



# EMPLOYMENT IN COLOMBIA



Colombia is the third most populous country in South America and the fourth largest. Colombia is the third most business friendly country in Latin America. The service sector in Colombia dominates the economy with 57% GDP, followed by manufacturing at 27% GDP. Colombians are educated, entrepreneurial, and skilled. Approximately 60% of the Colombian population are part of a skilled workforce. Employment in Colombia is governed by the labour code (*Código Sustantivo de Trabajo*), which applies to both domestic and international employers. Below is some key information on employment in Colombia, intended to provide a brief overview of employment law in Colombia. It is not intended as a substitute for professional legal advice and counsel.



## WORKING TIME AND OVERTIME

Working hours in Colombia should not exceed 48 hours per week. Overtime hours should not exceed 12 hours per week. Overtime is paid at an additional 25% and 75% for Sundays. If overtime is completed on a Sunday, the employee will be entitled to one rest day in the week without deduction from salary. Employees who work between 10pm - 6am are entitled to an additional 35% salary based on the daytime salary and overtime at 75%.

Employees must have at least 1 paid day off every 6 days (usually Sundays).

## ANNUAL LEAVE

Full-time employees are entitled to a minimum of 15 paid working days' annual leave per annum, continuous or consecutive, to which all workers who have worked during a calendar year are entitled. The annual leave entitlement may be divided if agreed between employer and employee and 9 days carried over to the following year. There are 18 public holidays in Colombia.

## TRIAL PERIOD

Probation periods (Contrato de Trabajo) in Colombia cannot exceed 2 months. Any probation period must be confirmed in writing, or it will not be valid. For fixed term contracts of less than 12 months the trial period may not exceed one fifth of the term initially agreed upon for the contract.

## RESIGNATION AND DISMISSAL

The employee may unilaterally terminate the employment contract by giving the employer notice in writing, required notice may vary depending on what has been agreed in the contract of employment. Generally, this is a minimum of 30 days. An employee on a fixed term contract will need to be provided with 30 days written notice by the employer before the end of the contract term. If this is not provided, then the contract will be assumed renewed. An employer may terminate employment without incurring liability if a justified cause established by law is relevant. These are mostly based around misconduct and poor performance.

A disciplinary process will need to take place before a termination with cause. Terminations without cause are valid but there will be a required severance payment. Examples of justified cause are for example acts of violence, intentional damage to company property, disclosing commercial or technical secrets, under performance, breach of H&S.

At least 15 days' notice is required for termination of poor performance. Cases of misconduct, notice is not required, and termination can take place immediately. Terminations without just cause, the employee will be entitled to the following severance payments as well as any outstanding salary payments. Employees earning less than 10 legal monthly minimum wages are entitled to 30 days salary for up to one service and an additional 20 days for each further years' service, proportional to the fraction of the year.



## **RESIGNATION AND DISMISSAL CONT...**

Employees earning more than 10 legal monthly minimum wages are entitled to 20 days salary for up to one years' service and an additional 15 days for each further years' service, proportional to the fraction of the year. Employees on a fixed term contract are entitled to severance that is equal to the salary owed until the term of the agreement expires.

There are certain cases where it is not possible to terminate employment even if there is a just cause without authorisation from the Ministry of Labour or a Labour Judge. These cases include:

- Employees or partners who are on maternity leave or pregnant cannot be dismissed without just cause and approval from the Ministry of Labour.
- Employees that are on sick leave or have restrictions that substantially limit their ability to complete their duties cannot be dismissed without just cause. No authorisation is required for termination with just cause.
- Employees less than 3 years away from retirement cannot be dismissed without just cause. Authorisation is not required for termination with just cause.
- Temporary collective bargaining protection (fuero circunstancial). During collective bargaining, an employer may not terminate a unionized employee without cause. Authorisation is not required for terminations with just cause.

