

**Concept of Ordinary Salary for the Determination of
Notice Termination and Severance Payments.**



For considering it of interest and relevance, we herein present a brief summary of a recent jurisprudential criterion of the Chamber of the Labor, Land, Administrative and Fiscal Proceedings of the Supreme Court of Justice (the “Third Chamber of the SCJ”), in its Labor attributions.

According to Article 192 of the Labor Code of the Dominican Republic (hereinafter “LC”), salary is “the retribution that the employer must pay to the employee in compensation for the service rendered. The salary is composed by the amount in cash that must be paid by the hour, day, week, fortnight, or month to the employee, and by any other benefit obtained for his services”. In this same sense, the ordinary salary perceived by the employee is the one that the employer must use as basis for calculation and payment of acquired rights (vacations, Christmas salary and bonus) and severance and labor compensations (notice of termination and severance payment) due to the termination of a work relationship.

Through Sentence No. 521, dated October 8th, 2014, entirely available at: http://www.poderjudicial.gob.do/consultas/consultas_sentencias/fallos_nuevos.aspx, the Third Chamber of the SCJ complemented the jurisprudential criterion that had been applied in previous cases (see Sentence of November 24, 1999, J. B. No. 1086; Sentence of November 15, 2000, J.B. No. 1086, Pag 732; Sentence of October 16, 2003, J. B. No. 1103, pages 981-985; Sentence of March 21, 2012, J. B. No. 1216, page 2045, Banco del Progreso Vs. Pedro Castillo). *The referred decision set the limits of the concept of ordinary salary which is the basis for the calculation and payment of the labor compensations as consequence of the termination of a work contract. The Third Chamber of the SCJ established that the ordinary salary is the retribution perceived by the employee as consequence of the rendering of his/her service within the normal working hours, in a constant and permanent manner in periods not greater than a month. **Consequently, all retributions perceived by the employee for his/her work or by reason of same that do not meet these characteristics shall be catalogued as “extraordinary salaries” which shall not be computed for determination of the notice of termination and severance payment.***

In summary, the Third Chamber of the SCJ, established the criterion that in order to be catalogued as ordinary salary certain amounts of money, are required the following elements: a) that is earned within the normal working hours; b) that is based on services rendered; c) that is constantly and permanently perceived; and d) that is perceived in periods no greater that one month. Consequently, according to Sentence No. 521, the extraordinary salaries perceived by the employees, such as compensation for higher education, pension plans, housing rental, payment of utilities such as water, electricity, telephone, gas, additional working weeks, year-end bonus, re-hiring bonus, payment of airline tickets on behalf of the employee, amongst others, do not qualify as ordinary salary, but as contractual agreements, THAT ARE NOT PART OF THE ORDINARY SALARY TO BE TAKEN INTO ACCOUNT FOR DETERMINATION AND/OR CALCULATION OF THE NOTICE OF TERMINATION AND SEVERANCE PAYMENTS.

Note: This document contains solely general information on the subset matter, therefore does not constitute a legal opinion by Russin Vecchi & Heredia Bonetti. It is recommended to seek legal advice for each particular matter.