



**Global Employment  
Compass  
COLOMBIA**

# Contents

- 1. Summary of applicable rights for different categories of workers ..... 2
- 2. Legal requirements/rights/ practices for different categories of workers ..... 3
  - a. Employees ..... 3
  - b. Independent contractors/consultants\* ..... 18
  - c. Volunteers..... 25
  - d. Non-citizen employees and consultants, including refugees and others forcibly displaced ..... 30
- 3. Addendums.....35

This document provides brief answers and recommendations to readers for information purposes. The information contained in this document is general and may differ according to the circumstances. Thus, this document does not constitute legal advice. We decline in advance any responsibility should you decide to act upon any information contained in this document.





# 1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers	Volunteers
<b>Employment laws and regulations</b>	Yes	No	Yes
<b>Employees' compensation/ remuneration requirements</b>	Yes	No	Yes
<b>Minimum wage requirements</b>	Yes	No	N/A
<b>Mandatory provident fund/retirement benefit fund contributions</b>	Yes	No	N/A
<b>Immigration requirements including the right to work in your country</b>	Yes	Yes	Yes
<b>Personal Data (Privacy) laws and regulations</b>	Yes	Yes	Yes
<b>Anti-discrimination laws and regulations</b>	Yes	Yes	Yes



## 2. Legal requirements/rights/ practices for different categories of workers

### a. Employees

#### Section Contents

1 Contracts of Employment.....	3
2 Conditions of employment.....	6
3 Safe and supportive work environment .....	13
4 Tax .....	14
5 Remote work.....	15
6 What to do when things go wrong? .....	16

In Colombia, there is no significant distinction between white-collar and blue-collar workers as they share the same individual, collective rights and labour benefits set forth in the Labour Code (Código Sustantivo del Trabajo – CST) for workers in Colombia. However, for those workers in positions of leadership, who undertake trust and management tasks, there is a special regulation, according to which, such workers have no limitation on the maximum legal workday (47 hours per week). In addition, according to the law, workers who hold management positions in a company may not simultaneously hold management positions in a trade union.

It is important to highlight that in Colombia, labour, and employment regulations for workers in the private sector are different from those established for public workers.

### 1 Contracts of Employment

**What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?**

Employment contracts can be verbal or written. Fixed-term contracts must be agreed in writing, otherwise, if there is no written agreement, the legal presumption that the contract is for an indefinite term will apply. In the case of verbal contracts, the law requires as a minimum that the nature of the work and the place where it will be executed must be agreed upon.

In accordance with current labour laws, employment contracts in Colombia can be classified according to their type or duration as follows:





- indefinite term contract.
- fixed-term contract – these can be agreed for terms shorter than one year (with strict regulation of their extensions, which cannot exceed three in less than one year) and may be no longer than three years; and
- an employment contract for specific work or activity, which is effective during the term of execution of the work or activity (previously agreed by the parties).

### **What are the key terms of employment contracts?**

A relationship is considered to be an employment contract if three conditions are met:

- the person provides services directly.
- the person is subordinate; and
- compensation or payment is provided for the service.

If these three conditions are met, the relationship will be considered as an employment contract, disregarding the name or agreement the parties signed, since in Colombia, in labour matters, reality prevails over formal agreement.

### **Is it acceptable to have a probation period for employees? If yes, for how long?**

Yes, it is acceptable. The probation period must be in writing and by general rule, should not exceed the term of 2 months. In fixed-term employment contracts with a duration of less than one (1) year, the probation period may not exceed one-fifth of the term initially agreed for the respective contract and it may not exceed two months in any case.

When successive employment contracts are concluded between the same employer and worker, the stipulation of the trial period is not valid, except for the first contract.

### **Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?**

Yes, they are permissible. Regarding the limitation of fixed term contracts, these can be agreed for terms shorter than one year (with strict regulation of their extensions, which cannot exceed three in less than one year) and may be no longer than three years.

### **Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?**

Not necessarily, but In Colombia, although employment contracts can be written or verbal, certain agreements must be in writing, such as:

- the fixed term of the employment contract.
- the fully integrated salary agreement.





- agreements regarding non-salary payments.
- the probation period of the employment contract; and
- the teleworking agreement of the employment contract.

In the case of written contracts, the law provides a number of requirements that must be included, such as:

- identification of the parties' domicile.
- the place and date of the agreement.
- the place of hiring and the place where the worker will provide their services.
- the nature of the work.
- the amount of remuneration, form, and periods of payment.
- where accommodation and/or food is provided as part of the payment, it is necessary to quantify the same; and
- the terms of the contract.

**Do employees have to be issued with a written employment contract before they start work?**

No, they do not have to do it. Since the employment contract can be verbal or written.

**Can you provide a simple template of the contracts mentioned above?**

See the [Addendum](#)

**Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?**

In Colombia, there is no such obligation. However, a screening record can be performed during the hiring procedure. Having said that, criminal record reports are accessible to every national in the country through the official website of the national police.

Even though it is accessible to every national, there is no obligation for employers to run a criminal record check.

**Can employers request references from former employers for new hires?**

Yes, they can. And also it is widespread practice to verify experience and the information provided by the candidate.

**Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?**





Yes, Within the representative bodies of elected workers there are some committees at the companies in which workers from those companies participate, such as:

- The COPASTT or *Comité Paritario de Seguridad y Salud en el Trabajo* (Occupational Safety and Health Committee created by the 1295 Decree of 1994) is in charge of the promotion and surveillance of the rules on occupational health and safety issues; as it is a parity committee, it is made up of an equal number of representatives of the employer (workers appointed by the employer at its discretion) and workers elected by open voting by the company's workers for a period of two years. The need of this employee representative body is triggered once the employer or company has at least 10 or more employees in their service. In case, there are less than 10 workers, it would be necessary to appoint an Occupational Health and Safety Overseer.
- Labour Co-existence Committee (Against Harassment at the Workplace) created under Law 1010 of 2006, which receives complaints on workplace harassment within the company, and internally and confidentially seeks to overcome situations. Half of its members represent the employer and are appointed by the same, and the other half are elected by a vote within the organisations in which workers from those companies participate, such as, the COPASTT.

**Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?**

No, it is not common. There is just one exception to the main rule and there is the collective bargaining negotiation in the banana sector.

## 2 Conditions of employment

**What is the minimum age requirement for employment?**

By general rule in our regulation, the minimum age to enter an individual employment contract is eighteen (18) years old. It is also possible to request a special permit for minors between fourteen (14) and eighteen (18) years old before the Labour Inspector or the Mayor of the jurisdiction where the minor will work.

**What type of work may a child undertake? For example, are there any specific restrictions?**

The special permit for minor to enter an employment contract, shall be granted after the authority is able to verify that the minor will not suffer moral or physiological harm, that he will be engaged for work appropriate to his age and that, in case the minor is under sixteen years old, the working day will not exceed six hours per day.

### Wages

**What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?**

The legal minimum wage for workers who work the maximum legal working hours in 2023, is COP1,160,000 per month with a mandatory transport allowance of COP140,606, and this can be





paid proportionally where the worker works less than the mandatory workday or has a part-time job.

There are no exceptions in minimum wages for young persons or people with disabilities.

**Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?**

There are no conditions that warrant a pay raise per se, but in the case of ordinary salaries, employers must recognise:

- a legal bonus for services in June, equivalent to 15 days of salary (known as *prima* in Spanish).
- a legal bonus for services in December, equivalent to 15 days of salary (*prima*).
- severance pay corresponding to 30 days of salary, to be deposited in the Fund account by February each year.
- interest on the severance payment corresponding to 12% per year on the value of the severance pay; and
- vacation pay consisting of 15 days of salary per year.

**When are wages due? For example, is there any obligation to pay wages weekly, or monthly?**

Wages must be paid in equal and due periods, either during the work or immediately after its completion. It can be agreed between the parties if it is monthly or weekly. It should be noted that wages should be paid at the latest on a weekly basis and salaries within a period not exceeding one month, while surcharges for extra or night work can be paid with the salary of the period following the month in which they are due.

**Are employers obliged to provide employees with paid leave on public holidays?**

Yes, they are. There are 18 mandatory holidays per year that workers have the right to enjoy and for which they are entitled to receive compensation. If, under any circumstance, the employer requires an employee to work on a holiday, such work must be paid with surcharges.

**Are employers obliged to provide employees with annual leave?**

In Colombia, workers have the right to enjoy 15 business days of paid rest (vacation) for each year of service rendered in favour of their employer.

