

Legal update

Special Bar Against Dismissals

December 2015

Labour

On December 28, 2015, the President of the Republic enacted Decree with Rank, Value and Force of Law N° 2,158 (“Law-Decree on Special Bar Against Dismissals”)1 in the Special Official Gazette of the Bolivarian Republic of Venezuela (“GORBV”) N° 6,207. The Law-Decree on Special Bar Against Dismissals provides a special protection against dismissals (“Special Bar Against Dismissals”) for a term of three (3) years.

1. Effective term of the extension of the Special Bar Against Dismissals.

Articles 2 and 10 of the Law-Decree on Special Bar Against Dismissals order the Special bar Against Dismissals as of December 28th, 2015 and for the term of three (3) years, therefore, it will last until December 28th, 2018.

2. Effects of the Special Bar Against Dismissals.

The Special Bar Against Dismissals means that employers cannot dismiss, impair the labour conditions or transfer a worker without just cause for the term of three (3) years beginning on December 28th, 2015. In order to dismiss, impair the labour conditions or transfer a worker, employers must obtain previous authorization from the Office of the Labour Inspector through a dismissal qualification process that shall begin before the corresponding Office of the Labour Inspector pursuant to Article of the 422 Organic Law on Employment, Male and Female Workers (Labour Law)².

Failure by the employer to make a request to dismiss a worker shall give the latter the right to ask for reinstatement and payment of unpaid wages and labour benefits or restoration of the infringed legal situation, as set forth in Article 425 of the Labour Law.

3. Employees eligible for the Law-Decree on Special Bar Against Dismissals.

Pursuant to Article 3 of the Law-Decree on Special Bar Against Dismissals, the following employees shall be under the protection of the Special Bar Against Dismissals:

- a. Hired employees for an indefinite term, after one (1) month of services for an employer:
- b. Hired employees for a fixed-term agreement, provided that the term specified in the agreement has not expired, and;
- c. Hired employees for a specific task or work, as long as all of it or the portion under his/her responsibility has not been completed.

4. Employees non-eligible for the Law-Decree on Special Bar Against Dismissals.

Pursuant to Article 3 of the Law-Decree on Special Bar Against Dismissals, the following employees shall be expressly excluded from the Special Bar Against Dismissals:

- a. Management employees³, and;
- b. Temporary and occasional workers⁴.

Under the Law-Decree on Special Bar Against Dismissals, job stability of public servants shall be governed by the protection standards contained in the Law for Public Officers⁵.

5. Sanctions.

The Law-Decree provides in Article 9 that the employer that dismisses, transfers or impairs the labour conditions of a worker protected by the Special Bar Against Dismissals, without first obtaining authorization from the Office of the Labour Inspector shall be punished by a fine of between 60 and 120 tax units, in accordance with Article 531 of the Labour Law.

Moreover, the same sanction will be applied to those who impede or disobey the order for reinstatement of a worker granted with Special Bar Against Dismissal, in accordance with Article 532 of the Labour Law, as well as imprisonment of between six to 15 months, in accordance with Article 538 of the Labour Law.

Footnotes

¹ *Decree with Rank, Value and Force of Law on bar Against Dismissals N° 2.158*. Official Gazette of the Bolivarian Republic of Venezuela (“OGBRV”) N° 6,207, dated December 28, 2015.

² *Decree with Rank, Value and Force of Organic Law on Employment, Male and Female Workers*. Special OGBRV N° 6,076, dated May 7, 2012.

³ A management employee shall be understood to be the person who intervenes in the decision-making processes or orientations of the company, as well as the person who acts as representative of the employer before the other workers or third parties and substitutes him/her, completely or partially, in his/her functions. (Article 42 Labour Law).

⁴ According to the abrogated Organic Labour Law, temporary employees render services in selected seasons of the year and in continuous, uninterrupted working days, for terms that delimit their intended work (Article 114), and casual or occasional employees work once in a while and their work relationship end upon completion of the entrusted work (Article 115). Neither of those types of workers are established in the Labor Law currently in force.

⁵ *Law for the Public Officers*. OGBRV N° 37,522, dated September 6, 2002.

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