

2011

# Labor Regulations



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## Labor Regulations

Most of the constitutional rights included in the Costa Rican Constitution are applicable to employment as they are basic rights for all individuals. The most important law that is applicable to employment is the Labor Code, which establishes the general rules governing all labor relationships.

Other important laws are the Law of Labor-Related Risks (Law No. 6727) and the Law for Worker's Protection (Law No. 7983), which establishes the rules for the administration of retirement plans. Employers must also consider the "Administrative Provisions", such as the decrees establishing minimum wages (updated every six months).

The rights established in the Constitution, the Labor Code and the other statutory provisions and regulations, seek to guarantee:

1. Freedom of association and protection to the right to organize;
2. Right to collective bargaining;
3. Right to strike;
4. Prohibition of forced labor;
5. Child and youth labor protection;
6. Elimination of discrimination;
7. Equal payment for women and men.

In addition to currently enforceable laws and to avoid any possible legal loophole, companies may implement their own set of rules by creating internal policies and manuals specifying certain relevant issues. These policies and manuals must be registered and approved by the Ministry of Labor. Some issues that may be included in the policies are: code of conduct, occupational health policies, appropriate use of equipment, dress code, among others.

### **Work Shifts**

The Day Shift is of 8 hours per day (extendable to 10); 48 hours a week and can take place between 5:00 am and 7:00 pm. It is common to find among these kinds of shifts the so-called accumulative days, which refer to the possibility a company has to distribute the hours of a working day (generally Saturdays) among the other 5 working days (from Monday to Friday). This is possible as long as the working day does not last more than 10 hours. In this case, the work contract should specify that Saturday is, for all legal effects, a working day, as it is accumulated during the week days.

The Mixed Shift takes place during both the day shift hours and the night shift hours, but cannot be more than 3.5 hours during the night shift hours, if so; the shift becomes a night shift (according to the article 138 of the Work Code). Normally, it lasts 7 hours per day and 42 hours a week, but it can be extended to 8 hours a day and 48 a week if the job or the working place is not dangerous or unhealthy.

The Night Shift lasts 6 hours per day and 36 a week, and can take place between 7:00 pm and 5:00 am. It cannot be extended and its payment has to be the same as the day shift or mixed shift even though it is shorter.

The time which employees remain under the immediate, delegated, or directed orders of the employer is considered to be effective work time. Two 10-15 minute rest periods

per workday are customary. If the working day is continuous and the lunch break does not exceed 30 minutes, it will be considered part of the work period and thus paid.

Administrative workers, general managers, etc. (commonly white-collar workers) are excluded from this limitation of shifts. However, they cannot be forced to work more than 12 hours a day.

Employees have the right to enjoy at least one fixed day of absolute rest during each week, or following six days of continuous work. If the employee has to work during his rest day, he is entitled to double his normal pay.

Labor law allows the workday to extend beyond the legal work beyond the statutory workday, but no more than 12 hours a day; except in very exceptional circumstances. Overtime wages are equivalent to the corresponding hourly rate plus 50%. Overtime is used in exceptional circumstances; this means that the extraordinary work day can't be used to permanently expand the regular workday.

These rules only apply to regular workers and administrative employees.

## **Employment Contracts**

Employment contracts are private agreements reached between the employer and the employee that don't need to be recorded with the exception of agricultural workers, domestic workers, temporary workers and workers hired for a specific task; which have to be writing executed. It is convenient to make sure that such work agreements reflect the real terms and conditions of the labor relationship so that none of the parties may prove otherwise. The Costa Rican Constitution establishes that all labor contracts must be written in Spanish. However, the lack of a written contract does not significantly affect any of the parties or diminish their rights and obligations.

## Trial Period

Every labor contract or relation for an indefinite term will have a three month trial period. The company can decide not to hire the individual during those three months and not incur in any responsibility other than the payment of vacations (one day per month) and the Christmas bonus. After the three month trial period, it is assumed that the company has hired the individual and all provisions of the Labor Code are in force, both to the company and the employee.