**Are employees entitled to receive their usual salary during their annual leave?**

Yes, they are.







### **Is there a requirement to pay overtime? How is overtime compensated?**

In Colombia, employers must have authorization from the Ministry of Labour to work overtime beyond the mandatory work schedule. Failure to get authorisation will incur penalties. With regard to overtime, the law provides that workers cannot work more than two extra hours per day and 12 extra hours per week.

Workers should be compensated for overtime by their employers as follows:

- surcharge for overtime – 125%, accrued when the legal maximum workday is exceeded.
- surcharge for night work – 35% on top of the amount of the ordinary wage, accrued for work between 9pm and 6am.
- surcharge for extra night work – 175%, accrued when the legal maximum workday is exceeded between 9pm and 6am.
- surcharge for Sunday work – 75% surcharge on the value of the ordinary salary and in the case of regular Sunday work, a compensatory rest day; in the case of an occasional Sunday, the worker may choose an additional surcharge instead of the compensatory rest day.

It is important to highlight that workers in management positions, trust and leadership positions do not have a maximum legal working time limitation and therefore, they are not entitled to surcharges for overtime work. In addition, integrated salaries are not subject to any surcharge whatsoever.

Regarding the regulations in Colombia on this matter, it is important to highlight that several bills are currently in progress in Congress, one of which is related to labour law and regulation.

It will modify the conditions of fixed-term contracts, forms of termination of employment contracts, surcharges, collective bargaining processes, and outsourcing, among others.

### **Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?**

Yes, provisional remedies such wage garnishments correspond to precautionary measures ordered by a judge or by an administrative authority with powers of active collection that limit the availability of the worker's salary, obliging the employer to retain a sum of this to deposit it at the orders of the judge or the respective authority to satisfy compliance with the ordered measure.

### **Are employees entitled to an end-of-year payment?**

Yes, in case of ordinary salaries employers must recognise:

- a legal bonus for services in June, equivalent to 15 days of salary (known as prima in Spanish).
- a legal bonus for services in December, equivalent to 15 days of salary (prima).





- severance pay corresponding to 30 days of salary, to be deposited in the Fund account by February each year.
- interest on the severance payment corresponding to 12% per year on the value of the severance pay; and
- vacation pay consisting of 15 days of salary per year.

**Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?**

Yes, the circumstances of the termination should be evaluated, if it was a termination without fair cause, the employee must be compensated and also, he or she is accrued all the regular legal salary benefits.

**Working hours**

**What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?**

For more than 50 years, the maximum working hours in Colombia were set as eight hours per day and 48 hours per week, updated under the issuance of Law 2101 of 2021 which reduced the maximum legal working day as follows:

- as of 15/07/2023 – 47 hours as maximum working hours per week.
- as of 15/07/2024 – 46 hours as maximum working hours per week.
- as of 15/07/2025 – 44 hours as maximum working hours per week; and
- as of 15/07/2026 – 42 hours as maximum working hours per week.

The workers are entitled to a mandatory rest day, normally on Sunday, and the law allows the parties to agree that the daily working time can be distributed between four and ten hours per day to ensure the maximum working hours per week. Colombian labour law also provides diverse ways in which to distribute the maximum working hours, in accordance with ILO conventions ratified by the country.

In case the employee is contractually required to work less than this amount will not immediately consider them as part timers employee, since there are flexible agreements, and the part time contracts have some specific terms. It is feasible to agree on part-time employment contracts, provided that at least the legal minimum wage is paid pro rata to the number of hours worked, and contributions to the social security system must be paid on a minimum contribution basis equal to the monthly legal minimum wage in force.

**Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?**





As was previously mentioned, there are 18 mandatory holidays per year that workers have the right to enjoy and for which they are entitled to receive compensation. If, under any circumstance, the employer requires an employee to work on a holiday, such work must be paid with surcharges.

Besides mandatory holidays, in Colombia, workers have the right to enjoy 15 business days of paid rest (vacation) for each year of service rendered in favour of their employer. The date of vacation must be set by the employer, who must ensure that at least six days of continuous vacation per year are enjoyed.

Employees are also entitled to paid sick leave, paid maternity leave, and paid paternity leave.

**Do part time employees receive any particular protection on the basis of their part-time status?**

Part-time employees have exactly the same benefits of a full-time employee, with the legal benefits pro rata to their time worked.

**Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?**

Yes, part-time employees enjoy and receive the same pro-rated terms according to their time worked.

**Social security**

**What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?**

According to the law, employers are obliged to pay social security contributions for all their employees, regardless of whether they only work on a part time basis. So, for health, the total contribution is 12.5%, of which the employer pays 8.5% based on the employee's salary, and 4% is deducted from the employee's salary. For pensions, a contribution of 16% must be made, where the employer contributes 12% and the employee is deducted 4%.

**Are employers obliged to provide health insurance to their employees?**

Yes, they are. Employees require health insurance, and they need to be covered regarding labor risks.

**Are employees entitled to unemployment insurance/benefits following the end of employment?**

Yes, it is not exactly known as unemployment insurance. There is a benefit called unemployment protection mechanism for up to six (6) months or when the beneficiary re-establishes an employment relationship before the six months have elapsed or fails to comply with the obligations undertaken to access the benefits of the Solidarity Fund for the Promotion of





Employment and Protection of the Unemployed. In any case, this benefit shall be incompatible with any paid activity and with the payment of any pension type.

The requirements are as follows:

1. That your employment situation has ended for any reason or in the case of being self-employed your contract has completed the agreed term of duration and you do not have any other or do not have any source of income.
2. That they have made contributions for one year, continuous or discontinuous, to a Family Compensation Fund. In the case of dependent workers, they must have made contributions during the last three years. In the case of self-employed workers, they must have made contributions for two years, continuous or discontinuous.
3. Register with any of the authorised employment services belonging to the Employment Services Network and develop the job search route.
4. To be enrolled in training and retraining programmes under the terms set out in the regulations issued by the National Government.
5. To be entitled to the monetary incentive for the voluntary saving of their severance pay, those who earn up to two Minimum Wages (MMWF) (Minimum Monthly Wage in Force must have saved at least 10% of their average monthly salary for the last year. For those who earn more than 2 SMMLV the minimum savings must be 25%.

**Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?**

Yes, the social security system in Colombia covers the risks of disability or sickness, old age, and death, and it is the employer's and worker's obligation to contribute monthly through a deduction made by the employer and the worker. The covered benefits include being paid a percentage of salary when too ill to work (*Ingreso Base de Cotización - IBC*). This is covered by the social security system.

It will be covered by the employer the first two (2) days, from third day until day one hundred and eighty (180) by the *EPS* (Health promoting body), private company in charge of providing medical attention; and from day one hundred and eighty (180) to day five hundred and forty (540) day it will be covered by the *AFP* or pension fund.

After day 540 there are no clear rules in some cases for the payment of incapacity of common origin. The development of this issue has been through the jurisprudence of the Labour Chamber of the Supreme Court of Justice.

The Court has reiterated that it is the *EPS* (Health Promoting Entity) in charge of who must make the payment of medical leaves of more than 540 days, as long as the worker has a favourable concept of rehabilitation and has not recovered during the course of the illness that originated the illness of common origin, having followed the recommendations of the treating doctor.

It is the pension fund that must recognise the payment of medical leaves of more than 540 days, provided that the worker has an unfavourable rehabilitation concept or a loss of working capacity of more than 50%, which allows the worker to apply for a disability pension.





It is important to emphasise that employers should actively participate in the processes of illness and recovery of their workers, since, in a situation where the worker obtains an opinion issued by the National Disability Rating Board with a loss of working capacity of more than 50%, the worker should immediately apply for a disability pension to guarantee that the worker has an income derived from the pension, and that the employer can terminate the employment contract with fair cause.

As it was previously mentioned, from day 540 onwards, the Health Promoting Entity's will again pay the disability allowance or medical leaves.

**Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?**

Yes, employers are obliged to provide maternity leave for employees. This corresponds to 18 weeks, with the addition of more weeks in the case of premature or multiple births. In the case of abortion, four weeks' leave is allowed. This is covered by the social security system. It is not possible to have unpaid maternity leave.

**Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?**

Yes, it is available to employees. This lasts for two weeks. It is also covered by the social security system. It is not possible to have unpaid paternity leave.

