

An Overview of Dominican Labor Law

by

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1. Introduction

Labor relationships in the Dominican Republic are governed by Law No. 16-92 of May 29, 1992, commonly known as the Labor Code, which is characterized by its strong and sometimes inflexible protection of the rights of the individual employee.

This overview is a brief yet detailed summary of the Labor Code's most relevant provisions. All references in parentheses refer to articles in the Labor Code unless otherwise specified. Please note that no overview can validly substitute professional legal assistance.

2. Hiring a Workforce

There are several details to pay attention to and obligations to comply with when hiring a workforce.

2.1. The Employment Contract

As a general rule, any and all relationships in which one person obliges him or herself to provide any form of service to another, in exchange for remuneration and under the direction and/or supervision of the latter, are considered to be employment contracts and subject to the provisions of the Labor Code (Arts. 1 and 2).

Such contracts, which may be verbal or written, are presumed to exist in every such case, unless proven otherwise by the employer. Given this presumption, it is quite possible for a person considered a private contractor in other jurisdictions to qualify as an employee in the Dominican Republic.

Any party to an employment contract may require the other to prepare and/or sign a written version of a previously verbal agreement (Art. 19). If in writing, any modifications made to it must be in writing as well (Art. 20). Written agreements are recommended since they foster a clear and sound work relationship.

Any work carried out by a foreigner on Dominican soil is subject to the provisions of the Labor Code since Dominican labor laws are territorial in nature (Principle V of the Labor Code).

2.2. Restrictions and Obligations

Certain limitations apply to the terms of the employment contract and the persons being employed. There is also a series of employer-exclusive obligations that arise from hiring a workforce.

2.2.1. Working Hours and Shifts

Normal working hours may not exceed eight hours a day nor 44 hours a week (Art. 147). Employees in executive or managerial positions are considered an exception to this rule and may work up to 10 hours a day (Art. 150).

Daytime work hours range from 7:00 a.m. to 9:00 p.m. (Art. 149). A work shift is considered a daytime shift as long as no more than three hours exceed the 9:00 p.m. limit. Otherwise it is considered a night shift, which entails an increase in remuneration, as detailed below in 3.2. The weekly work shifts normally end on Saturdays at noon, giving the employee 36 hours of uninterrupted rest. Any other arrangement must provide the same minimum uninterrupted rest period of 36 hours.

2.2.2. Employee Nationality

At least 80% of an entity's work force must be Dominican (Art. 135). Likewise, no less than 80% of the payroll, with the exception of salaries for technical or executive positions, must correspond to wages earned by Dominicans (Art. 136). Distributions of Dominican and foreign workers for work forces of less than 10 people are provided for expressly under the Labor Code (Art. 137). Employees carrying out exclusively executive or managerial duties and those in technical positions for which there is no available Dominican substitute are exceptions to these rules (Art. 138).

2.2.3. Employee Age

A person is considered of legal age for labor purposes at 16. However, an employment contract may be entered into by a minor for nonhazardous work provided that the minor has reached the age of 14 and has obtained the authorization of his or her parents (Art. 17). Work hours for minors may not exceed six hours a day (Art. 247). Employment of minors is prohibited in establishments selling alcoholic beverages (Art. 253).

2.3. Bookkeeping and Filings

Employers are required to keep the following records on a permanent basis: (i) employee, wage and schedule listings; (ii) vacations listings; (iii) overtime listings and (iv) inspection visit records (Art. 16). Keeping these records and duly registering with authorities is crucial for employers, given that they are the only valid evidence that may be presented by them against employees in many cases.

3. Wages

Wages must be paid in cash and cannot be below the established minimum wage. (Arts. 192 and 193). The interval between salary payments cannot exceed one month (Art. 198). Nonpayment of wages by the employer is considered a criminal offense punishable by a fine and up to five years in prison (Arts 198 and 211).

MINIMUM WAGE BY SECTOR	
Businesses in General (by Capital/Holdings in Pesos)	
4,000,001.00 and above	6,400.00 DOP
2,000,001.00 to 4,000,000.00	4,400.00 DOP
Up to 2,000,000.00	3,900.00 DOP
Hotels, Casinos & Restaurants	
500,001.00 DOP and above	4,970.00 DOP
200,001.00 DOP to 500,000.00	3,550.00 DOP
Up to 200,000.00	3,200.00 DOP
Other Sectors	
Duty Free Zones	4,450.00 DOP
Private Security Firms	5,400.00 DOP
Non-Profit Organizations	2,587.00 DOP

3.1. Minimum Wage

Minimum wages are established by the National Salary Committee, a dependency of the Ministry of Labor, and vary according to the different type of business and their installations and/or holdings. Current minimum wages are specified in the side table.

