



**COUNTRY  
COMPARATIVE  
GUIDES 2023**

# The Legal 500 Country Comparative Guides

## Panama

# EMPLOYMENT AND LABOUR LAW

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This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Panama.

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# PANAMA

## EMPLOYMENT AND LABOUR LAW



### 1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

Generally, the employer requires a justified cause to lawfully terminate an employment relationship. If an employer decides to terminate an employee with more than two years of services, without cause, they will normally try to negotiate a mutual agreement termination, in which a compensation similar to the one applicable to unjust termination will be offered to the employee.

There are three types of just causes which empower the employer to terminate the employment relationship without severance.

First, the Labour Code sets forth 16 causes of disciplinary nature. Within this group, we may mention the following: (i) If the employee incurs, while on duty, in acts of violence, threats or ill treatment against the employer, his family, or members of the management of the undertaking or his fellow workmen, except in cases of self-defence; (ii) If the employee, without the authorization of his employer, discloses technical, commercial or industrial secrets or other information of a confidential nature which may cause damage to the employer; (iii) If the employee, while on duty commits serious dishonest or dishonourable actions or criminal acts against property to the detriment of the employer; (iv) If the employee fails to show for work, without permission from the employer or without justified cause, two Mondays during the course of a given month, six in a given year or three consecutive days or alternate days in any period of one month's employment.

The second group of just causes for termination by the employer contemplates situations of non-imputable nature, notably the following: (i) Properly verified mental or physical disability of the employee which makes it impossible for him to perform the work; (ii) The expiration of the term of one year, starting from the date

of suspension of the contract, due to illness or non-employment related accidents; (iii) Force majeure or Acts of God which involve as a necessary, immediate and direct consequence, the definitive stoppage of the employer's activities.

The third group consists of causes of an economic nature, namely the following:

- i. Insolvency or bankruptcy of the employer.
- ii. The closing of the enterprise or definite reduction of work because of notorious and evident unprofitability of the enterprise; and
- iii. Definitive suppression of work inherent to the worker's contract.
- iv. Evident reduction of the employers' activities due, for instance, to serious economic crisis, partial failure to meet operating costs due to a properly established decrease in production, innovations in the industrial process or revocation or lapse of an administrative concession, cancellation or decrease in sales orders, or any other similar cause duly verified by the competent authority.

As an exception, employers may terminate the employment relationship, without cause, if the employee has less than two years of service, in which case, the employer must give notice of the unjustified termination to the employee 30 days in advance or pay a sum equivalent to 30 days of salary, and, in addition, pay them a severance equal to 3.4 weeks of salary per each year of service or prorated.

Termination without cause of employees hired for a fixed term will require the payment of the salaries pending until the natural expiration of the contract as severance.

### 2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many

**employees need to be affected for the additional considerations to apply?**

The concept of redundancy is not contemplated in the Labour Code; therefore, terminations based on this cause will be considered as unjustified.

In this case, the employer may terminate employees with less than two years of service providing notice and paying severance, and in the case of employees with more than two years of service, offer mutual termination agreements with the payment of severance.

**3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?**

Termination of employment as a result or on in the context of a business sale would also be considered as unjustified and the same procedure applied to terminations in case of redundancies will apply in this case.

**4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?**

If the termination is with cause or it is a negotiated termination, there is no mandatory notice period to be given. In terminations of employees with less than two years of service 30 days of notice is required or payment in lieu of notice.

In Panama it is not customary to have contractual notice entitlements in excess of the minimum period.

**5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

Yes, it is possible to pay in lieu of notice. Notice is only required in terminations without cause of employees with less than two years of service.

Notice is not required in terminations for cause or negotiate terminations.

**6. Can an employer require a worker to be**

**on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

Although the concept of garden leave is not contemplated in the law, there are no provisions that would prevent the employer from requiring an employee to be on garden leave.

**7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

Notice of termination must always be in writing and must specify the reasons for termination. In the event of termination for economic reasons, the employer must obtain authorisation from the Ministry of Labour and prove prima facie the valid economic reasons for termination. If, after 60 calendar days have passed since the date when the employees were served with the authorisation request, the labour authorities have not ruled on the petition, the employer can proceed to execute the dismissals. In this instance, the employer shall nevertheless pay the dismissed employees severance.

Termination agreements must be expressed in writing and shall not involve the waiver of vested rights (accrued vacations, accrued XIII month bonus and seniority bonus).

**8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?**

If the prescribed procedures are not followed, termination may be considered as unjustified, and the employee may opt to a) request reinstatement to the job position or b) request payment of severance. In both cases, the employee may claim the payment of back salaries for up to three months for employees hired after August 1995 and up to five months for employees hired prior to August 1995.

