



PREVENTIVE LABOR AND EMPLOYMENT PRACTICES

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Hiring personnel usually evidences growth in any business, but it also comes along with obligations and duties, as well as risks, that may result in considerable loss for the company if such are not taken into consideration, prevented or foreseen. For example, incorrectly hiring employees as independent contractors may initially represent savings for the employer, but it is not a recommended practice, as sooner or later the company may face retroactive payments of labor-related duties, unpaid salary taxes, interest and fines, plus other possible penalties such as temporary closure of the business. Likewise, in the event of a lawsuit by an employee who was wrongfully hired as an independent contractor, the company could end up paying without having even considered it in its budget- thirteenth month bonuses (also known as Christmas bonuses, “aguinaldo” in Spanish), vacation accrued in previous periods, notice, severance, interest, legal costs and wage indexation.

It is also important to bear in mind that there are conducts such as lateness or tardiness, inappropriate use of IT resources, unauthorized use of Intellectual Property or disclosure of confidential information, and employee harassment (“Mobbing”), among many others, that are not expressly regulated in the Costa Rican Labor Law. In those cases, application of disciplinary actions may be difficult if such have not been previously typified as faults or offenses. A termination for an offense that has not been yet classified may be nullified by a competent Court, resulting in payment of severance, legal costs, wage indexation and even lost wages as indemnity for the losses and damages caused.

For such reasons, at our firm we have dedicated a considerable part of our labor-law practice to the prevention of the above mentioned risks. By periodically reviewing and updating the existing policies and Employee Manuals, the creation of new policies and manuals and the establishment and implementation of an appropriate legal structure, reducing the risks associated with wrongful employment practices is possible. Avoiding economic loss and lengthy legal proceedings is feasible when the rights of employees are fully respected, employment duties and obligations are met and employer’s rights are put in practice.

Among the practices we recommend employers to prevent risks and contingencies, are the following:

1) **Creation and implementation of a customized “Employee Manual”**, which would include all the policies that the employees must abide to, as well as indication of the faults and offenses that are not expressly regulated by Costa Rican Labor Law and the associated disciplinary measures.

This Manual must also establish certain rules that are mandatory for the correct handling of the human resources of the company. Some of the policies that should be included in the Employee Manual are the following: (i) use of company property; (ii) use of confidential information and intellectual property; (iii) lateness and absenteeism; (iv) use of alcohol and drugs; (v) sexual harassment; (vi) non-discrimination, (vii) job abandonment; (viii) applicable disciplinary actions; (ix) granting of vacation time; (x) overtime; (xi) handling of employee information; and (xii) payment of work-related expenses, all of which are truly important for a healthy and correct operation of the company. If the company already has Employee Manuals, periodical revisions are recommended to update the existing policies and adapt them to the company's current needs.

2) **Customization of employment agreements**: According with the Costa Rican Labor Code, it is mandatory to have written employment agreements for each employee. Such agreements must include the basic employment conditions. The policies and employment terms that the employer may need to change in the future must not be included in the Employment Agreements, but in the Employee Manual, to allow the employer to adjust such policies at any time needed.

3) **Execution of independent contractor agreements**: Hiring independent contractors for certain services is always necessary for any business. Nevertheless, this modality must only be used when the supplier or provider of the services is indeed an independent contractor. Our labor law assumes the existence of a labor relationship; therefore, hiring an independent contractor and not executing a proper services agreement results in considerable risks and contingencies.

Besides the already mentioned measures, there are other preventive employment practices you may implement, such as full and correct compliance of all Social Security obligations, properly documenting the employee's disciplinary history, constantly coaching and updating your employees on their obligations and performing legal audits. These practices are very likely to help you keep a healthy operation of your business and minimize the associates risks. In case you should need assistance with this or other legal matters, you can contact us at info@costarica-law.com.