**Are employers liable for absence due to work-place injuries?**

No, they are not liable. They have to be properly notified and comply with the obligation to contribute monthly through a deduction made by the employer and the worker. The covered benefits include being paid a percentage of salary when too ill to work (Ingreso Base de Cotización – IBC). This is covered by the social security system.

**Are employees entitled to retirement benefits from the employer? If yes, what benefits?**

No, they are not.

**Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?**

No, they are not. There is no whistleblowers regulation in Colombia.





### 3 Safe and supportive work environment

#### **Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)**

The company should have internal policies to ensure employees health and safety in the workplace. All employers should ensure: All workers on the site are trained and aware of evacuation alarms, evacuation routes, and emergency assembly areas.

The OSH legal framework and institutional structure in Colombia is broad and complex. The Labour Code contains a number of OSH provisions which are largely developed by the specific OSH legislation. The leading OSH legislation is composed by the Law No. 9 of 24 January 1979 that establishes health and safety measures, followed by the Decree No. 614 of 14 March 1984 on the organization and management of occupational health.

In Colombia there are OSH Committees at a national, sectional, and local level according to Decree No. 16 of 9 January 1997 that regulates the integration, functioning and the network of OSH Committees. OSH joint Committees at the workplace are required for companies with 10 or more workers.

Regarding the Professional Risk System, the OSH legislation foresees a set of standards and procedures to prevent, protect and assist workers from the effects of occupational diseases and accidents that may happen during or as a result of the work performed, besides maintaining vigilance for strict compliance with occupational health standards. The main legislation on this aspect is Decree Law 1295 of 1994.

Occupational safety and health are defined as the discipline which deals with the prevention of injuries and diseases caused by working conditions, and the protection and promotion of the workers' health. The occupational safety and health aim to improve working conditions and environment as well as occupational health including promotion and maintenance of the physical, mental, and social wellbeing of workers at any workplace.

#### **Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)**

No, there is not a requirement to issue these policies. It is a recommendation to the employers, but it is not mandatory to have it.

#### **Is there a requirement to provide employees with training designed to combat discrimination and harassment?**

As mentioned above, it is not mandatory nor a requirement. Employers are suggested to have training to combat discrimination and harassment.

#### **Is there a requirement to have a data protection policy?**

There is a regulation in Colombia on the handling of personal data, which specifically regulates the management of information received by an employer from its workers, in furtherance of Article 15





of the Colombian Constitution, providing the fundamental right to privacy, good name, and expressly indicating the right to update and rectify information collected in databases, reiterating the respect for freedom and other guarantees in the collection, processing, and circulation of data.

### **Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?**

As mentioned above, it is not mandatory nor a requirement. It is a recommendation for employers to implement it and included within their work policies but not a requirement itself.

## **4 Tax**

### **Which taxes are mandatory for employers to pay and deduct on behalf of their employees?**

In the case of employment contracts, social security and parafiscal contributions apply, so that salaries can be deducted from the company's income. VAT in employment contracts does not apply, this only applies to sale transactions.

On top of those, employment cost, the employer would be in charge of covering these contributions based on their salary, on the following proportion:

- **Social benefits**
  - Layoffs severance payment: 8,33% (1 monthly salary per worked year paid directly to the pension fund).
  - Legal bonus: 8,33% (1 monthly salary per worked year)
  - Holidays: 15 business days 4,16%
  
- **Social security contributions to the system:**
  - Health: 12.5% of the salary or basic contribution income, of which 8.5% corresponds to the employer and 4% to the worker.
  - Pension: 16%, of which 12% is paid by the employer and 4% by the worker.
  - Labour Risk Administrator: the percentage of contribution is paid only by the employer and depends on the level of risk in which the employee is classified, according to the activity in which the employee is engaged.
  
- **Parafiscal contributions:**
  - Compulsory contributions imposed by law on employers, which are determined on the taxable base of the total payroll and benefit not only workers but also the support of the ICBF, the SENA, and the Family Allowance Fund (*Caja de Compensación Familiar*)





- Parafiscal contributions are paid in the proportion of 9% of the value of an employer's payroll, which is broken down into a proportion of 4% for Family Allowance funds, 3% for the ICBF and the remaining 2% for the SENA.

It is important to note that employers are also obliged to make the corresponding deduction for Withholding Tax. This corresponds to a monthly amount that the company must withhold from workers according to their salary income and must be reported to the tax authority in Colombia (*DIAN*).

According to the Tax Statute, there are two requirements to establish that deductions or tax payments must be made from the worker's salary:

- (i) The salary payments must be related to the necessity, causality, and proportionality of the income-generating activity.
- (ii) Social Security must be paid and withholding tax must be applied when applicable.

**Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?**

Yes, all employee taxes are deducted from their salary. Once there is an employment contract, the employees are not required to pay directly any taxes.

## 5 Remote work

**Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?**

No, the employers are not required to have a legal entity to hire employees, but it is mandatory to be legally constituted in Colombia in order to pay social security. Having said that, we highly recommend having a registered legal entity in order to hire employees to avoid any inconveniences with social security.

**Are employers required to provide any form of physical working space for employees working in your country?**

No, it is not a requirement to perform any activities. In case any form of physical working space is required the employer would have to implement a space to provide to its employees.

**Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.**

In Colombia, since 2008, there has been a regulation for teleworking as a formal mode of remote work in which the employer and the worker can agree on one of three remote working modalities.







- Autonomous work: always outside the company and only going to the employer's offices occasionally.
- Mobile work: in this modality, there is no established place for the provision of services and the use of technological tools is essential.
- Supplementary work: the employee works three days per week at home and the other days at the employer's office. This agreement must be in writing, it must fix the days and places where the service will be provided, and an amount must be provided by the employer to cover equipment, connections, programs, energy, and travel expenses.

As a result of the COVID-19 pandemic, new laws were issued in Colombia that regulated other more flexible forms of remote work, such as special work at home, remote work (Law 2121 of 2021), and regulations for digital nomads. Likewise, it is common in Colombia to use home office benefits as part of worker retention strategies.

## 6 What to do when things go wrong

### Dispute resolution

#### **Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?**

Labor issues and labor lawsuits are addressed in Colombia before a specialized jurisdiction for labor and social security matters, and the proceedings and complaints are conducted in accordance with the provisions of the Labor Code and the Labor and Social Security Procedural Code.

The matters addressed by this jurisdiction include conflicts originating in employment contracts, union privilege actions, union matters for cancellation, and qualifications about the legality of strikes, among others.

Judicial proceedings must be addressed through lawyers who hold the right to appear in court and most cases have two instances of knowledge, apart from matters known by judges for small cases.

Judges for labor matters have the possibility of ruling ultra and extra petita in favour of workers when they find workers' rights such as salaries, benefits, or compensation, other than those claimed, have been violated but have not been asserted by workers.

Employees are also able to use alternative dispute resolution mechanisms.

### Resignation

#### **What grounds do employees have for resignation?**

The employment contract can be terminated unilaterally by the worker at any time without grounds to support his/ her decision.

Regarding the submission of resignation by workers, an obligation in paragraph 2, Article 47 of the Colombian Labour Code provides that workers may terminate the contract no less than 30 days in advance; however, since the enactment of Law 789 of 2002, there has been no economic penalty for workers who do not comply with this notice and, in this sense, it is an obligation that cannot be enforced.





## Termination

### **What grounds do employers have for the termination of employment contracts?**

Article 62 of the Substantive Labour Code includes, in a restrictive way, the grounds for termination of the employment contract with fair cause. Such grounds for unilateral termination with fair cause are for both the employer and worker.

Thus, the grounds that an employer can assert in support of terminating an employment contract with fair cause, can be divided between those that originate in the behaviour of the subject (a serious breach, acts of violence, material damage caused intentionally, immoral or criminal acts, preventive detention of worker, and poor performance, among others), and those based on objective criteria (such as recognition of the worker's right to their old-age pension).

Dismissal for fair cause requires compliance with the procedure that guarantees the due process for the worker, in which the worker knows the breaches that are imputed to them and is aware of the evidence and can challenge them. Likewise, the Constitutional Court in the constitutionality sentence C 593 of 2014 determined the need for the worker to have the possibility of appealing the decision.

### **How do employers have to document the termination of an employment contract?**

In Colombia, termination of the contract with fair cause requires a disciplinary process to be carried out respecting due process, the right of contradiction, and up to two officials from the union to which the worker belongs may participate if the worker so decides; the failures must be asserted, showing the evidence, and currently by way of jurisprudential interpretation, it has been provided that even the right to a second instance or review of the decision within the company should be granted.

