

QUICK GUIDE: TIPS TO CONSIDER WHEN **TERMINATING** AN EMPLOYMENT CONTRACT

In our labor framework, there are several ways to terminate an indefinite-term employment contract, one of which is "desahucio" (unilateral termination), which can be executed by either the employee or the employer in the exercise of the right granted by the Labor Code. For validity, certain restrictions and requirements outlined in the Code must be observed.

In this article, we aim to provide some useful advice that employers should consider when exercising this right, from the perspectives of labor law, social security, and taxation, as follows:

FROM A LABOR LAW PERSPECTIVE

I. FORMAL OBLIGATIONS:

- a)** The obligation to notify the employee in writing.
- b)** Notify the employee by granting the pre-notification period specified by the Labor Code, based on the length of the employment contract, as follows:
 - i.** Employment contracts between 3 to 6 months: 7 days.
 - ii.** Employment contracts between 6 months and 1 year: 14 days.
 - iii.** Employment contracts longer than 1 year: 28 days.
- c)** Notify the Ministry of Labor in writing within 48 hours.
- d)** Report the employee's departure using form DGT-4 in the Integrated Labor Records System (SIRLA) of the Ministry of Labor within the first five (5) days of the following month.

II. RESTRICTIONS:

The employer's right to terminate the employment contract via desahucio is restricted under the following conditions:

- a)** During the employee's vacation period;
- b)** Suspension of the employment contract due to common illness leave;
- c)** Suspension of the employment contract due to temporary disability leave (i.e., work-related accident or occupational disease);
- d)** Employee's pregnancy;
- e)** Maternity leave;
- f)** Guaranteed period by the employer that the employee will continue to be employed; and
- g)** Employees protected by union immunity:
 - i.** Members of a union in formation: up to 3 months after the union's registration.
 - ii.** Members of the Executive Board and representatives in collective bargaining: up to 8 months after ceasing their duties.

III. PAYMENT OF LABOR BENEFITS:

The employer must pay labor benefits within 10 calendar days of the contract termination date. Failure to do so will result in a penalty of one (1) day of regular salary for each day of delay in payment. These labor benefits include:

- a)** Compensation equivalent to the salary the employee would have received had the employer complied with the pre-notification period (i.e., compensation for failure to provide prior notice); and

b) Severance pay according to the length of the employment contract, as follows:

i. Employment contracts between 3 to 6 months: 6 days of regular salary.

ii. Employment contracts between 6 months and 1 year: 13 days of regular salary.

iii. Employment contracts between 1 and 5 years: 21 days of regular salary per year.

iv. Employment contracts longer than 5 years: 23 days of regular salary per year, starting from the first year.

Finally, the employer must ensure the employee signs a release form acknowledging receipt of the termination package.

IV. OTHER REMUNERATIONS:

Although the employer is not necessarily required to pay all of the following remunerations upon termination, it is common practice to include them in the termination package, as follows:

a) Proportion of the Christmas Bonus for the months worked in the calendar year, corresponding to the twelfth of the salary earned by the employee.

b) Proportion of participation in the company's profits for the months worked during the fiscal year. This payment is less common, as employers sometimes decide to wait for the close of the fiscal year to determine whether profits were generated and if profit-sharing is possible.

c) Vacation compensation: Equivalent to the salary for unused vacation time.

FROM A SOCIAL SECURITY PERSPECTIVE

- a)** Report to the Treasury of Social Security the wages earned by the employee that constitute contributory salary for these purposes, up to the termination date, after deducting the employee's contributions.
- b)** Report the employee's departure to the Treasury of Social Security no later than the termination date.
- c)** Deduct social security contributions on wages paid, as well as on compensation for unused vacation time.
- d)** Neither compensation for failure to provide prior notice nor severance pay, nor the Christmas Bonus or participation in company profits constitute contributory salary for social security purposes.
- e)** Pay the Treasury of Social Security the amounts corresponding to employee deductions along with the employer's contributions within three (3) business days of the following month.

FROM A TAX PERSPECTIVE

- a)** After deducting the total amount of social security contributions, the employer must act as a withholding agent when paying the termination package for those amounts that are not exempt from income tax:
 - i.** Payments for pending wages;
 - ii.** Payments for vacation compensation;
 - iii.** Payments for participation in company profits.

b) The following concepts are exempt from income tax and are part of the termination package:

i. Compensation for failure to provide prior notice;

ii. Severance pay;

iii. Christmas Bonus.

c) Payment to the General Directorate of Internal Taxes for employee withholding taxes must be made no later than the tenth (10th) day of the month following the declared period.

Implementing these recommendations ensures that the employer meets obligations not only toward employees whose contracts have been terminated by desahucio but also toward the relevant government authorities mentioned.

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