

LATIN LAWYER REFERENCE LABOUR & EMPLOYMENT 2020

Dominican Republic

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1 May foreign employers hire employees directly in your jurisdiction or is it necessary to act through a local subsidiary? Are secondments or loans of personnel lawful? Can this trigger a permanent establishment of the foreign company in your jurisdiction?

Foreign employers may hire employees directly in Dominican Republic. The Foreign Investment Law of 1995 grants foreign investors the same rights and obligations as local investors. The secondment or personnel loan is not contemplated in the law, although in practice, it happens under certain conditions. However, an employee may not have more than one employer in the same work schedule. Hiring personnel through a local outsourcing company is legal and done quite often. The employer of such personnel would be the outsourcing company. The hiring of personnel, even if done via an outsourcing company, could potentially trigger a permanent establishment.

2 Is there a limit to the number (or ratio) of foreign employees an employer may have in your jurisdiction?

Yes. Although the limit is 20 per cent, there are exceptions for specialised, administrative or technical employees or family members.

3 May labour or employment agreements, and the termination of those agreements, be subject to any legislation other than that of your jurisdiction?

Yes, but only when such laws grant more favourable conditions to the employees than those provided by Dominican laws.

4 What are the requirements for an enforceable agreement? Are there any formalities that labour or employment agreements must adopt to be enforceable in your jurisdiction? Are fees, duties or taxes generated by any of them?

In broad terms, Dominican labour regulations do not require express formalities for employment agreements to be enforceable. The main requirement is that such agreements do not limit in any way the rights of the employees under the Labour Code and ancillary legislation.

Oral employment agreements are permitted, and indeed are quite common. Only certain types of employment agreements, such as those with seasonal workers, are subject to certain conditions, such as registration with the Ministry of Labour.

There are no fees, duties or taxes generated by employment agreements.

5 What are the implications of hiring personnel without a clear, written, employment agreement in place? Can this have any effect in the event of litigation or have a bearing on social security or tax issues?

As indicated above, it is not necessary to formalise employment agreements in writing. Under Dominican law, the agreement between the parties will be that which is applied in practice over and above that which may exist in writing. Notwithstanding this, it is customary for employment agreements with administrative or managerial personnel to be in writing. The advantage is its probative value in the event of litigation. Whether the employment agreement is oral or in written should have no bearing on social security or tax issues.

6 What are the employers' obligations (social security and related benefits) regarding employees after contracting? Are any social benefits tax deductible? Are these applicable to foreign employees?

In addition to the payment of salary, the principal obligations of the employer include complying with the provisions of the Labour Code and ancillary legislation regarding the health and safety of employees. These measures include having first-aid kits in the workplace, taking preventive measures against workplace accidents and, in certain cases, creating a safety and hygiene committee within the workplace. The employer must make contributions and regular payments to the Dominican social security system, pension fund, and incapacity and survival insurance against labour risks. In a similar manner, the employer must also contribute to the pension system. These obligations are applicable to foreign employees; there is no difference in our jurisdiction between them and the local employees.

To allow the foreign employees to enjoy the Social Security benefits and ensure the accumulation of the pension funds, the foreign employees must be legal residents in Dominican Republic. However, being an illegal alien in no way affects the employee's labour rights or his or her right to file a labour action.

7 What benefits, other than cash remuneration are employees in your jurisdiction entitled to? What severance entitlements may employees claim?

Severance benefits based on the employee's seniority, profit sharing bonuses, an extra monthly salary in December (Christmas salary), and paid maternity and vacation leave. Employees may claim these benefits during employment, in case the employer does not comply or after the relationship is terminated by any of the possible means (layoff, resignation, or dismissal).

8 What is the role of the unions in the relationship with foreign employers and employees?

There is no difference in the role of unions if the employers are foreign or domestic.

9 Do employees have the right to form unions? Is it mandatory for employers to honour this?

Yes. The right to form unions is protected by the Dominican Labour Code, and enshrined in the Dominican Constitution. It is mandatory for employers to honour them.

10 May unions be an independent party to a labour controversy in your jurisdiction? What are their rights and duties towards the employer and unionised employees?

Duly registered unions may be a party in a labour controversy. They can act as plaintiff or defendants in labour lawsuits or collective bargaining agreements. Unions can set conditions in their by-laws in addition to those contained in the law, for the admission of its members and in this regard, to autonomously set the conditions for their exclusion, with these decisions not being able to be appealed via any action.

On the other hand, the members of a union in formation, up to 20 in number, and part of the members of the board of directors of a union, enjoy the "union enclave", according to article 30 of the Labour Code.