### **What is the responsibility of employers for damages incurred by an employee's actions within his/her work?**

An employer can be liable for negligent acts or omissions by an employee "in the course of employment," regardless of whether there is permission for the action.

An employer is liable for the acts or conduct of its employees during the execution of their services or in activities where employees represent the employer, unless the employer is able to demonstrate that it is in compliance with its obligations of due diligence or has no means to prevent the conduct.





## b. Independent contractors/consultants\*

### Section Contents

1 Contracts .....	18
2 Conditions of work for consultants.....	20
3 Safe and supportive work environment .....	23
4 Remote work .....	23
5 What to do when things go wrong .....	24

*Independent contractors and, therefore, true employers and not representatives or intermediaries, are **natural or legal persons who contract the execution of one or several works or the provision of services for the benefit of third parties**, for a fixed price, assuming all the risks, to carry them out with their own means and with freedom and technical and managerial autonomy. But the beneficiary of the work or owner of the work, **unless the work is outside the normal activities of his company or business, shall be jointly and severally liable with the contractor for the value of the wages and the benefits and indemnities to which the workers are entitled**, which shall not prevent the beneficiary from stipulating the necessary guarantees with the contractor or from recovering against him the amount paid to those workers.*

\* The term consultant will be used to also refer to independent contractors, or any other term that would mean a person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.

### 1 Contracts

#### What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

There are no types or a classification for independent contractors, but contracting through the figure of the independent contractor should have the following characteristics, which must be considered in the framework of the execution of the service agreement contract:

- The independent contractor or outsourcing company is contracted for the provision of a service or the execution of a determined or determinable work or activity in favour of the contractor.
- The contracts regulating these relationships are of a civil or commercial nature and are concluded between a contractor (beneficiary of the service) and a contractor (provider of the service).
- The contractor (associate) must have **technical, administrative, operational, and financial autonomy to provide its service independently from the contractor**. This





implies that the contractor (Colombian associate) must be an expert in the contracted work, and the company's corporate decisions should not be determined by the associate. Likewise, the contractor must have sufficient financial capacity to autonomously assume the burdens of the operation, hire its own staff, and fulfil its labour obligations as an employer.

- The contractor (Colombian associate) should be delegated to conduct an entire process or sub-process, considering the speciality and professionalism required for the service.
- The risks arising from the provision of the service are borne directly by the contractor.
- The company may use natural persons to develop or conduct the object of the civil or commercial contract being executed. However, with regard to this situation, it is important to bear in mind:
  - The associate must have its own means of work, tools, and instruments to enable it to perform the contracted service. Therefore, in principle, any NGO must refrain from supplying the associate's personnel with these items.
  - There cannot be a subordinate relationship between the principal and the contractor, nor between the principal and the contractor's employees.

There are no specific agreements for NGOs, it should be noted that all independent contractors should have the same characteristics to be considered as such.

### **What are the main elements of consultant agreements?**

The main elements of consultant agreements or independent contractors are from the perspective of the contractor, this type of contracting involves the integral transfer of a process or subprocess to a third party or contractor, which is generally a third party (natural person or company) specialised in a specific subject or task, to carry out the contracted work. Therefore, the nature of service agreements contracts implies that the activities to be developed by contractors are autonomous and independent, without any type of subordination. Likewise, the contracted service must take precedence over the person who performs it.

In this regard, in addition to having the above mentioned characteristics, the service contract must not include any element of an employment contract in its performance, especially that of subordination, given that subordination is one of the characteristic elements of an employment contract.

### **Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?**

A probation period is only established within an employment contract, and since independent contractors / consultants are not employees, they have a civil/ commercial relationship, there is no obligation to have a probation period in place, just an agreement for their services.





**Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?**

It is possible that the agreement has a fixed term due to the related activity to be performed, meaning that the consultation /independent contractor term is related to the execution and completion of the contract.

**Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?**

Yes, it is important to have the independent contractor / consultant agreement in writing to be compliant with the terms for the provision of the services in benefit of a third party, also to establish that the contractors are autonomous and independent, without any type of subordination.

**Do all types of independent contractors/consultants have to be under contract in order to be able to work?**

Not necessarily, it is mandatory to have a signed contract to start rendering services or be able to work but since they have a civil and commercial nature, it is advisable to have in writing to determine the work or activities to be performed in favour of the contractor.

**Can you provide a simple template of the agreements mentioned above? Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?**

Yes, there will be attached as an addendum to this document. Please refer to the Annex. No, there is no such obligation to run a background check.

## **2 Conditions of work for consultants**

**Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?**

Yes, it is necessary to have the capacity to enter into an individual employment contract, therefore all persons who have reached eighteen (18) years of age are able to do so. In cases where the consultant or independent contractor is a minor, there are certain restrictions regarding the age and the type of work that can be performed by them. The contracting party should request a special permit to the Ministry of Labour, to be considered the conditions of job by minors under 14 years of age and minors under 18 years of age. The job should not be dangerous, and it is also important that their right to study is protected.





**Does a consultant/independent contractor need to obtain a license or any other permission in order to work?**

No, to work as a consultant/ independent contractor is not required to obtain a license but in case their profession requires a license to perform their activities, it will be imperative to obtain a license through the professional councils of the different careers.

**Payment**

**Are there any minimum pay requirements for consultants/independent contractors? Are there any exceptions in minimum wages for young persons or people with disabilities?**

No, there are not. The minimum payment requirements are established to pay social security that cannot be under the minimum wage but for contractors / independent contractors, there is not a mandatory labour regulation to pay a specific amount.

**Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?**

No, there is no employment contract, in consequence, there are no employment benefits nor social benefits, including statutory/ paid leave for independent contractors/ consultants.

**Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?**

No, there is no employment contract, in consequence, there are no employment benefits nor social benefits, including annual paid leave for independent contractors/ consultants.

**Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?**

No, there is no employment contract, in consequence, there are no employment benefits nor social benefits, including overtime payments. The independent contractor / consultant is autonomous about his work, time, work tools, meaning he / she will be in charge of executing the contract in accordance with the terms of the agreement.

**Are consultants entitled to an end-of-year payment?**

No, there is no employment contract, in consequence, there are no employment benefits nor social benefits, including end of the year payments.

**Are consultants entitled to a final payment when the contract is terminated?**





No, there is no employment contract, in consequence, there are not employment benefits nor social benefits, including final severance payment. On the other hand, it can be entitled to a final payment only in case of breach of contract or non-compliance with the terms of it.

### **Working hours**

#### **Are consultants entitled to any type of leave, whether paid or unpaid?**

No, the consultants are not entitled to any type of leave since they do not have a direct employer nor an employment contract, in consequence they would not be entitled to a paid or unpaid leave.

### **Social security**

#### **Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?**

No, the end user engager does not need to make any social contributions on behalf of the consultant or independent contractor, since there is not an employment relationship between the end user engager and the contractor. It would be the responsibility of the latter to make his /her own contributions to the social security system.

#### **Are independent contractors/consultants entitled to unemployment insurance/benefits after termination of their independent contractor/consultancy agreement from the end user engager?**

No, the consultant or independent contractor is not a real employee and there is not a labour relationship between the contracting party and the consultant or independent contractor. In consequence the independent contractor / consultant would not be entitled to any social benefit derived from an employment contract.

#### **Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?**

No, the consultant or independent contractor is not a real employee and there is not a labour relationship between the contracting party and the consultant or independent contractor. In consequence the independent contractor / consultant would not be entitled to any social benefit derived from an employment contract.

#### **Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid?**

No, independent contractors / consultants are not entitled to any social benefits, including maternity leave. Being an independent contractor or consultant does not make you eligible to any social benefit derived from an employment contract.





**Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?**

No, independent contractors / consultants are not entitled to any social benefits, including maternity leave. Being an independent contractor or consultant does not make you eligible to any social benefit derived from an employment contract.

**Are employers obliged to cover work-place injuries for independent contractors/consultants?**

This depends on the type of classification of the job. Independent contractors must pay for the labour risks, unless classified under risks IV and V, in which case the contracting party will assume 100 per cent of the contribution to the labour risk system.

**Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?**

No, an independent contractor is not entitled to receive social benefits or any type of compensation due to the termination of the contract.

### 3 Safe and supportive work environment

**Are there any differences in terms of the regime that applies to employees?**

In Colombia, the legal framework for creating a safe and supportive work environment is primarily governed by labour laws, occupational health and safety regulations, and other related provisions. The aim is to protect the well-being of employees and ensure that workplaces are free from hazards.

