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ARGENTINE INDIVIDUAL LABOR LAW (July 2007)

In Argentina, individual labor law regulates the relationship between an employer and an employee. This relationship is set forth by the Employment Contract Act, specific regulations that apply to certain categories of workers (*estatutos especiales*), and collective bargaining agreements depending on the activity of the employer.

The employee must be a physical person with working and legal capacity, and cannot be substituted in said relationship by any other person. An employee cannot be under fourteen years of age, and minors under eighteen years of age require parents' express authorization in order to be employed. The employer is the physical or legal entity that hires the employee.

In case a company hires personnel for the provision of services to a third company, employees are deemed as direct employees of this third company. Temporary staffing companies are the exception to this rule, being specifically regulated by law and requiring formal authorization for the provision of its services.

In those cases in which a company hires another entity for the performance of part of its normal, ordinary and specific activity, it shall be jointly and severally liable *vis-a-vis* the latter's employees for any labor law infringement. This same liability shall be applicable to any company that, not being the employee's formal employer, happens to be part of the same economical group of companies or the controller of said employee's formal employer.

In principle, the employment contract does not require a specific form. In this sense, it does not need to be written for its validity. One of the exceptions is, among others, the fixed-term employment contract.

The employment contract is presumed to last for an undetermined period of time. However, there is an initial trial period of three months, during which no indemnification is due for termination of the contract without cause (with the exception of the payment of an indemnification due for lack of prior notice equal to fifteen days of salary).

A special kind of employment contract to be executed for an undetermined period is the seasonal employment contract. Even though its term is undetermined, the effects of the contract – rendering of services and payment of salaries- only take place during the corresponding season determined by the nature of the activity of the employer.

Notwithstanding all the above, under special circumstances, the employment contract can have a limited life. Such cases include: (i) fixed-term employment contracts, in which a term is established in advance by the parties, said fixed term being justified under extraordinary circumstances; (ii) temporary staffing contracts, in which a specific term cannot be pre-established, the term of the contract thus depending on the length of an extraordinary event (i.e., excess of sea-

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sonal work, performance of an extraordinary work, sick leave, maternity leave, replacements, etc.).

The minimum salary is compulsory fixed by the National Government. Above this legal floor, the collective bargaining agreements applicable to each company also establish those minimum salaries to be paid to each category of workers.

According to the Employment Contract Act, every employee is entitled to a thirteenth salary which is paid as two semi-annual bonuses at the end of June and December each year.

The payment of salaries shall be performed by means of a deposit in the employee's banking account, which must be opened on his behalf by the employer. In certain exceptional cases, the salary may be paid in cash or by check.

Fringe benefits have been specifically enumerated by the Employment Contract Act. They are meal purchase orders, supermarket purchase orders, reimbursement of medical expenses, supply of work clothing, reimbursement of nursery school tuition, provision of school supplies, training courses and seminars and burial expenses. These benefits are considered non-remunerative payments, and therefore do not trigger payment of any social security contributions.

Termination of the employment contract may be motivated by various reasons.

On the one hand, it can be terminated due to the employer's decision (at will).

If there is sufficient and just cause for the dismissal, no indemnification shall be due to the employee.

If the termination is due to an unjustified dismissal (without cause), the employee shall be entitled to indemnification equal to one monthly salary per year worked, or fraction equal to or higher than three months. The monthly salary to be considered is the best normal, ordinary monthly salary accrued by the employee during the last year of employment.

Notwithstanding the above, there are caps on collective bargaining agreements which must be considered for the calculation of the referred to indemnification. Such cap is equal to three times the average of all salaries foreseen by the collective bargaining agreement for the different working categories contemplated by it. In case the employee's salary is higher than said cap, the latter shall be taken into account for the calculation of the indemnification. The floor of this indemnification is one month's salary, not taking into consideration the application of the collective bargaining agreement cap.

Even though the legislation that establishes said caps is still in force, a precedent of the National

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Supreme Court of Justice pronounced its unconstitutionality (*in re* "*Vizzoti*"). Under this judicial precedent, depending on the amount of the employee´s salary, the calculation of the indemnification in case of dismissal without just cause shall be made according to the following alternatives: (i) if 67% of the salary is inferior to the cap established in the applicable collective bargaining agreement, the amount of the cap must be taken as base for the calculation; (ii) if it surpasses 67%, the precedent of the Supreme Court becomes applicable, and the seniority indemnification shall be calculated considering 67% of the employee´s salary multiplied by the number of years worked.

The employee shall also be entitled to prior notice of his dismissal without cause, equal to one month if his seniority is less than five years, and to two months if his seniority is of five years or more. In lieu of prior notice, the worker shall be entitled to one or two monthly salaries, depending on the seniority of the employee.

The indemnification due for dismissals without cause shall be higher if the employee was dismissed during the period of protection for marriage or maternity, or was a union representative.

At present and due to the economic emergency declared in 2002 by the National Government, indemnification corresponding to dismissals without cause is increased by 50%, exception made for employees hired as from January 1, 2003 and who represented a net increase of the company's payroll as of December 31, 2002.

The employment contract may also be terminated by the employee's decision motivated by any serious infringement by the employer (thus entitling the employee to receive indemnification) or without cause (resignation), in which case the employee shall not be entitled to collect any indemnification.

The employment contract may also be terminated as a result of the mutual agreement of both parties, in which case no indemnification is owed either.

Other causes of termination of the employment contract –other than the parties' free will- have also been foreseen in the law. Such causes give rise to a reduced indemnification, or no indemnification at all, and include the following cases: force majeure, lack of or decrease in workload, death of the employee or of the employer, disability of the employee, bankruptcy of the employer and retirement of the employee.