In the same manner, the employer cannot end the employment agreement of a worker protected by the union enclave via dismissal without cause. Dismissal without cause carried out in these conditions produces no legal effect.

The labour enclave protecting an employee ceases if he or she incurs in physical or moral violence against the employer or other employees, causes disorder in the company, prevents the other co-workers to carry out their work, works against the assets of the company, incites the destruction of work instruments or materials, or commits a crime or misdemeanour sanctioned by the law or in violation of the Constitution. However, for an employer to terminate a protected worker, the Labour Court of Appeals must lift the union enclave protection.

Likewise, unions cannot block freedom to work, nor take any measure to constrain employees or employers from being members of the association or to remain therein. Any member of a union can be severed from it at any time, despite a contrary clause in the by-laws, without any obligation except the payment of pending dues.

11 May a union request, bring about or cause a stoppage? If so, in what cases and what remedies would be available to the employer?

Unions have the right to strike under certain conditions. A strike is defined as "the collective voluntary suspension of work by workers in defence of their common interests". While unions can bring about or cause a strike, it is not a right specifically attributed to them, but is enjoyed by all employees of the company, even those not unionised. A strike must be limited to the act of suspension of work.

Strikes in Dominican legislation are considered an extreme measure, which can only be resorted to after having exhausted all possible attempts at amicable negotiation. Therefore, before declaring the strike, employees must notify the Ministry of Labour in writing, explaining their motives, must have the approval of at least 51 per cent of all employees, and must request mediation from the Ministry towards a settlement of the conflict, and if this is fruitless, then three arbiters must be named.

During the strike, the employees cannot commit violent actions against persons or company assets, nor promote disorder within it. If such actions should take place, the company can request for the strike to be declared illegal, setting liability on the authors of the damage.

During the time of the strike, the company can request the labour department to order the indispensable employees to return to their stations, to maintain security and essential assets. On the other hand, the company may request a labour court to hand down a writ ordering the return of employees to their activities and that it proceed with putting together arbiters for the resolution of differences. If this request is sustained by the judge, the employees must go back to work within 72 hours, with liability against those who do not abide by the judge's decision.

12 Which legislation governs the enforcement of international relationships or labour agreements provided for in international business contracts, and in international commercial proceedings, to be performed within your jurisdiction?

The Dominican Constitution and labour laws are of territorial application, when there is conflict with regards to an applicable labour law, the one that applies is the one most favourable to the employee; however, this will always be an option for the employee to decide.

13 Which international treaties or conventions are applicable to labour or employment relations in your jurisdiction? Has your country made any reservations to or denounced any treaties of the International Labour Organization?

The conventions of the International Labour Organization. Dominican Republic has assumed most of the agreements and recommendations of such entity in our legislation. The Dominican Republic has subscribed and ratified 40 labour treaties, of which 36 are enforced and four have been denounced. Fifty-three treaties have been subscribed but not ratified.

14 Are arbitration agreements to resolve labour or employment disputes valid and enforceable in your jurisdiction? Is there any legislation in your jurisdiction governing the private arbitrability of labour or employment disputes? May controversies in labour or employment matters in your jurisdiction be resolved through private arbitration (in your jurisdiction or abroad), or in foreign courts?

The process for arbitration for the solution of labour conflicts is contained expressly in Dominican labour regulation. The Dominican Labour Code, in its article 419 provides that in all cases of labour conflict, of whatever nature, the employees, or the associations representing them, can agree to the submission to the judgment of freely chosen arbitrators.

The decision rendered by the court is only valid as long as it does not stray from the dispositions of public order of labour law.

The arbitration process is not commonly used to settle conflicts between parties, but rather between conflicts related to the collective agreements between employees and employers.

15 Are mediation mechanisms available and legally enforceable in your jurisdiction? Do conciliation fora exist in your jurisdiction and is conciliation mandatory before litigation? Is conciliation conducted by labour boards or courts or by an independent body?

Informal mediation mechanisms exist but are not legally enforceable. Conciliation fora exist and are mandatory before litigation, except in cases seeking to determine the legality of strikes or the enforcement of judgments. The conciliation is carried out in the same court that will hear the labour claim.

16 Does the law in your country require that labour or employment proceedings be held in a specific jurisdiction or place or require that proceedings be carried out in a specific language?