Now the question refers to if there are any differences in terms of the regime that applies to employees, and the proper response is no, since the key aspects related to safety and environment applies to all employees in the workplace, the keyword here is employees. For independent contractors or consultants, the specific situation should be evaluated since there is not a labour relationship and they are not employed, when a company hires an independent contractor, it hires a service.

### 4 Remote work

**Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?**

No, the end user engager is not required to have a registered legal entity in Colombia. It is not mandatory to hire independent contractors/ consultants. It is possible for the end user engagers as consultants / independent contractors for activities that generate less sensitivity in the business, leaving the activities that generate value as their own.







From a labour point of view, it is not needed to establish a legal entity in Colombia in order to affiliate the contractors or consultants and upgrade the labour relationship to employment labour contracts.

In this regard, we would like to remind you that the figure of the independent contractor implies that the contracting party transfers a process or sub-process to the contractor, so that said process is developed by the latter, in an independent and autonomous manner.

To this extent, article 34 of the Substantive Labour Code establishes the figure of the independent contractor as follows:

"1o) Independent contractors and, therefore, true employers and not representatives or intermediaries, are **natural or legal persons who contract the execution of one or several works or the provision of services for the benefit of third parties**, for a fixed price, assuming all the risks, to carry them out with their own means and with freedom and technical and managerial autonomy. But the beneficiary of the work or owner of the work, **unless the work is outside the normal activities of his company or business, shall be jointly and severally liable with the contractor for the value of the wages and the benefits and indemnities to which the workers are entitled**, which shall not prevent the beneficiary from stipulating the necessary guarantees with the contractor or from recovering against him the amount paid to those workers. (...)" (Emphasis added by us).

## 5 What to do when things go wrong

### Resignation

**Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?**

Consultants and independent contractors do not need any reason to terminate the contract. They can terminate it for any reason in accordance with the terms of the contract.

### Termination of agreement

**What grounds do end user engagers have for the termination of consultant agreements?**

The contract can end at any time by the end user engager or by the consultant or independent contractor. Grounds for termination will not be needed by any of the parties unless it has been established otherwise in the service agreement.

**What is the responsibility of the end user engagers for damages incurred by a consultant's actions within his/her work?**

This will depend on the terms of the service agreement. If it has not been agreed between the parties regarding liability for damages, general principle of civil liability will apply. Under the Civil law, an end user engager could be liable for damages incurred by a consultant if the consultant / independent contractor performs work under similar circumstances to those of an employment relationship.





## c. Volunteers

### Section Contents

1 Contracts .....	25
2 Conditions of employment.....	25
3 Safe and supportive work environment .....	28
4 Tax .....	29
5 What to do when things go wrong .....	29

*Volunteering in Colombia is a powerful force for leaving no one behind and brings together around 800,000 people, according to the country's national volunteering system. In this sense, volunteerism is a huge resource for solving social, economic, and environmental problems. Generally, the most visible aspects of volunteering relate to service delivery in communities. People engage in voluntary work to help eliminate poverty, improve health and basic education, address environmental problems and climate change, reduce the risk of disasters, and combat social exclusion and violent conflict. Volunteering is also associated with social cohesion, solidarity, empowerment, responsibility, participation, collaboration, and inclusion.*

*According to Law 720 of 2001 "Volunteer" is any natural person who freely and responsibly, without receiving remuneration of an employment nature, offers time, work, and talent for the construction of the common good, individually, or collectively, in public or private organisations or outside of them.*

### 1 Contracts

#### **Are organizations required to sign any form of agreement with volunteers?**

No. There is no requirement to sign any form of agreement with volunteers. Legally, in our jurisdiction there is no requirement to provide a volunteer with a written agreement. However, in most cases, organizations taking on volunteers, while wishing to avoid creating a legally binding contract, do like to formalise the volunteering arrangement in a legal way by having a voluntary agreement that does not imply having a labour relationship between the organisation and the volunteer.

### 2 Conditions of employment

#### **Is there a minimum age requirement for volunteers?**

No, there is not a minimum age requirement for volunteers. But the age requirement for volunteering can vary depending on the type of opportunity, the organisation, and labour law in effect. In some cases, there is no age requirement at all – under-18 programs – while other opportunities may only be open to individuals over the age of 18, legal age to work in Colombia.





According to law, children over the age of 14 can only work under the following conditions:

- They have a written authorization from both parents, authenticated by a public notary.
- They have a written authorization from a Labor Inspector, issued by the Ministry of Social Protection
- Teenagers aged between 15 to 17 years old are only authorized by law to work for up to six hours a day and 30 hours per week.
- Children aged 17 and above are allowed to work for no more than eight hours a day and 40 hours per week.
- Children under 15 years old can obtain authorization to work from a Labor Inspector only if they participate in sports, cultural, recreational, and cultural activities, for no more than 14 hours per week.

Even though the above conditions are established for minors who are willing to work, they should be overlooked for volunteers as well, but since it is not a labour relationship, it should be governed by the organisation and type of opportunity offered.

### **What type of volunteering work may a child undertake? Are there any restrictions around this?**

As stated above, the type of volunteering work a child may undertake will depend on the organization and the type of opportunity required in the volunteering work.

The labour law protects minors, and it provides a specific authorization, under the following conditions:

- Teenagers aged between 15 to 17 years old are only authorized by law to work for up to six hours a day and 30 hours per week.
- Children aged 17 and above are allowed to work for no more than eight hours a day and 40 hours per week.
- Children under 15 years old can obtain authorization to work from a Labor Inspector only if they engage in sports, cultural, recreational, and cultural activities, for no more than 14 hours per week.

Even though the above conditions are established for minors who are willing to work, they should be overlooked for volunteers as well, but since it is not a labour relationship, it should be governed by the organisation and type of opportunity offered.

### **Payments and reimbursement**





### **Are organizations allowed to pay stipends to volunteers?**

According to the law it is not prohibited nor regulated either, the organization can decide whether to pay stipends to volunteers or not. Most of the time, in case of payment to volunteers it refers to an allowance for expenses, it must not be considered a salary. In case a nonprofit or organization pays volunteers regular and significant amounts, its employees, stipends, allowances, or wages, make their volunteer workers look more like employees.

In the legal definition it is stipulated that the volunteer does not receive a remuneration of an employment nature for offering his/her time, work, and talent.

### **Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).**

As stated before, according to the law it is not prohibited nor regulated either in our jurisdiction. Although volunteering is unpaid it is up to the organisations to reimburse volunteers for out-of-pocket expenses. Some reasonable expenses include, but are not limited to:

- Travel
- Meals and refreshments.
- Care of dependants
- Equipment, such as protective clothing
- Support worker expenses.
- Administration costs

Nevertheless, it is important to point out that it is not a legal obligation to reimburse volunteer expenses, particularly as some non-profit or charitable organizations are not in the financial position to do so.

Additionally, organisations should not pay volunteers fixed sums, stipends or rewards that are not necessary for the role that by nature is unpaid by nature.

### **Working hours**

#### **Are there any obligations around how many hours volunteers can work?**

No, there are no obligations regarding the number of hours volunteers are able to work. It depends on the type of organisation and help needed from the volunteers, not regulated by law.

#### **Are volunteers entitled to any type of leave?**

No, they are not entitled to any type of leave as well as they do not have any other additional social benefits or any type of compensation due to the type of relationship termination of the





contract since there is not an employment relationship between volunteers and the organization for whom they work.

### **Social security**

#### **Are organizations obliged to pay any social security contributions on behalf of their volunteers?**

No, they are not. The organizations do not need to pay any social contributions on behalf of their volunteers, since there is not an employment relationship between the organizations and their volunteers. It would be the responsibility of the latter to make their own contributions to the social security system.

#### **Are organizations obliged to provide health insurance to volunteers?**

No, they are not. The organizations do not need to provide health insurance to their volunteers, since there is not an employment relationship between the organizations and their volunteers. It would be the responsibility of the latter to make their own contributions to the social security system.

#### **Are organizations liable for absences of volunteers due to work-place injuries?**

It is important to point out that in a regular employment relationship, between an employer and employee, an employer is liable in the event of work accidents. The employer has to ensure a safe and healthy working environment. He has to take measures to make sure that his employees are not injured during their activities. In the event of work accidents, the employer is in principle responsible. The employer will have to pay for the damage unless the employee has acted with intent or deliberately reckless.

