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Venezuela Special Protection Against Dismissal

Employment and Labor





The Decree

On December 30, 2014, the president of the Bolivarian Republic of Venezuela, Nicolas Maduro, enacted the Decree N° 1.583 (the Decree) in the *Official Gazette* that establishes special protection against employment dismissal, also called “*inamovilidad*.”

The Decree provides that employees cannot be dismissed, demoted or transferred without a justified cause previously authorized by the labor inspector. The special protection covers employees from January 1, 2015, to December 31, 2015; this period, however, is usually extended annually by presidential decree.

The Decree aims to protect the job stability of certain categories of employees. Pursuant to article 5 of the Decree, the following employees are covered by the protection of the special bar against dismissal, regardless of their wages:

1. Employees hired for an indefinite term, after one month of service for an employer;
2. Employees hired for a definite term, provided that the term specified in the agreement has not expired, and
3. Employees hired for a specific task or job, so long as all or the portion of the task or job under employee’s responsibility has not been completed.

The Decree covers a wide range of employees in addition to those already covered by the Venezuelan Labor Law for Workers (known as “LOTTT” under its Spanish acronym), and those already protected due to specific circumstances (pregnant women, partners of pregnant women, parent of a child with disability, parent of an adopted child, union leaders, etc.).

Additionally, article 5 of the Decree establishes those employees who are excluded from the special bar against dismissals:

1. Management employees, defined under article 37 of the LOTTT as those who intervene in the decision-making processes of the company, as well as the person who acts as representative of the employer before other workers or third parties and substitutes the employer, completely or partially, in its functions; and
2. Temporary and occasional workers who render seasonal services in continuous, uninterrupted working days for specific time periods, and those who work once occasionally and their work relationship ends upon completion of the entrusted work.

Therefore, pursuant to the Decree, only management employees as well as temporary and occasional employees are excluded from the application of the special protection and may be dismissed without the previous authorization from the labor inspector.

The process to dismiss covered employees

Employees covered by the Decree must not be dismissed without “just cause.” Causes for dismissal are established in article 79 of the LOTTT and may be based on misconduct or any type of serious breach of employee’s obligations. Thus, the protection does not imply the impossibility to dismiss or transfer an employee; it means that employers are able to terminate employees only with just cause

pursuant to article 79 of the LOTTT. The cause must be authorized by the Labor Inspector upon the employer's request before the dismissal.

Under the LOTTT, if an employer believes there is "just cause" to dismiss, transfer or adversely change the employment conditions of an employee who is covered by the special protection, it must request authorization from the labor inspector within 30 days after the date of the alleged misconduct. Once the request is received, the authority will notify the employee and set a hearing to reach an agreement between the parties. If such agreement fails, the employer shall present evidence of the just cause and the process will conclude with a binding decision, accepting or rejecting the alleged just cause for dismissal.

If a covered employee has committed violent acts that endanger other employees, the employer or its representatives, and represents a threat to people or property, the employer is entitled to suspend the employee, with full pay, for up to 48 hours. During this period, the employer may request authorization from the labor inspector to dismiss the employee immediately.

Once the just cause reason is approved by the labor authority, the employer may dismiss the employee, who will be terminated with payment of the mandatory labor benefits set forth in the LOTTT (such as vacations, vacation bonus, profit sharing and seniority), and no additional payment as an indemnity for termination of employment will be made. If the employer dismisses an employee without just cause previously authorized by the labor inspector, the employee would be entitled to assert a claim for reinstatement with back pay, as well as any additional labor benefits that were not received.

The LOTTT establishes a penalty against the employer for a violation of the special protection in the form of a fine equal to sixty (60) tax units to one hundred (120) tax units, (approximately from \$38.88 up to \$77.77). Failure to comply with the reinstatement order has its own consequences. The company's representatives (including the Board of Directors) might be subject to a criminal investigation and/or imprisonment for six to fifteen months. Additionally, the employer will have to comply with the reinstatement order before filing any action against it before a labor court; otherwise, such action will be rejected. Additionally, any procedure before the labor authority may result in a revocation of the employer's labor clearance necessary to comply with other important labor obligations.

In addition, the LOTTT establishes that the labor inspector in charge of executing an order is vested with the power to request the intervention of the police or the military force to enforce an order if the employer fails to comply. If in the most extreme case where the company suspends its activities or ceases operations in Venezuela, the labor authorities may also, at its discretion and without granting the company any type of due process, issue orders of appropriation for the government to occupy or take over the operation of a company alleged to be in violation of the law.

Under the special protection afforded by the Decree, employers are not allowed to pay an amount equal to the seniority benefit in lieu of the reinstatement. Employers are obliged to reinstate the employee with back pay if the employee is dismissed without authorization.

Although the LOTTT establishes a short period of time to process and decide the request (less than a month) before the labor inspector, in practice it may take much more time. The fact that the Decree covers a wide range of employees has increased the number of requests, thereby slowing the process.

For this reason, employers seeking to terminate an employment relationship with a covered employee should analyze the time it may take to obtain the labor authorization to dismiss an employee with cause as well as the cost of such process. In some cases, employers seek to come to a voluntary termination agreement with an employee by offering a payment of benefits greater than the amount that the employee would be entitled to if terminated for just cause. Such terminations should be based on case-by-case analysis to comply with the provisions of the LOTTT. In any case, the employer must document the termination appropriately and pay all mandatory benefits set forth in the LOTTT.

