

## Legal Update

### Recent news in Colombian labour law

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February 2016

#### **Opinion No. 147921 of 2013 issued by the Pensions and Payroll Tax Unit –(Unidad de Gestión Pensional y Parafiscales– UGPP)**

The Pensions and Payroll Tax Unit (UGPP) temporarily suspended the inclusion of social benefits for determining the basis of contributions to the Integral Social Security System.

#### **Updates**

The UGPP temporarily established that it will not include social benefits to calculate the total remuneration and the 40% limit set by Article 30 of Law 1393 of 2010, according to which all non-salary income in excess of that ceiling must be taken into account within the basis of contributions comprehensive social security system.

The UGPP will take this measure until the Consultation and Civil Service Chamber of the Council of State issues an opinion in relation to this matter.

Link: <http://www.ugpp.gov.co/noticias/concepto-n-147921-de-2013.html>

#### **Judgment SL13188-2015 No. 55726 of the Labor Cassation Chamber of the Supreme Court of Justice.**

For not completing the weeks contributed for 20 years of service retirement pension is denied pursuant to Law 71 of 1978.

#### **Update**

To qualify as a beneficiary of the retirement pension, it is necessary to accredit (i) the age requirement and (ii) the budget of weekly contributions equivalent to 20 years of service.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=267134&d=1>

#### **Opinion No. 184305 of the Labor Ministry.**

Even without an employment contract, an employee in probationary period must be dismissed with just cause based on the Labor Code.

## Update

The employer is entitled to terminate the employment contract without generating the obligation to pay compensation for damages, but this must, in any event, be based on the verification of the worker's lack of skills to perform the tasks assigned, i.e. fails to meet the expectations corresponding to the office.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=272161&d=1>

## Opinion No. 62149 of the Labor Ministry.

Inclusion of a penalty clause in employment contracts.

## Update

If the employer considers that the untimely and immediate resignation of the worker causes it damages, it may appeal to the judges of the Republic in search of recognition of such damages, prior evidencing the damages that may have eventually been caused to it by the unexpected breaking of the employment association. However, under the premise that the obligation to pay compensation would require legal recognition, it could be interpreted that any contractual provision that imposes such burden on the employee that resigns without notice, could eventually be unenforceable.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=272157&d=1>

## Opinion No. 178051 of the Labor Ministry.

Suspending the affiliation of a union member who is disabled is conditional on organizational authority.

## Update

The union will be responsible for the administration of the comprehensive social security system, such as membership, retirement payments and other developments regarding the participating affiliates. People who join the union to provide their services or perform works commissioned under such contract, are called participating affiliates. Therefore, the disassociation of the participating affiliate shall be governed by the provisions of the regulations of the union contract itself, because there is no employment relationship between the affiliate and the union that obliges the employer to adhere to what is provided by the labor law in this regard.

Link: <http://www.articulo20.com.co/sitio/edicion.php?idedicionx=3155&d=1&iddi=272155>

## Judgment SL17123 -2014 No. 42494 of the Labor Cassation Chamber of the Supreme Court of Justice.

Although the company is classified as high risk, this does not mean that all its personnel are classified equally.

## Update

Even though a company falls within the high-risk classification, this does not mean that by this fact alone all the personnel working at such entity is understood to be employed in high-risk activities.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=268247&d=2>

## **Judgment SL1398-2015 No. 52582 of the Labor Cassation Chamber of the Supreme Court of Justice.**

Road traffic incident that caused the death of the worker is declared an accident of the worker.

### **Update**

When the traffic accident causes a temporary incapacity it will be covered by the Health Sponsoring Entity of the Contributory System to which the victim person is affiliated, if the accident is common origin, or by the Professional Risk Administrator, if it is qualified as a work accident, as applicable.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=257991&d=2>

## **Judgment 46160 of 2015 of the Labor Cassation Chamber of the Supreme Court of Justice.**

Conventional rights are admissible when acquired during the term of the employment relationship.

### **Update**

Rights that are conventionally agreed by workers enjoy special legal and constitutional protection, but they are only acquired during the term of the employment contract, since such extralegal prerogatives cannot exist indefinitely over time; i.e., they only exist while there is a contractual association. Therefore, it is inconceivable that a person who dissociated her or himself from a company approaches the latter after many years to claim an alleged right because she or he met the requirements after her or his disassociation.

Link: [http://www.notinet.com.co/dboletin\\_07.php?fecha\\_b=2016-02-23&idinv=339241](http://www.notinet.com.co/dboletin_07.php?fecha_b=2016-02-23&idinv=339241)

## **Judgment 45710 of 2015 of the Labour Cassation Chamber of the Supreme Court of Justice.**

Employer is obliged to compensate the employee for damages caused by unfair dismissal.

### **Update**

The employer must pay compensation for the unfair dismissal of the worker, in the sense of being condemned to compensate pain and suffering caused by an unfair dismissal. Since pain and suffering is subject to judicial discretion, to the extent that it is not possible to put a price on pain, despair, dejection, anxiety and other components pertaining to the individual's inner self.

Link: [http://www.notinet.com.co/dboletin\\_07.php?fecha\\_b=2016-02-24&idinv=339321](http://www.notinet.com.co/dboletin_07.php?fecha_b=2016-02-24&idinv=339321)

## **Opinion No. 2016-N0005901 of the Labor Ministry.**

Temporary Services Companies (*Empresas de Servicios Temporales* - EST) must also implement the Work Health and Safety System.

### **Update**

ESTs are the only ones authorized to temporarily collaborate in the corporate purpose of the user companies, for which reason workers are sent by the EST to comply with this mission, to the premises of the user company to provide the

temporary services for which it is contracted. Furthermore, to perform these tasks such personnel is exposed to various risks in the companies therefore they must adopt the Work Health and Safety System.

Link: <http://www.articulo20.com.co/contenidos/detalles/?iddix=272541&d=1>

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