This protection also applies to persons who are in a position similar to employees. Therefore, the volunteer is in a position similar to an employee and is dependent on the safety measures taken by the organizations. Now that the volunteer is being involved in workplace injuries, he has the right to the same protection as an ordinary employee. That means, the organization is liable for damage the volunteer suffers.

## **3 Safe and supportive work environment**

#### **Are there any differences in terms of the regime that applies to employees?**

Even though the organizations have a different legal perspective, and they are not employers of the volunteers. They must guarantee the same work environment for volunteers as they do for their employees and independent contractors or consultants.

It should be noted that organizations must provide the same level of protection and accountability to volunteers in case they need to conduct similar activities or are being exposed to the same level of risk as employees. Accordingly, the organizations should carefully conduct risk assessments of





the activities to be developed as volunteers to classify them in the corresponding risk and put appropriate measures in place.

## 4 Tax

### **Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?**

In case the organization decides to pay stipends to volunteers, it should review the amount and type of stipends received by the volunteers in case they should be treated as the employees that are paid staff of the organization.

In this regard, payroll tax contributions must be withheld from their pay. Reimbursements for expenses incurred while volunteering are also sometimes considered taxable income. Since they might be deductible but not at the same rate that is for businesses. In addition to knowing the rules on your end, it is also important for volunteers to check with their own accountants or tax preparers about the possibility of deductible expenses. Volunteer mileage, for example, is deductible, but not at the same rate as mileage for business.

## 5 What to do when things go wrong

### **What grounds do organizations have for the termination of volunteer agreements/arrangements?**

There are not legally specific grounds for the termination of volunteer agreements.

### **What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?**

When an organization relies on the help of volunteers, it needs to understand how it may be held liable for its volunteers' actions.

Nonprofits can be liable for the actions of their agents. Unless an exception applies, an organization typically is responsible for damages caused by its agents. An agency relationship may exist when an organization has control, or should have had control, over an individual's actions. This concept extends to volunteers, especially if they are doing work under the direction of a nonprofit manager and on behalf of the nonprofit.

General principle of civil liability will apply. Under the Civil law, an organization could be liable for damages incurred by the volunteer if the contractor performs work under similar circumstances to those of an employment relationship or their paid staff.





## d. Non-citizen employees and consultants, including refugees and others forcibly displaced

### Section Contents

1 Status and the right to work.....	30
2 Contracts .....	31
3 Conditions of employment.....	31
4 Safe and supportive work environment .....	32
5 What to do when things go wrong? .....	33

### 1 Status and the right to work

#### **Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)**

Non-citizen employees and consultants, even if they are refugees or have been forcibly displaced are subject to the same rights and regulations as Colombian workers, barring the right to join a union. Foreign workers must enter into a formal written contract with an employer and after one month's service in Colombia foreign employees are obligated to make contributions to the pension scheme.

Both the employer and employee must comply with the procedures required by the Colombian Ministry of Foreign Affairs relating to the entry of the foreign person into Colombia, and the supervision of the foreign person's stay in Colombia.

To be able to work in Colombia, foreigners must obtain a suitable visa, depending on the type of work they undertake. Individuals or companies who are interested in working in Colombia are recommended to employ the legal services of a professional company to ensure the visa process runs smoothly.

#### **Are employers obliged to secure work permits for their employees or consultants?**

Yes, employers are obliged to secure work permits for their employees and consultants before they sign a contract with them and prior to start providing their services. Without a work permit, it would not only be illegal, but it will be imposed with fines, and they will also be administratively punished for not complying with the immigration Law in Colombia.

Additionally, the foreign worker or consultant will be fined by the Ministry of Foreign affairs.





### **Is it always necessary to obtain a work permit?**

Yes, it will always be necessary to obtain a work permit. If a foreign employee or consultant is going to be hired by a national company and receives any type of payment within the country they will necessarily need to obtain a work permit.

Additionally, some specific professions will also require a professional permit to be able to perform their job in the country, such requirement should be taken into consideration before applying for the visa.

### **Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?**

To be able to perform any type of remunerated job within the country, foreigners, even if they are asylum seekers or any other person forcibly displaced, should have a protection status that allows them to work in Colombia.

For refugees, there is a specific type of visa that is the type M-Refugee visa, once the foreigner has been recognised in its condition of refugee in Colombia, with this type of visa the foreigner will have an open work permit without any type of restrictions due to the profession or job title to be performed.

## **2 Contracts**

### **Are employment contracts or consultant agreements for non-citizens different to those for citizens?**

No, they are not different. It should be noted that the type of ID will be the foreigner ID and the contract should be restricted to the duration of the visa granted to work.

Furthermore, the employer should verify that the foreigner got the ID after having completed the registration process of the Visa.

## **3 Conditions of employment**

### **Does national law regulate the quotas for the number of non-citizens within one organization?**

Companies registered in Colombia may employ foreign workers if they have more than 10 employees, but foreigners may only make up 10% of the general staff levels, and 20% of specialist/managerial positions. It is possible to apply for special authorization to the Colombian authorities to exceed this level.

### **Are employers obliged to report about employed non-citizens?**







Once the individual is hired with full compliance with the immigration requirements, it is the employer's obligation to report on the virtual government platforms, SIRE and RUTEC, about the start and/or termination of employment of foreign workers:

- SIRE is the general registration platform for all foreign persons in Colombia – registration must be complete within 15 calendar days after the date of starting work; and
- RUTEC is supervised by the Ministry of Labour and its main function is to verify that employers comply with their obligation to make sure foreign workers are registered and affiliated to the Social Security System – this registration must be complete within 120 days after the date of starting work.

**Are there any other differences in conditions of employment for non-citizens and citizens?**

No, they are not, the same conditions should be applicable to foreign workers or consultants as well.

**Are there any specific employment terms that apply to citizens but not apply to non-citizens?**

In order to introduce incentives in the formalisation and generation of employment, the Colombian Congress issued Law 1429 of 2010, which, in Article 65, modified Articles 74 and 75 of the Labour Code. As a result, a limitation, or quotas for hiring foreign workers currently do not exist in the law.

It is important to note that there are currently special regimes in which certain proportions remain for the hiring of foreign workers. These include oil companies and aviation companies (Articles 1803 and 1804 of the Code of Commerce).

In cases of residence for certain periods in Colombia, the worker must apply for a foreigner identification card.

In some regulated professions, besides a work visa, foreign workers require special temporary permit registration. In the case of a regulated profession, the person's competence must be reviewed, and an application must be made to the professional councils.

## 4 Safe and supportive work environment

**Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.**

No, there are no differences in a safe and supportive work environment for non-citizens. It should be noted that employers must provide the same level of protection and accountability to foreigners as they do for the national employees.

**Does the employer have additional obligations for non-citizens?**





The employer must bear the expenses for returning such foreign workers hired abroad to provide services in Colombia to their country of origin. In addition, the employer must report the hiring and letting go of a foreign worker to Colombia Migration (*Migración Colombia*) on the SIRE (*Sistema Integrado de Registro de Extranjeros*) platform within 15 calendar days following the initiation and termination of the employment relationship, under penalty of fines.

## 5 What to do when things go wrong

**Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.**

No, it is the same process of termination if it is an employment contract, besides that, the employer must bear the expenses for returning such foreign workers hired abroad to provide services in Colombia to their country of origin.

**Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.**

No, it is the same process of resignation if it is an employment contract, besides that, the employer must bear the expenses for returning such foreign worker hired abroad to provide services in Colombia to their country of origin, if the foreigner is not returning to their country of origin, the foreigner will have 30 days to apply for another type of visa to stay legally in the country.

**Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?**

Yes, they are, since the employment relationship is the same, and the employment laws and labour regulations also apply for non-citizens, due to the territoriality provision.

To this extent, it should be noted that Article 2 of the Substantive Labour Code (SLC) enshrines the **principle of territoriality**, which states: "*Territorial application. This code applies throughout the territory of the Republic for all its inhabitants, regardless of their nationality*".

In this sense, Article 2 of the SLC provides for the theory of *lex loci solutionis*, which means that the employment relationship is governed by the law of the country where the contract is executed and not of the place where it was concluded, in case the non-citizens have signed the country in their country of origin or where they were located before coming to Colombia.