Finally, it is important for employers to bear in mind that under Venezuelan labor legislation it is possible to dismiss an employee with just cause as long as they comply with the provisions set forth either in the LOTTT or the Decree.

Recommendations

Since the Decree covers a wide range of workers, employers seeking to terminate an employee should first analyze if such employee is covered by the Decree. In order to do so, either the position or functions performed by the employee must be analyzed on a case-by-case basis to determine if the protection applies.

If the employee is covered, the employer must request authorization from the labor inspector to dismiss the employee with just cause. The employer should make sure to have the documents or proof to demonstrate just cause for which the employee will be dismissed. Only after the authorization of the labor inspector is issued can the employer terminate the employee; otherwise, the employee would be entitled to claim reinstatement.

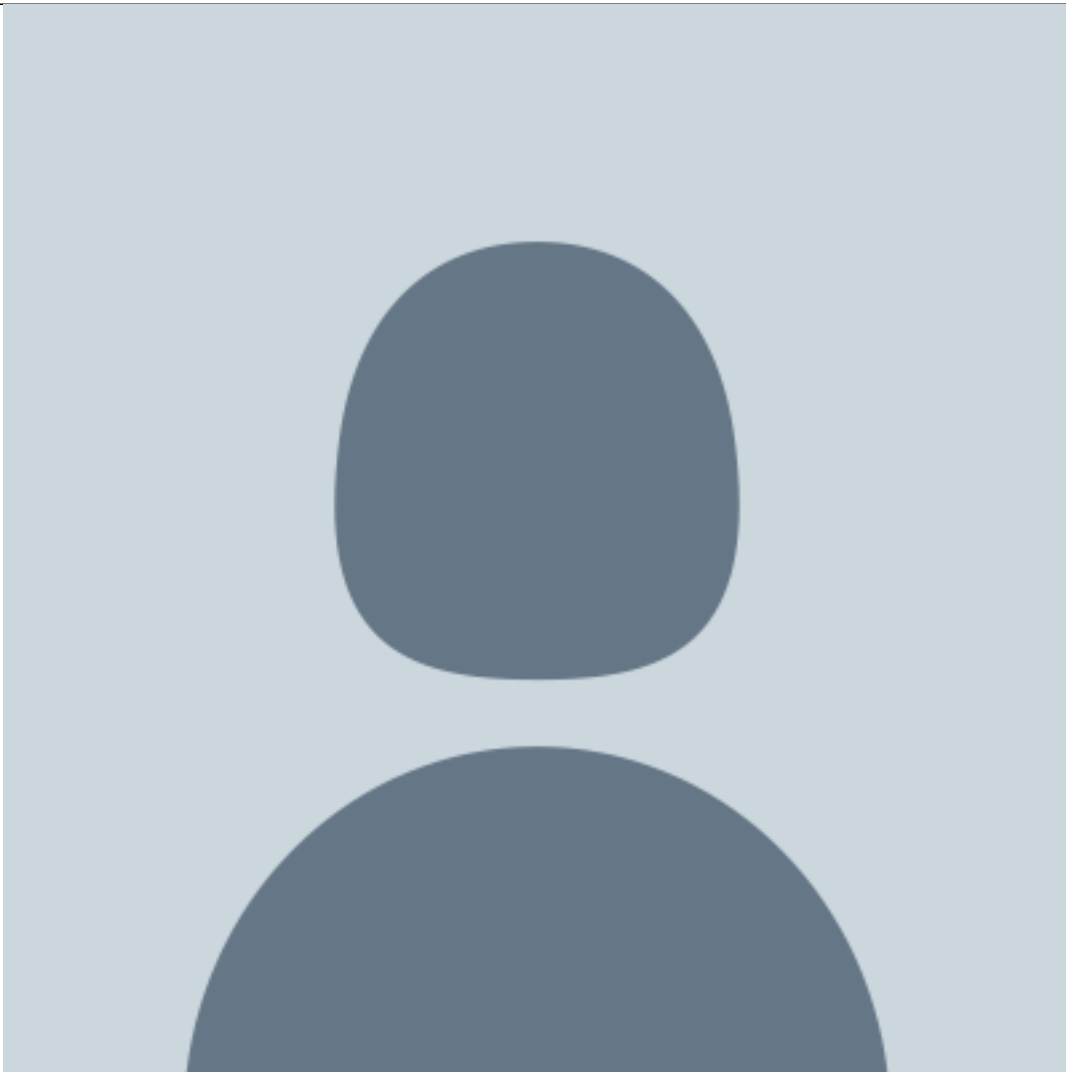
If the employee is not covered by the special protection, the employer may proceed with the dismissal by paying all mandatory benefits under the LOTTT and documenting such termination to avoid risk of any future claim.

Any other means of terminating the employee must be carefully analyzed on a case-by-case basis in order to comply with the provisions of the LOTTT.

If the labor authority issues an order to reinstate an employee, the employer should comply with such order, considering the potential punishment includes arrest. In any case, only after compliance will the employer be able to file an action opposing the order before the labor court.

Documentation of termination is also important, as employers must make sure that all mandatory benefits established in the LOTTT are reflected and paid to the employee to avoid any future claim.

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