## Employment Termination

If an employee's dismissal is due to a justified cause, the employer will only be liable for the payment of wages, proportional vacation time and Christmas Bonus. The dismissal must be well substantiated in case the employee should file a complaint. All disciplinary actions against the employee because of any fault must be taken within 30 days of the action.

The following are "just causes" for ending an employer-employee relationship:

- Physical or moral acts or libel committed against another worker or the employer during working hours and outside working hours.
- Criminal acts or property damage.
- Acts that endanger security and working conditions.
- Release of confidential information.
- Unjustified absence for 2 consecutive days or 3 or more non-consecutive days.
- Disobeying instructions or orders.

In case of dismissal without "just cause", the employer must give dismissal notice and severance payment, proportional to the total time worked by the employee.

On the other hand, some reasons justify employees to resign while retaining their right to demand severance payments. These reasons are:

- Nonpayment of agreed salary.
- Dangerous working conditions or contagious diseases in the work place.
- Moral or physical damage or defamation against worker by the employer or his representatives during or after working hours.
- Purposeful damage to worker's tools by employer.

The following are a set of financial obligations that the employer must fulfill if the employee is dismissed without mediating a “just cause” or if he resigns for one of the reasons stated above:

***Pre Termination Notice (Pre Aviso):*** Before an employer can dismiss an employee without cause, he/she must notify the individual. Failure to do so will trigger additional obligations. The amount of notice required depends on the length of time that the employee has worked for that particular employer. If the period is greater than three months but less than six months, he is entitled to one week notice of termination; six months to one year: two weeks’ notice; more than one year: one month prior notice. Instead of written notice, the employer can pay the employee a sum of money equivalent to the salary that would have been earned during the notice period. (The same is effective if the employee decides to leave voluntarily. If previous notice is not given, the same time frame will be deducted from the vacations and Christmas bonus).

***Severance Pay (Cesantia):*** If the employer dismisses an employee without cause or if the employee quits for a cause attributable to the employer, he/she is entitled to severance pay. This payment works as a built-in unemployment compensation system. The Code states that severance pay should be calculated according to the average salary of the previous six months and in accordance to the period labored as follows:

- More than three months but less than six months: 7 days wage.
- Six months to one year: 14 days wage.
- More than one year: 20 days wage for every year labored up to a maximum of 8 worked years.

**Accumulated Vacation Payment:** When an employee is dismissed, any unused vacation time must be paid. The amount is determined by multiplying the employee's daily (gross) wage by the unused vacation days.

## Holidays

The following table shows observed holidays in Costa Rica:

Observed holidays	
January 1 <sup>st</sup>	New Year
April 11 <sup>th</sup>	Juan Santamaria Day
Holy Thursday	Holy Week
Good Friday	Holy Week
May 1 <sup>st</sup>	Labor day
July 25 <sup>th</sup>	Guanacaste Annexation
August 15 <sup>th</sup>	Mothers' day
September 15 <sup>th</sup>	Independence Day
December 25 <sup>th</sup>	Christmas Day

**Source:** Ministry of Labor, 2011

If the employee has to work during an observed holiday, the day must be paid double time. For example, assuming that the employee's daily salary is \$20 (monthly salary divided by 30), he must receive an extra \$20 in his monthly pay.

In the case of nonobligatory payment holidays (*August 2<sup>nd</sup>* for the Virgin Mary Festivity and October 12<sup>th</sup> -Columbus Day-), it is up to the company whether to give it free to the employees or not. If the employees receive their wages weekly and the company doesn't work that day, the day is not paid, but if the payment is biweekly or monthly, the day is paid in spite of the day was worked or not.

### **Paid Vacations**

The worker is entitled to a minimum of two weeks of paid vacations for every 50 weeks of continuous activity under the same employer. If terminated before accumulating those 50 weeks of employment, the employee is entitled to one vacation day per each month worked. If a worker has acquired a right to vacations and he or she ceases in his work for any cause before enjoying them, he will be paid the corresponding amount. This is the only case in which vacations are allowed to be compensated with money.