The Supreme Court of Justice, on 22 April 1998, by ruling No. 10.461 of Reporting Magistrate Francisco Escobar Henríquez, indicated that in order to determine the application of Colombian law in an employment relationship, the following variables must be taken into account:

*"Indeed, it should not be overlooked that the provision extends the rule of Colombian labour law to all inhabitants of the national territory and the concept of inhabitant refers to the person who lives or establishes his abode and residence in a certain place, and as far as the employer is concerned, it has to do with the headquarters of the respective economic exploitation unit, company, establishment, activity or business to which the worker lends his labour force, Hence, that law does not cease to apply for the circumstance that the latter*





*must carry out more or less extensive work abroad as part of the employment contract, since this does not necessarily imply that he will settle in the country where he is to carry out his temporary mission or, in other words, that he must change his residence or the territorial headquarters of the business or company in which his work is involved".*





## 3. Addendums

### ANNEX

Template of the agreements for an independent contractors or consultants, referred in part IV. Independent contractors/consultants\*, in point 1(g).

### ANNEX

#### "CONTRACT FOR THE PROVISION OF SERVICES

Between the undersigned, namely, \_\_\_\_\_ of legal age and identified with citizenship card number \_\_\_\_\_ issued at \_\_\_\_\_, acting in the name and on behalf of \_\_\_\_\_ identified with *NIT* \_\_\_\_\_, who for the purposes of this contract shall be referred to as **THE CONTRACTING PARTY**, on the one hand; and, on the other hand, \_\_\_\_\_, of legal age, domiciled at \_\_\_\_\_ identified with **ID/ Foreign ID/ Visa/Passport** number \_\_\_\_\_ issued at \_\_\_\_\_, who for the purposes of this contract shall be referred to as **THE INDEPENDENT CONTRACTOR**; it is hereby stated for the record that the parties wish to enter into this contract, which is governed from its inception by the following clauses:

**FIRST. PURPOSE OF THE CONTRACT. THE INDEPENDENT CONTRACTOR** undertakes with **THE CONTRACTING PARTY** to perform, independently and with full autonomy, the work and other activities inherent to the contracted service, which shall consist of \_\_\_\_\_. **(IDENTIFY IN DUE FORM THE SPECIFICALLY CONTRACTED SPECIALIZED SERVICE, WHICH MUST BE SUFFICIENTLY SPECIFIC TO COMPLETELY UNDERSTAND THE ACTIVITIES TO BE PERFORMED BY THE CONTRACTOR).**

**SECOND. DURATION.** This contract shall have a duration of \_\_\_\_\_ months/days/years counted from \_\_\_\_\_, **(INDICATE DATE OF BEGINNING OF SERVICE PROVISION)** and until \_\_\_\_\_, **(INDICATE DATE ON WHICH THE BINDING IS FORECAST TO END)**, which period may be extended by mutual agreement between the parties after the execution of the corresponding additional agreement.

**THIRD. VALUE OF THE SERVICE. THE CONTRACTING PARTY** shall pay **THE INDEPENDENT CONTRACTOR** for fees, the amount of \_\_\_\_\_ pesos (THE TOTAL AMOUNT OF THE CONTRACT MUST BE INSERTED IN THIS POINT) in current currency, upon presentation of a collection account which shall be made by **THE INDEPENDENT CONTRACTOR** at \_\_\_\_\_ **(IDENTIFY PERIOD, IF DAILY, AT THE END OF THE CONTRACT, MONTHLY, ETC.).**





**FOURTH. FORM OF PAYMENT.** THE CONTRACTING PARTY shall pay the collection account(s) submitted by THE INDEPENDENT CONTRACTOR at \_\_\_\_\_ (**IDENTIFY PERIODICITY OF PAYMENTS**), according to the value indicated in the previous clause, and within \_\_\_\_\_ days following its submission after verification and approval.

**FIFTH. PROVISION OF THE CONTRACTED SERVICE AND PLACE OF EXECUTION.** Pursuant to the provisions of the first clause of this document, THE INDEPENDENT CONTRACTOR shall render its services within the hours of availability of THE CONTRACTING PARTY, and in compliance with the requirements and needs of THE CONTRACTING PARTY.

In this regard, the parties accept and agree that the services of THE INDEPENDENT CONTRACTOR shall be rendered from the city of \_\_\_\_\_, however, complying with the time zones of Colombia and of THE CONTRACTOR, since this contract for the rendering of services shall be governed by the applicable Colombian regulations.

**SIXTH. GUARANTEE OF THE CONTRACTED OBJECT.** In case of faults, damages, failures, deterioration before its useful life or malfunction in the performance of the object contracted by the CONTRACTING PARTY, THE INDEPENDENT CONTRACTOR undertakes to meet any type of requirement by the CONTRACTING PARTY during the \_\_\_\_\_(\_\_\_\_) months following the termination of the provision of the service, to resolve any inconsistency presented without this implying the generation of additional fees to those already agreed in the third clause of this contract.

**SEVENTH. OBLIGATIONS OF THE CONTRACTING PARTY.** THE CONTRACTING PARTY reserves the right to exercise the respective control over the execution and fulfilment of the contractual object and against the following obligations: 1. To provide access to the information it considers appropriate for the execution of the contract. 2. To pay the fees stipulated in the present contract. 3. To establish a work programme by mutual agreement with THE INDEPENDENT CONTRACTOR. 4. Any others inherent to the object and nature of the contract.

**FIRST PARAGRAPH.** It is hereby clarified that the monitoring, control and supervision that THE CONTRACTING PARTY carries out over the performance and obligations arising from this contract are simply for administrative reasons, in accordance with the nature of the service provided and, consequently, it cannot in any case be interpreted or presumed that by this fact a subordination or dependence of THE INDEPENDENT CONTRACTOR to THE CONTRACTING PARTY is configured.

**EIGHTH. OBLIGATIONS OF THE INDEPENDENT CONTRACTOR.** In the performance of this contract THE INDEPENDENT CONTRACTOR undertakes to: 1) To comply with the guidelines set forth by THE CONTRACTING PARTY for the rendering of the service object of this contract; 2) To use and have the instruments it deems necessary for the effective performance of the object of this contract; 3)





To appear at **THE CONTRACTING PARTY'S** premises to perform the contracted service when so required by **THE CONTRACTING PARTY**; 4) To directly assume the risks inherent to the performance of the object of this contract; 5) Submit the collection accounts submitted at the end of each month for the purpose of payment of the service provided; 6) Submit, together with the collection accounts submitted at the end of each month, proof of payment, affiliation and coverage to the Colombian Social Security System corresponding to the respective month; 7) Notify any change in the place of service provision mentioned in the present contract. **(TO INCORPORATE OTHER OBLIGATIONS THAT THE COMPANY CONSIDERS RELEVANT AS LONG AS THEY DO NOT RESEMBLE THOSE OF AN EMPLOYMENT CONTRACT, IN ORDER NOT TO GENERATE A RISK OF CONTRACT REALITY).**

**PARAGRAPH:** Failure to comply with the obligations mentioned in this clause entitles the **CONTRACTING PARTY** to terminate the contract for the provision of services unilaterally and without the recognition of any type of compensation and/or damages.

**NINTH. OBLIGATIONS OF THE CONTRACTOR REGARDING SOCIAL SECURITY.** **THE INDEPENDENT CONTRACTOR** acknowledges that it is its obligation to be affiliated and pay contributions to the Social Security System in accordance with the laws of such territory and thereby complying with the Colombian regulations by virtue of which all independent contractors must be affiliated to the Social Security System. Therefore, it is **THE INDEPENDENT CONTRACTOR'S** obligation to submit to **THE CONTRACTING PARTY** at the time **THE CONTRACTING PARTY** so requests the certifications and/or proof of affiliation and payment of the respective contributions issued by the corresponding entities.

**PARAGRAPH ONE.** The parties declare that in the event **THE INDEPENDENT CONTRACTOR** does not submit to **THE CONTRACTING PARTY** the certifications and/or proof of affiliation and payment of the respective contributions issued by the corresponding entities in Colombia, **THE CONTRACTING PARTY** shall refrain from paying the corresponding fees, such fact being a breach by **THE INDEPENDENT CONTRACTOR** of its contractual obligations, which is a cause for **THE CONTRACTING PARTY** to unilaterally terminate the contract for the provision of services at any time, without any indemnification whatsoever.

**TENTH. EXCLUSION OF LABOUR RELATIONSHIP.** The parties acknowledge that **THE INDEPENDENT CONTRACTOR** shall act independently, with full technical and managerial autonomy in the performance of the contracted service.