3.2. Overtime

Every hour above the 44-hours weekly limit is to be paid at 135% of the normal hourly wage (Art. 203). Every hour in excess of 68 hours a week is to be paid at 200% of the normal hourly wage. Night hours are paid at an additional 15% (Art. 204).

3.3. Christmas Salary

In addition to his regular salary, every employee in the Dominican Republic receives, on or before December 20, a so-called "Christmas salary" equal to one-twelfth (1/12) of the total regular salary earned during the year (Art. 220). To calculate the Christmas salary, only the regular salary received is taken into account, excluding tips, overtime and benefits received from profit sharing. The Labor Code establishes a maximum Christmas Salary of five times the minimum wage. However, many employers waive this limitation and pay employees who have worked the whole year a full extra monthly salary.

The Christmas Salary is exempt from income tax (Art. 222).

3.4. Profit Sharing

Employers must share 10% of their net profits with their employees. The Labor Code, however, allows employers to cap the amount distributed as follows: an employee with less than three years on the job will receive a maximum of 45 days' salary; an employee with three years or more, will receive a maximum of 60 days' salary (Art. 223).

4. Time Off

The Labor Code contemplates several forms of time off for employees, such as leaves of absence, vacations and holidays.

4.1. Leaves of Absence

An employee has the right to paid leaves of absence in the following cases (Art. 54): (i) Marriage, five days; (ii) Death of grandparent, parent, offspring or spouse or three days; (iii) Wife or companion giving birth, two days, and (iv) Maternity leave, six weeks before the birth of the child and six weeks after.

4.2. Vacations

Employers must grant their employees a yearly minimum of 14 working days of paid vacation (Art. 177). After five years on the job, vacation time increases to 18 working days per year. An employee acquires the right to vacation after a year on the job.

Vacations cannot be fractioned for periods shorter than a week and may not be replaced with additional payment or any other form of compensation (Art. 182). The salary for the vacation period must be paid by the employer on the day prior to the beginning of vacation (Art. 181).

4.3. Holidays

Public holidays in the Dominican Republic are listed on the table below:

HOLIDAYS IN THE DOMINICAN REPUBLIC	
Occasion	Date
New Year's Day	January 1
Three Kings' Day	January 6
Day of the Virgin of Altigracia	January 21
Birthdate of Juan Pablo Duarte	January 26
Independence Day	February 27
Good Friday	Variable (March or April)
Corpus Christi	Variable (May or June)
Labor Day	May 1

Restoration Day	August 16
Day of the Virgin of Mercedes	September 24
Constitution Day	November 6
Christmas	December 25

5. Termination

Termination implies a permanent break in the effects of the employment contract. Several types of termination are contemplated under the Labor Code.

5.1. *At Will Termination ("Desahucio")*

Any party to an employment contract has the right to terminate it unilaterally without the need to specify a cause (Art. 75). The terminating party must give 7, 14 or 28 days advance notice of this decision to the other party depending on whether the agreement has been in force for more than 3, 6 or 12 months respectively (Art. 76). A late notice or no notice at all will entail a penalty of one day's salary for every day of noncompliance (Art. 79). Employers who exercise their right to terminate their employees without cause must make severance payments to the terminated employee as detailed below in 5.3 (Art. 80).

5.2. *For Cause Termination ("Despido" and "Dimisión")*

Employers may dismiss their employees alleging one or several of the specific causes listed under Article 88 of the Labor Code.

For cause termination by an employer ("despido") requires evidence of the commission by his or her employee of one or several of the listed grounds for termination (Art. 87). It also requires that the employer give notice of the termination and the grounds on which it is based to the Department of Labor within 48 hours of the dismissal (Art. 91). Failure to prove cause or to render the notice within the stated 48 hours will make the employer liable for payment of severance to the employee (Arts. 93 and 94). The right of the employer to base the dismissal on a specific cause for termination expires 15 days after the employee has committed the act alleged as grounds for termination (Art. 90).

The advice of legal counsel is strongly recommended before proceeding to terminate an employee for cause.

An employee may resign from his or her job for cause ("dimisión"). For cause termination by employees also requires evidence of the commission of one or several of the listed grounds for termination (Art. 96 and 97). If proven, the employee has the right to receive severance from the employer (Art. 101).