## **RESTRICTIVE COVENANTS**

Provisions on restrictive covenants in Colombian labour law are scarce. The legislation only provides rules for non-compete clauses. Restrictive covenants are therefore allowed, under some limitations. Restrictive covenants may be included in the employment contract, or they can be included in separate documents during the employment relationship. A violation of a restrictive covenant during the employment contract can be subject to disciplinary measures from the employer. The violation of a restrictive covenant, which intends to apply after the employment relationship ends, can be enforceable through a legal claim against the former employee.

## **CONTRACT OF EMPLOYMENT**

A contract of employment (Contrato de Trabajo) can be agreed either in written or verbal form. However, it is always best practice for these to be provided in writing. The contract should include employees details, employer details, probation period, contract length (if applicable) place of work, hours, days, holidays, notice periods. All employers with at least 10 employees must have 90% of the company's workforce as Colombian citizens or residents. The remaining 10% may be foreign nationals with the relevant work permissions. There are three main types of contracts in Colombia, permanent contracts (contrato a término indefinido), fixed term contracts (contrato a término fijo) this contract must always be provided in writing and can't be for more than 3 years, and temporary contracts (contrato temporal) for temporary or casual jobs. This type of contract cannot be valid for more than 30 days and can be provided in writing or verbally.

## **MATERNITY AND PATERNITY LEAVE**

Expectant mothers are entitled to 18 weeks maternity leave, this paid at 100% of their average salary. At least one week of leave must be taken before the due date, extended to 2 weeks when medically necessary. The employer pays the maternity leave and this is then reimbursed by social security. Fathers are entitled to 8 working days paternity leave, this is paid at 100% of the average salary by the employer who then claim this back from social security.



## SICKNESS LEAVE

An employee is entitled to 2 days sick pay from their employer at two-thirds of their average salary. After the 2 days the employer still pays but is reimbursed by social security. This is valid for up to 180 days. If the absence is due to a work-related accident or illness, the employee will be entitled to 100% of their average salary. Medical authorisation from a Colombian social security entity will need to be obtained so the employee can be paid when they are unable to attend work.

## SOCIAL SECURITY

Every employee in Colombia whose contract is governed by the Colombian labour regulations are required to be part of the social security system. Exceptions to this are foreign employees, if they are covered by an equivalent pensions scheme in their home country. Both employers and employees are required to make contributions. Contributions cover items such as pensions, health social security system, professional risks, family welfare fund, and national learning service (SENA).

## HEALTHCARE AND INSURANCE



Colombia provides a public health insurance plan called EPS (Entidades Promotoras de Salud). Healthcare in Colombia is ranked 22 out 191 countries by the WHO. Costs are inexpensive compared to countries such as the U.S and European countries. Contributions for EPS are approximately 12.5% of an employees salary. All residents in Colombia are required to sign onto EPS. Foreign workers may opt-out but must be able to show proof of coverage through another plan, such as a private plan or company plan. In addition to EPS there are another two types of healthcare insurance available. These are Prepagada, a private healthcare insurance which is paid as a monthly premium. The premium can vary depending on age pre-existing conditions and the plan chosen. SISBEN is a free government subsidised healthcare system which is for Colombians living below the poverty line.



# EMPLOYMENT OF FOREIGN NATIONALS

Most foreign nationals will need a visa to work in Colombia. Below are the two most common visas. Any documents must be translated into Spanish by a certified translator or a sworn public translator. Every foreigner with a visa planning on staying in Colombia for longer than 3 months will need to apply for a foreigner identity card at a regional office. The card must be applied for within 15 days of entering Colombia.

## M-5 WORK VISA

This is the most common work visa for Colombia and can be valid for up to 3 years and can be extended up to 5 years. The work visa allows multiple entries but will no longer be valid if the person stays out of Colombia for longer than 6 months consecutively. To begin the process of applying a copy of the signed work contract with a Colombian employer will be needed. Other documents required include but are not limited to a letter of motivation from the employer, six months of bank statements, a photocopy of the passport, a passport-style photo, academic proof of suitability to the job. After holding this visa for 5 years, a person can then apply for a R-Visa (residence visa).



