the following lawyers:

>Isabella Gandini García	Bogotá	+571 746.4602	Isabella.gandini@nortonrosefulbright.com
>María Adelaida Durán	Bogotá	+571 746.5565	Maria.duran@nortonrosefulbright.com

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