ECONOMIC ASSISTANCE	
Time Employed	Assistance
3 to 6 months	5 days' salary
6 to 12 months	10 days' salary
Over 1 year	15 days' salary per year

5.3. Termination Due to Incapacity or Death of the Employee

In the event of incapacity or death of the employee, the employer shall pay the employee, or his/her heirs, economic assistance in the amounts shown in the table to the right (Art. 82).

5.4.

SEVERANCE PAY	
Time Employed	Severance
3 to 6 months	6 days' salary
6 to 12 months	13 days' salary
1 to 5 years	21 days per year
Over 5 years	23 days per year

Severance Pay

Severance pay, due in the circumstances described above, varies depending on the duration of the employment contract as shown (Art. 80). When applicable, any sums owed by the employer must be paid within 10 days of the termination (Art. 86). Noncompliance entails a penalty of one day of salary for every day of delay (Art. 86).

5.5. Maternity Protection

The Labor Code provides special protection for employees who are pregnant or have recently given birth (Arts. 231 to 243). At will termination by the employer is strictly forbidden during the pregnancy of the employee and up to three months after birth (Art. 232). The pregnant employee has the right to paid maternity leave during the six weeks that precede the probable birth date and the six weeks that follow it (Art. 236). The employee has also the right to three rest periods of 20 minutes each per workday to breast-feed her child (Art. 240).

An employer who terminates a pregnant employee at will or without justifying cause for dismissal will be liable to pay the employee, in addition to the standard severance, the equivalent of five months' salary (Art. 233).

5.6. Suspension

An employment contract may be suspended either by the mutual consent of the parties or due to one of the other causes expressly provided by the Labor Code (Art. 51). Under a suspended employment contract, neither employer nor employee have to comply with their respective obligations for the duration of the suspension.

6. Unions

Dominican Law acknowledges the right of employees to associate into unions in order to defend their interests (Art.8, Section 11 of the Constitution). Unions must have a minimum of 20 members (Art. 324). Union officials receive special protection from termination by their employer (Art. 391).

6.1. Strikes

The Labor Code recognizes the right to strike by unions. Strikes can only involve the peaceful interruption of the work carried out by the employees (Art. 402). Strikes in essential services, such as utilities, communications and hospitals, are illegal (Arts. 403 and 404).

Before striking, unions must give a 10-day notice to the Ministry of Labor stating the following: (i) the economic conflict or infringement of rights which the strike aims to solve; (ii) how previous attempts to solve the conflict without striking have not been successful; (iii) that the strike has the approval of at least 51% of the union members and(iv) that the services affected by the strike are not essential to the public (Art. 407).

7. Withholding Taxesg

7.1. Income Tax

All employers must withhold income taxes from their employees' salaries and pay them monthly to the tax authorities (Art. 307 of the Dominican Tax Code). Currently, only salaries higher than RD\$20,000 pesos per month are subject to withholding.

7.2. Social Security

The Dominican Social Security system established by Law No. 87-01 contemplates insurance for health and labor risks and an incapacity/retirement fund, to be funded by salary-based contributions to be made by both employee and employer in the proportions described below.

Concept	Employee Contribution	Employer Contribution	Total Contribution
Health Insurance	7%	3%	10.0%
Labor Risk Insurance	--	1.25%	1.25%
Incapacity/Retirement Fund	7.12%	2.88	10.0%

Employers are responsible for payment of social security contributions, withholding their employees' share from the payroll. Contributions are capped at twenty times the minimum salary. Any amount above this cap is not taken into account to calculate the monthly contribution.

7.3. INFOTEP

The "Instituto de Formación Técnico Profesional" (INFOTEP) is a public institution created by Law No. 116 of 1980 to provide training and continuous education to Dominican workers. INFOTEP is financed by a 1% tax on the payroll of all private businesses payable monthly.

8. Domestic Workers

Domestics do not benefit from many of the provisions of the Labor Code (Art. 4). Domestics are defined as workers dedicated to household chores, such as cooking and cleaning, when carried out outside of a business (Art. 258). Condominium employees are not considered domestics.

Domestics are not subject to any regular work hours although every domestic must have a minimum of nine hours per day of uninterrupted rest and a weekly rest of 36 hours without interruption (Arts. 261 and 262). Domestics do not have the right to receive severance pay when dismissed. However, domestics do have the right to two weeks of paid vacation a year after their first year at work and to receive a Christmas salary as regular workers do.