The employer has the capacity to change the two weeks to a scaled system of vacations according to the time worked by the employee or any other system that results in higher benefits for the employees. The employer will establish time frame in which the employee may enjoy his or her vacation, but this must be done within the fifteen weeks following the day in which fifty weeks of continuous service are reached.

The employees will have an uninterrupted vacation period. Eventually, it may be divided into a maximum of two periods, provided there is an agreement between the parties. As a rule, the Labor Code does not allow employees to accumulate vacation time, except in cases when the employee carries out technical or confidential tasks that make his replacement difficult.

### **Maternity Leaves**

Maternity leave entitles the employee to a one-month leave prior to delivery and three months thereafter. Maternity leave is payable at the same 50% rate for 4 months (120

days: 30 days before and 90 days after birth), while Social Security covers the remaining 50%.

### **Sick Leave**

Leaves due to partial work disabilities (e.g. illness, disease) may be granted by the Social Security System (CCSS) after a medical examination. The CCSS covers 100% of medical usage. The salary of the three days of illness is paid 50% by the CCSS and 50% by the employer. From the 4th day and after, the CCSS pays 60% of the employee's salary and the company has no obligation to pay the rest.

### **Occupational risk insurance**

All employers must carry an insurance policy with the National Insurance Institute to cover occupational risks. In case of absence by injury or accident, the National Insurance Institute covers 60% of the injured worker's salary without time limitation from the first day.

### **Wages / Payment**

Minimum wages are adjusted by the National Salary Council (made up of representatives from the labor force, employers and the Government) twice a year based on the inflation index. Payment is by time period or unit/piece work. The company is free to determine the method and timing of payment. Blue-collar workers are paid weekly or twice a month; white-collar and domestic workers, monthly.

### **Social Security System**

A public institution ("Caja Costarricense de Seguro Social") manages a national health system, along with the Ministry of Health.

Contributions of employers and employees to the national health system are mandatory and calculated as a percentage of monthly salaries. Contributions amount to 34.5% of salaries paid on the part of employers and 9.7% of salaries received on the part of employees.

The system includes two regimes, which are mandatory for all legally established employers and employees: illness and maternity (medical treatment) and disability, old age and death (mandatory pension). The Social Security System does not prevent employers or employees from joining other pension, health or retirement plans, either public or private.

### **Christmas bonus**

The Christmas bonus (“aguinaldo”) is an additional one-month salary that must be paid to all employees after one year of employment, from December 1st, to November 30th. It is payable each year during the first twenty days of December. If an employee has not worked for a full year, the bonus must be paid proportionally.

### **Injuries on the job / workers compensation insurance**

The Labor Code establishes guidelines for the creation of occupational health and safety policies. Laws that cover worker compensation were expanded in 1982 and incorporated into the Labor Code.

Every employer must have worker's compensation insurance to protect workers from accidents. The National Insurance Institute (Instituto Nacional de Seguros) sells the worker's compensation policy. The employer may also be responsible for independent contractors if they are under his direction. If a worker is injured and the employer does not obtain insurance as required, the employer will be liable for all expenses incurred by the worker as a result of the injury. Municipal inspectors from the National Insurance

Institute verify that all employers have worker's compensation insurance. Certified inspectors may shut down any business that violates these provisions.

Once an injury on the job occurs, the employer is responsible for filing a Notice of Injury Form at the National Insurance Institute, within eight days of the accident. The injured worker has a right to claim medical benefits rehabilitation incurred as a result of the injury, as well as the payment of 75% of his/her salary.

### **Worker's Protection Law**

The Worker's Protection Act, enacted in February 2000, established a mandatory contribution by employers of 3% of salaries paid to employees. 50% of this contribution goes to a mandatory individual pension account that every employee must have with a public or private pension fund operator, and the other 50% goes to a mandatory individual capitalization account that every employee must also have. Amounts transferred by employers to individual capitalization accounts will be released to employees in the event of termination of the employment relationship, regardless of the cause of termination.

### **Foreign Labor**

An expat can have a job in Costa Rica. The General Directorate of Immigration and Aliens has a fast-track system that facilitates procedures for companies in order to hire expats.