In the event the employee is reinstated, the employer may still maintain the dismissal by paying severance and back salaries.

**9. How, if at all, are collective agreements relevant to the termination of employment?**

Collective agreements are not relevant to the termination of employment. What is relevant is if the employee that will be terminated has union immunity, for example, for being a member of the union board.

**10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

There is no requirement to request permission or inform a third party to validly terminate the employment relationship, unless termination is based on one of the economic reasons that justifies termination, in which case prior authorization of labour authorities is required. Failure to obtain said prior authorization will result in the termination being considered as unjustified.

**11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

Panama has created certain protections against discrimination or harassment against employees with a) chronic diseases, b) disabilities, or c) with disabled children. Protected employees may only be terminated with cause, prior authorization from the labour courts. An authorization process may take several months or even a few years to conclude, time during which the employee continues to hold their position and collect salaries.

**12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

Termination based on discrimination or harassment will be considered unjust; therefore, triggering the payment of severance. Labour courts will not recognize the payment of damages or any additional compensations other than legal severance.

Employees that seek payment of damages for discrimination or harassment suffered in the context of their employment being terminated, will have to claim

the payment of such damages in civil courts. The burden of proof will fall on the employee, who will have to prove the damage and quantify such damages.

**13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

There are other protections that would prevent the employer from terminating the employment relationship without previously obtaining the court's authorization to do so: a) employees with union immunity, b) employees with maternity immunity (during pregnancy and one year after expiration of the maternity leave), c) employees with paternity leave (three business days as of birth).

**14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

Yes, employees that have made disclosures in the public interest, specifically in relation to social security matters, are protected from termination of employment.

**15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?**

This situation is not contemplated in labour regulations, but in practice it will be possible to do so. For this to legally work it will be necessary to interrupt both employment relationships for a term that exceeds whatever the employee had accrued for unused vacations at the moment of termination of the first employment relationship.

**16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions?**

We do not foresee any risks associated with the use of artificial intelligence in the employer's recruitment or

termination decisions, unless, and in the particular case of termination, the decision to terminate the employment relationship is not based on a justified cause for termination, in which case the payment of severance is triggered.

**17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?**

Upon termination of the employment relationship employees are entitled to the payment of vested rights, regardless of the cause of termination.

Vested rights are accrued vacations and accrued XIII month bonus, and, in indefinite term relationships, seniority bonus.

Vacations are calculated as 30 days of salary for each 11 months of continuous work. Salary for this purpose will be the average monthly salary for the last eleven months including the payment of any bonuses, or the salary of the last 30 days, whichever is higher.

XIII month bonus is paid in three instalments on April 15, August 15 and December 15. Payment for each instalment is calculated based on the salaries earned by the employee since the payment of the last instalment divided by 12.

Seniority bonus is equal to one week of salary per each year of service or prorated. Salary for this purpose will be the average monthly salary for the last 5 years including the payment of bonuses.

In the case of unjust terminations, employees are entitled to the payment of severance. Severance is equal to 3.4 weeks of salary for each year of service during the first 10 years of service. Years of service after that are paid at one week of salary per year or prorated. Salary for this purpose will be the average monthly salary for the last 6 months or the salary of the last 30 days, whichever is higher.

**18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.**

Vested rights cannot be waived by the employee, but

severance can be negotiated.

There is no requirement to provide payment in return of non-disclosure or confidentiality clauses.

**19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

This type of restrictive covenants is not regulated in Panama and there are certain arguments that the same may restrict the individual from exercising their constitutional right to work or free commerce. Notwithstanding this, customarily, restrictive covenants are required from employees upon termination of employment and, although their enforceability is not certain, they act as psychological tools that dissuade the former employee from engaging in the restrictive activities.

**20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?**

Yes, it is possible and customary to require current and former employees to keep information relating to the employer as confidential.

**21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?**

There is no obligation to provide employment references to new employers.

**22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?**

Currently, the most common difficulties faced by employers when terminating employment are those related to the various protections preventing employers from terminating employees with a) chronic diseases, b) disabilities, c) with disabled children. These protections have been created to prevent discrimination in the work

place; however, employees are abusing the protections and demanding the payment of higher severances to agree to the termination of employment. This is possible because, even though the employer has a justified cause to terminate a protected employee, it requires a prior authorization from the labour courts, which may take several months and years in some cases, term during which the employee remains in their job position collecting salaries.

There is no clear or easy way to mitigate these situations, since the protections come into force once the probationary period expires, which under Panama law is a maximum of three months.

**23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**

We do not foresee any changes that would impact the way employers approach termination of employment. Current regulations have been in place for over 50 years and the only changes made, almost over 25 years ago, benefited the employer's position.

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