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## Expected Changes To Dominican Republic's Labor Law Likely To Rebalance Employer-Employee Relationship

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In recent years, the Dominican Republic has enacted reforms affecting virtually every industry and every significant Dominican statute with one principal goal in mind: to enhance the rule of law for the benefit of Dominicans and investors – foreign and domestic alike. Thus, the Dominican Republic has amended everything from its corporate law to its tax law, has adopted a wide range of incentives to attract capital, and has made it clear that, simply put, the country invites and welcomes companies from around the world to do business here in a modern, free market economy that ensures profitability and competitiveness.

Now, the Dominican Republic is on the verge of another significant legislative development. By the end of this year, or by early next year, it seems likely that major amendments will be made to the Dominican labor law. Certainly, the changes will not affect the basic protections afforded to workers by Dominican law, just as workers in the United States and elsewhere are the beneficiaries of legislation enacted with their interests in mind. The changes expected to be made to the Dominican labor law, however, are likely to alter the balance between workers, on the one hand, and management on the other, with the result being a more favorable legal environment for employers.

This column highlights a number of the most important changes currently being discussed and explores the ramifications

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for foreign corporations doing business in the Dominican Republic if they are adopted.

### **Proposed Changes**

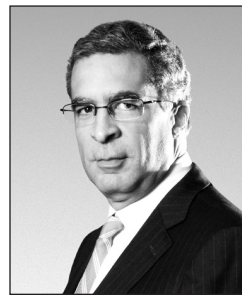
#### *Employment Contracts*

Proposed changes to the Dominican labor law begin with the law relating to employment contracts, including for employees who telecommute and people with disabilities as well as those who work in the maritime industry and aviation crews, which are subject to a special regimen provided by the Dominican Labor Code. The proposed changes would not alter the exclusion of independent professionals from the application of the provisions of the Dominican Labor Code, but technicians and self-employed workers would be inserted into this category.

#### *Information to Be Filed*

Concerning the burden of proof from which the employee is released with respect to documents that the employer must file and for purposes of determining whether or not a relationship is an employer-employee relationship, the law is expected to be amended to provide that employers must submit certain information to the Dominican Department of Labor within 30 days after hiring a worker or after the individual begins to work for the employer. The information to be submitted is expected to include:

- An indication regarding whether the employment contract may be for an indefinite term, for a specific period of time, or for a particular job or service.
- The employee's name, national origin, age, sex, marital status, address, and contact information.



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• For a Dominican employee, the person's identity card number, and for a foreign employee, the number on the person's passport and work visa issued by the immigration authorities.

• Where employment is for an indefinite term, the employer must provide the commencement date of the contract, the employee's position, the employee's salary, the employee's work schedule, and the employee's vacation time.

• Where employment is for a specific period of time, the employer must provide the subtype of contract agreed to by the parties from the options provided in the Dominican Labor Code, and the employee's salary.

• Where employment is for a particular job or service, the employer must provide the amount agreed on for the work.

Proof of receipt of this information, including via electronic means, fulfills the obligations. The Dominican Labor Department would have 30 days to review the information submitted. If it has no comments or questions, then the information submitted would be deemed approved. It is important to note that the information submitted is not provided to the courts.

Employers also would be required to provide information with respect to personnel changes to the Dominican Labor Department or the Social Security Treasury within five days after the end of each month. The information to be submitted is expected to include:

- Beginning and departure dates.
- Monthly regular salary paid to each employee.
- Changes in the positions or functions of employees under an employment contract for an indefinite term.
- Changes in the working schedule of employees under an employment contract for an indefinite term.
- Amount paid and number of overtime

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hours worked by each employee during the month.

It is worth noting that the information to be provided by the employer may be supplied electronically, whether through the Internet, via software, or by other technological methods.

#### *Probationary Term*

The first three months of an employment contract are considered a probationary period, unless the parties have agreed to a shorter term. During this period, either party – employee or employer – could terminate the employment contract without incurring any liability whatsoever, except for accrued pay and benefits.