## MERCOSUR VISA

The Mercosur visa is for citizens of countries that are Mercosur economic bloc. These include Argentina, either associate or permanent members of the Brazil, Paraguay, Uruguay, Colombia, Bolivia, Chile, Ecuador, Peru, Guyana and Surinam.

Citizens of these countries are able to apply for a M-3 visa which is valid for up to 2 years. After 2 years visa holders are able to apply for residency. The visa allows multiple entries into Colombia but will lose its validity if the person stays out of Colombia for longer than 6 months consecutively. The main requirement of this visa is a legalised criminal history report.



# SALARY AND SALARY TAXES

## MINIMUM WAGE

The national minimum wage in Colombia from January 2022 is 1,000,000.00 Colombian Peso (COP) per month. Additionally, employees that earn up to two times the monthly minimum wage are entitled to a transportation allowance of 117,172.00 COP per month.

## INCOME TAX

The Colombian tax year runs from January to December. It is the employer's responsibility to ensure taxes are paid from salaries before payments are made to employees. The general personal income tax rates are listed below as guidance. One unit is equal to approximately 36,308.00 COP.



Salary	0 - 1,090 Units	1,090 - 1,700 Units	1,700 - 4,100 Units	4,100 - 8,670 Units
<b>Tax payable</b>	0%	19%	28%	33%
<b>Salary</b>	<b>8,670 - 18,970 Units</b>	<b>18,970 - 31,000 Units</b>	<b>31,000 Units +</b>	
<b>Tax payable</b>	35%	37%	39%	



## SALARY PAYMENTS

Salaries in Colombia are generally paid on a monthly basis around the last working day of the month. Some industries may pay bi-weekly with payments made at the middle and end of the month. A 13th month salary payment (aguinaldo) is mandatory. This payment is split into two, the first half paid in the first 2 weeks of June and the second half within the first 20 days of December.

## SOCIAL SECURITY CONTRIBUTIONS

Social security contributions in Colombia are the responsibility of the employer to deduct from an employee's salary before payment. Both the employer and employee are subject to social security contributions. Below are approximate contribution rates for employers and employees, please note that these can vary.

	<b>Employer Percentage</b>	<b>Employee Percentage</b>
<b>Healthcare</b>	8.5%	4%
<b>Pension</b>	12%	4%
<b>Professional Risks (Aportes de Riesgos Profesionales)</b>	0.348% - 8.7%	N/A
<b>Payroll Taxes</b>	4% - 9%	N/A
<b>Solidarity Pension Fund</b>	N/A	1%

Payroll taxes cover the family compensation funds, family welfare (ICBF), and national learning service (SENA). These contributions are earnings related. Employees who earn less than 10 times the minimum wage monthly salary, contributions to ICBF and SENA do not apply.

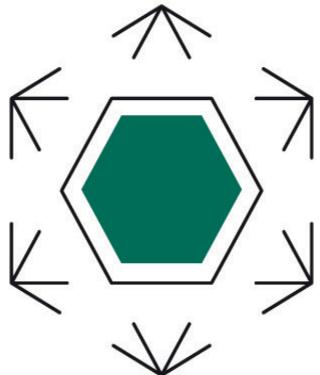


## SOCIAL SECURITY CONTRIBUTIONS CONT...

The solidarity pension fund of 1% only applies if an employee earns more than 4 times the minimum wage monthly salary. If an employee earns more than 16 times the minimum monthly salary the percentage further increases as per the below table.

	<b>Additional Percentage</b>	<b>Total Solidarity Pension Fund Contribution</b>
<b>16 - 17</b>	0.2%	1.2%
<b>17 - 18</b>	0.4%	1.4%
<b>18 - 19</b>	0.6%	1.6%
<b>19 - 20</b>	0.8%	1.8%
<b>20 - 25</b>	1%	2%

Contributions to the solidarity pension fund over 25 times the minimum monthly salary are capped.



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