Dominican Labour regulation enshrines the principle of territoriality of Dominican labour laws and this is a public order principle (ie, the parties cannot by way of contract override the territorial competence of one court and grant it to another). To determine the territorial competence of a court to consider a given lawsuit, the following are taken into account: (i) the place where the work is carried out; (ii) if the work is executed in several places, the plaintiff may decide, to their convenience, the forum; (iii) by the defendant's place of domicile; (iv) if the defendant's domicile is not clear or unknown, by the place where the employment agreement was executed or subscribed; and (v) if there are several defendants, by the place of domicile of any of them, at the option of the plaintiff.

If the procedure or lawsuit is carried out before a labour court of common law, the language to be utilised is Spanish, owing to its being the official language of the Dominican Republic.

17 Is there a concept in your jurisdiction providing for class action in labour or employment matters? Does your law allow the consolidation of multiple labour or employment proceedings? Are human rights related grievances admissible in labour and employment proceedings?

There is no specific concept for this matter; but it is possible for Dominican courts to consolidate in one action a request of different employees from the same employer. Yes, situations that affect human rights are perfectly admissible, such as a violation of an employee's dignity; the violation of a person's fundamental human rights could provide grounds for an employment relation termination by the employee with a just cause. Moreover, the general principles on which Dominican Labour Law is based specifically guarantee the individual human rights, such as: freedom of employment; the discriminatory treatment; protection of youth; freedom to assemble in employees' unions, as well as respect for employee human dignity as a general principle.

18 Can foreign lawyers serve as counsel in labour or employment proceedings in your jurisdiction? If so, can they do so alone or must a local lawyer serve as co-counsel? Are their fees subject to local taxation?

It is not mandatory for the parties to appear before a court represented by lawyers. They can act in their own defence. However, if they should decide to be represented by lawyers, they must grant a formal power of attorney to the latter. To practise in the Dominican Republic and represent parties in judicial processes, foreign lawyers, must first complete a procedure of validation of their title, authorisation and subsequent registration in the Dominican Bar Association.

19 Are labour or employment awards issued by foreign courts or arbitration courts recognised and enforced in your jurisdiction?

For a foreign judgment to be enforceable in the Dominican Republic, it must be final and irrevocable and be validated by a local court under the "exequatur" proceeding. The Dominican court would examine the following: (i) if it is accordance with the Dominican Constitution; (ii) its regularity and irrevocable nature; (iii) that it is not contrary to public order; and (iv) that it has been certified by the Dominican consulate of the country from which the sentence originates.

In this regard, it is our understanding that if the judgment coming from a foreign court is definitive, irrevocable and complies with the requisites of due process it can be enforced in the Dominican Republic upon an exequatur handed down by a Dominican court.

Moreover, if the foreign court judgment comes from a country that is a party to the Bustamante Code signed on 27 November 1928, said judgment would be enforced provided it complies with similar requirements to those for the exequatur. Finally, it should be noted that the Dominican Republic is a party to the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards.

20 May labour courts or boards grant interim relief? If so, how is that relief enforced? Does it apply to assets located abroad? Are these valid against unions?

Dominican courts can order conservatory measures during a labour process. For that purpose, a writ must be requested from the competent judge, who after having analysed the urgency, or if credit collection appears to be in jeopardy, can order conservatory measures on the debtor's assets. Any conservatory measure imposed by a judge is enforceable on the union's assets, since that kind of association is provided with legal personality. It does not appear to us that this writ is enforceable abroad, given that it is not about a sentence with the force of enforcement, but a mere administrative writ.

21 Can labour courts or boards issue orders, subpoenas or use other legal processes to compel the production of evidence by a third party or compel a third-party witness to appear before them? If so, will a court of law lend its aid in enforcing such an order against a recalcitrant third party?

In principle, yes, the court can, as a matter of law, order any institution to render documents necessary for a given case. In like manner, it can summon any person whose testimony seems useful for the clarification of the process to appear in court. In practice, the labour courts seldom use those prerogatives.

22 Can a party to a labour proceeding seek relief from the court or board? What is the scope of such relief?

Yes, a labour court, at the request of a party, can award party indemnifications for damages as a remedy if the other party had caused such damages as a consequence of breaching a labour law. This is without impairment of the indemnifications stated and pre-set in the labour law that come from the unilateral termination and without cause of the labour contract, notice and severance.

23 Are the resolutions issued by a labour court or board final? What are the remedies available for the parties?

Judgments handed down by first instance labour courts are enforceable the third day after being notified. This translates into the winning party being able to place conservatory, as well as executive attachments and embargoes on the assets of the losing party to collect the credit that may have been acknowledged to it. However, a new law has recently placed some limits on the right to place embargoes and attachments, because of widespread abuses.