### **Changes expected to be made to the Dominican labor law, are likely to alter the balance between workers, on the one hand, and management on the other, with the result being a more favorable legal environment for employers.**

#### *Paid Leaves*

If adopted, the changes to the labor law in the Dominican Republic will include paid leave for employees. For example, new mothers would be entitled to opt between taking three breaks of 20 minutes each a day, or two breaks of 30 minutes each a day, to nurse a child. As another example, male employees would be entitled to three days' paid leave on the birth of a child; under current law, they are entitled to two days' paid leave.

#### *Prohibitions*

The law also would "remove" a benefit, or what some seem to believe is a benefit, by specifically providing that employees may not use electronic devices or surf the Internet or social media accounts during work hours except as part of their work-related responsibilities.

#### *Successor Liability*

Current Dominican law provides that a new employer is jointly liable on pre-existing employment contracts when it succeeds an existing employer. That would change, if the proposed amendments are

adopted. Thus, a former employer would not be jointly liable with the new employer in case of payment of all rights and employment termination benefits then due, even if the employees continue to work for the new employer after the ownership of the business has changed.

#### *Ministry of Labor Determinations*

A significant expected change would allow the Ministry of Labor to allow, in special circumstances, employers to exceed the limits of the percentage of foreign workers or percentage of salaries paid to foreign workers where it is difficult or impossible for Dominicans to substitute for those foreign individuals. In this situation, the employer would be obligated to train Dominican workers under the supervision of the Ministry of Labor. In special cases where the legal established shift limits cannot be applied, the Ministry of Labor, in consultation with employees or their unions, could authorize an increase of the daily limit of hours employees could work, so

long as the average duration of work when calculated for 52 weeks would not exceed 44 hours per week.

#### *Apprentices*

New provisions of the labor law likely to be adopted will relate to employers' use of apprentices. The law would set a maximum one-year period for an apprenticeship, and would permit it only for individuals between the ages of 14 and 26. An apprentice would be taught skills for a reduced salary.

In these situations, the parties must enter into a written contract, to be approved by the Ministry of Labor, that states:

- Its purpose.
- Its duration.
- The salary due to the apprentice for his or her services, which may not be less than 50 percent of the applicable minimum wage.

At the end of the contract term, an apprentice would be entitled to receive a certificate signed by the employer explaining the knowledge or experience the person obtained as an apprentice.

#### *Telecommuting*

Several new articles in the Dominican labor law would govern telecommuting, defined as work that takes place off-premises, using technology or telecommunications tools. Employers and employees would be able to enter into a telecommuting agreement with respect to the employee's performance of his or her work without the employee being present at the employer's premises. Employers would make the assignments and supply equipment and technology to the employee, and the employee would be obliged to perform work assigned by the employer.

In addition, in situations where telecommuting was not contemplated by the parties' initial employment agreement, the law would provide that the decision to telecommute would be reversible by an agreement of the parties.

Employers with telecommuting employees would be responsible for taking all necessary steps to ensure the secure transmission of data and reports prepared by their employees. They also must respect their employees' privacy and provide notice before visiting their employees' homes, which should be done in the presence of the employee or any person appointed by the latter and which should be limited to controlling the work and the employer's equipment.

Employers would not be permitted to access a telecommuting employee's personal e-mail or other accounts without the employee's consent. If an employer installs a surveillance system, the law would require that it be "proportionate" to the employer's objective, and the telecommuting employee must be informed of the existence of such a system.

#### **Conclusion**

There are other significant provisions that are expected to be adopted. For example, strikes or work stoppages in private companies must never endanger life, health or the safety of individuals and must guarantee that public utility services be provided. The proposed changes also would clarify the application of the current provision of Dominican law that establishes that employers and employees would be able to agree to arbitrate labor disputes that arise between them.