Thus, the parties acknowledge that **THE INDEPENDENT CONTRACTOR** has full freedom to perform its obligations and execute the contracted services according to its availability and needs and by its own means. Consequently, the legal relationship created by the execution of this contract is of a purely commercial nature and shall be governed by the rules of Commercial Law, excluding from this contract any type of employment relationship.





**ELEVENTH. CONFIDENTIALITY. THE INDEPENDENT CONTRACTOR** shall refrain from disclosing, publishing or communicating, directly or indirectly to third parties the information, documents, videos, images, recordings or any other type of instrument to which it has access during the execution of the investigation or which is related to the execution or performance of this contract and, especially with the information related to the business and activities of **THE CONTRACTING PARTY**, notwithstanding whether or not the information is considered confidential or important, since both parties expressly agree that all information received by **THE INDEPENDENT CONTRACTOR** from **THE CONTRACTING PARTY** in connection with this contract is considered important and confidential and, therefore, disclosing it or transmitting it to unauthorised third parties may cause damage to the conduct of **THE CONTRACTING PARTY**'s business and activities or to its reputation. Consequently, the violation of the provisions of this clause shall be considered a serious breach of this agreement and shall entitle **THE CONTRACTING PARTY** to terminate it unilaterally and with just cause, without prejudice to any other right it may have under the law to claim compensation.

The parties declare that any information, document or procedure of **THE CONTRACTING PARTY** or of its affiliates, subsidiaries, parents, subordinates, related companies or companies, natural persons, shareholders, clients or third parties related thereto or about which **THE INDEPENDENT CONTRACTOR** has knowledge in the performance of this practice agreement or on the occasion thereof, which is not of public knowledge, is confidential, especially privileged information regarding operations, transactions or business, or the value thereof, which is sensitive for the operation of **THE CONTRACTING PARTY** or of third parties. In this regard, **THE INDEPENDENT CONTRACTOR** not only undertakes not to disclose any confidential information it may become aware of but shall refrain from using such information for personal gain or for the benefit of third parties.

**THE INDEPENDENT CONTRACTOR**, upon termination of its service contract for any reason whatsoever, shall immediately return to **THE CONTRACTING PARTY** any document, information or element that has been delivered to it for the performance of its duties.

**TWELFTH. INTELLECTUAL PROPERTY.** Taking into account the purpose of the contract for the provision of services entered into between the parties, **THE CONTRACTING PARTY** and **THE INDEPENDENT CONTRACTOR** agree that all inventions and original works of authorship (including discoveries, ideas, improvements, or system designs, whether patentable/registrable or not), conceived or developed by **THE INDEPENDENT CONTRACTOR** during the performance of this agreement and which in any way relate to the purpose hereof, shall belong to **THE CONTRACTING PARTY**. As a consequence of the foregoing, **THE INDEPENDENT CONTRACTOR** undertakes to inform **THE CONTRACTING PARTY** of the existence of such inventions and/or original works. **THE INDEPENDENT CONTRACTOR** shall agree to facilitate the timely fulfilment of the corresponding formalities and shall give its signature or issue the powers of attorney and documents that may be necessary for the formal acknowledgement of





the copyright to **THE CONTRACTING PARTY** when so requested by **THE CONTRACTING PARTY**, without **THE CONTRACTING PARTY** being obliged to pay any additional compensation whatsoever. Likewise, the parties agree that everything created, invented, discovered, developed or improved by **THE INDEPENDENT CONTRACTOR**, on the occasion of this agreement, belongs to **THE CONTRACTING PARTY**, without the need for any authorization, in accordance with the provisions of Article 539 of the Code of Commerce in accordance with the first paragraph of Articles 22, 88, 114 of Decision 486 of 2000 of the Commission of the Andean Community of Nations. Consequently, **THE CONTRACTING PARTY** shall have the right to have such inventions, improvements, designs, or schemes patented or registered in its name or in the name of third parties, respecting **THE INDEPENDENT CONTRACTOR'S** right to be mentioned as inventor or discoverer if it so wishes.

**PARAGRAPH.** In any event, the parties acknowledge and agree that all inventions and original works of authorship (including discoveries, ideas, improvements or system designs, whether patentable/registrable or not), conceived or made by **THE INDEPENDENT CONTRACTOR** during the performance of this agreement, are deemed and agreed by the parties to be necessary for the performance of **THE INDEPENDENT CONTRACTOR'S** usual activities, and therefore, pursuant to the provisions of Article 20 of Law 23 of 1982, as amended by Article 28 of Law 1450 of 2011, the economic rights derived therefrom shall belong to **THE CONTRACTING PARTY**.

**THIRTEENTH. TERMINATION.** This contract shall be terminated by agreement between the parties and unilaterally for breach of the obligations under the contract.

**FOURTEENTH. EARLY TERMINATION OF THE CONTRACT.** Notwithstanding the provisions of the preceding clause, **THE CONTRACTING PARTY** may terminate this contract at any time, giving **THE INDEPENDENT CONTRACTOR** written notice not less than \_\_\_\_ (\_\_) calendar days in advance, without being obliged to pay any amount as indemnification, except for the payment of the hours credited by **THE INDEPENDENT CONTRACTOR** for the corresponding monthly period, and without it being understood as a breach on its part.

**FIFTEENTH. EXPENSES AND TAXES.** The expenses and taxes required by the legalization and performance of this contract shall be borne by **THE INDEPENDENT CONTRACTOR**.

**SIXTEENTH. LAWFUL ACTIVITY.** **THE INDEPENDENT CONTRACTOR** expressly declares that it has no relationship whatsoever nor has it been involved in activities prohibited or qualified by law as criminal. In any case, **THE INDEPENDENT CONTRACTOR** irrevocably authorises **THE CONTRACTING PARTY** to make the verifications and investigations it deems necessary in this respect.

**SEVENTEENTH. PERSONAL DATA.** **THE INDEPENDENT CONTRACTOR** freely and voluntarily authorizes **THE CONTRACTING PARTY** to collect, use, transfer,







store, consult, consult and process (hereinafter "Process") the personal information that **THE INDEPENDENT CONTRACTOR** has provided to **THE CONTRACTING PARTY**, which is contained in the databases and files owned by **THE CONTRACTING PARTY**, for the necessary internal purposes, such as matters related to its identification document, identification number, nationality, country of residence, address, telephone, marital status, corporate and personal e-mail, fees, and bank account, in accordance with the provisions of Law 1581 of 2012.

**EIGHTEENTH. PROHIBITION OF ASSIGNMENT AND SUBCONTRACTING.** **THE INDEPENDENT CONTRACTOR** is prohibited from partially or totally assigning or commissioning the work to be performed and any other work that may cause damages to **THE CONTRACTING PARTY**, or subcontracting the same, unless expressly authorized in writing by **THE CONTRACTING PARTY**.

**NINETEENTH. INDEPENDENCE OF THE INDEPENDENT CONTRACTOR.** **THE INDEPENDENT CONTRACTOR** shall act on its own account, using its own means, assuming all risks, with absolute independence and autonomy; furthermore, it shall have no rights other than to demand the fees **THE CONTRACTING PARTY** agrees to pay under this contract.

**TWENTY. APPLICABLE LAW.** The parties accept and agree that this service contract shall be governed by the applicable Colombian law, notwithstanding that the **INDEPENDENT CONTRACTOR** may render its services from a different territory.

**TWENTY-FIRST. SUPERVISION.** In order to inspect, supervise and control the correct and timely performance of this contract, it has been agreed that **THE CONTRACTING PARTY** shall appoint the following supervisor or whoever the authorized person may define in his stead:

For all purposes, the following is appointed:

Name: \_\_\_\_\_.

Job Position: \_\_\_\_\_

E-mail: \_\_\_\_\_@\_\_\_\_\_.com

**TWENTY-SECOND. DOMICILE AND NOTICES.** For all legal and fiscal purposes, the parties agree to establish the city of \_\_\_\_\_ as the domicile of the present contract.

Notices shall be received by the parties at the following addresses:

By **THE CONTRACTING PARTY** at \_\_\_\_\_, in the city of \_\_\_\_\_ and by **THE INDEPENDENT CONTRACTOR** at \_\_\_\_\_, MOBILE: \_\_\_\_\_, in the city of \_\_\_\_\_.





In witness whereof, the present contract is signed at \_\_\_\_\_. on the \_\_\_\_\_ (XX) day of the month of \_\_\_\_\_ of the year two thousand \_\_\_\_\_ (202\_), in two copies of identical wording for each of the parties.

THE CONTRACTING PARTY

THE INDEPENDENT CONTRACTOR".





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