Although first instance labour judgments can be appealed, this does not automatically suspend their enforceability. To do so, the losing party, with court authorisation, must post a bond of twice the amount of the award, although under exceptional circumstances the Court can order the suspension without the posting of the bond if there are gross errors or mistakes in the judgment. Appellate decisions may be subject to a cassation recourse before the Supreme Court, to determine the correct application of the law, if a certain monetary threshold is met.

24 What are the grounds for challenging an award and what is the period of time a party has to challenge that award?

In general, the appellate review of first instance labour judgments is a “de novo” process. The appellant must prove that there has been a distortion of the facts or a misapplication of the law. The losing party has a period of one month to appeal the judgment, counted from the notification date.

25 If a party files a lawsuit in violation of an agreement to arbitrate, will a petition by the defendant to remit the lawsuit to arbitration be granted by the labour courts or boards in normal circumstances or is the right to sue not waivable? If so, will that petition be treated as a threshold matter or will it be rolled into the merits of the litigation such that the defendant will also need to defend the merits of the lawsuit in court?

Yes, such a petition would probably be granted by the labour court and the matter sent to the arbitration panel and yes, it would be handled as a threshold matter.

26 Does the law provide that post-award interest accrues on an unpaid award?

In the event the sentence handed down by the court is a fine, the losing party is ordered to pay an indexation, according to the variation that the national currency has suffered, from the date on which the suit was filed and date the sentence was pronounced. Also, in the rulings the losing parties are sentenced to pay procedural expenses generated by the lawyers. There are special procedures for collecting the referred payment.

27 Can a foreign award be enforced if the award has been set aside by the courts?

No, if the award is declared invalid the party cannot enforce it.

28 Are employment agreements for definite periods or seasonal jobs valid?

Yes, subject to certain conditions and the nature of services rendered.

29 Does the law allow probationary or initial training periods? If so, how long may they last?

Dominican law establishes a three-month period where the employee does not generate severance rights. The employer that terminates an employee during such period does not have to pay any kind of severance. Although the law does not call such period “probationary”, in practice, that is how it is frequently considered.

30 Are employees hired under any of the foregoing modalities entitled to all labour benefits and social security?

Yes, employees are entitled to all labour and social security benefits. But in the case of specific contracts, there are certain labour benefits that do not necessarily apply.

31 Is outsourcing lawful? Are there special rules or penalties associated with it?

Yes, as we mentioned before, outsourcing is lawful so long as it does not prejudicially affect the employee’s rights. The rules are the same.

32 Are there mandatory profit-share provisions in your jurisdiction?

Yes. All for-profit entities, with certain exceptions, namely free zone companies and those in the agricultural sector, must distribute every year 10 per cent of their net profits to a profit-sharing pool to be distributed among their permanent employees, with individual caps per employee of 1.5 or two monthly salaries, depending on their seniority.

33 Are restrictive covenants, such as non-compete and non-solicitation undertakings lawful and enforceable?

Yes, so long as they are not deemed “unreasonable” and do not excessively limit the employee’s right to employment and under certain conditions.

34 Outline any provisions in your jurisdiction’s law for the gig economy.

The gig economy is not yet prevalent in the Dominican Republic. The hiring of temporary employees is quite restricted under the Labour Code and sometimes requires Labour Ministry authorisation. Employees are presumed to be hired for indefinite duration. Although the engagement of independent contractors is permitted, such contracts be deemed to be employment agreements, if certain conditions are not met.

35 In brief, what advice do you have with respect to labour or employment relationships and agreements for a foreign lawyer advising a foreign client contemplating entering into a business deal with a company from your jurisdiction? What are the red flags?

Although Dominican wage scales are quite competitive on a worldwide scale, the severance indemnities are quite high. They amount to about six weeks’ salary per year of employment.

Dominican courts tend to be very pro-employee. It is generally advisable to settle out of court rather than to litigate. Litigation increases the costs to the employers and exposes them to enforcement actions in the event of an adverse judgment. There is a labour principle called *indubio pro operario* whereby any doubts about the application of a given right or obligation should be decided in favour of the employee.

That being said, Dominican labour laws grant employers the right to freely hire or terminate employees without the participation of any government entity.

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Georges Santoni-Recio has worked all his professional career at RV&HB, starting as a law clerk in 1980, becoming a partner in 1990, and then managing partner in 2000, a position that he still holds. He has developed a strong practice in foreign investment law, international trade and related matters. He is also a practicing litigator, specialising in general civil and commercial litigation.

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Georges is perfectly fluent in English and French, in addition to his native Spanish

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