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Venezuela Employers Beware: New Regulations Establish Additional Wage and Hour Requirements

By Juan Carlos Varela

As of May 7, 2013, employers in Venezuela must comply with the new wage and hour law established one year ago under Venezuela's employment law reform act, known as the Organic Law of Labor and Workers¹ (the "LOTTT", for its Spanish acronym). The LOTTT imposed, among other important provisions, new restrictions for work hours and days of rest, and allowed for an implementation period of one year. Before this one-year window came to a close, Venezuela's new president, Nicolas Maduro Moros, approved new regulations on April 30, 2013 that expanded these restrictions. Given these new restrictions, employers should immediately implement changes to their practices to comply fully with the wage and hour law.

Key Wage and Hour Amendments to the LOTTT under the New Regulations

Workday and Days of Rest

Under the LOTTT, the workday is limited to eight hours and the workweek to 40 hours, to be worked over a five-day period, with two mandatory consecutive days of rest per week. For night shifts (work performed between 7 p.m. and 5 a.m.), the workday is limited to seven hours, the workweek to 35 hours, and the work must be compensated with premium pay of 30% over the wage paid to employees working during the day shift.

The new regulations establish that the two consecutive days of rest must include Sunday. This arrangement necessarily requires the days of rest to fall either on Saturdays and Sundays, or Sundays and Mondays.

The regulations allow for the following two exceptions to this rule:

1. **Companies with Uninterrupted Operations (Art. 185 of the LOTTT).** By private agreement between the employer and the employees or their union, one of the days of rest may fall on a day other than Sunday for companies whose operations cannot be interrupted due to public interest concerns, technical reasons, or other special circumstances, except that the two alternate days of rest must always be consecutive.

¹ Ley Orgánica del Trabajo, Las Trabajadoras y los Trabajadores, decree No. 8.938, published in Gaceta Oficial de la República Bolivariana de Venezuela, No. 6.076, on May 7, 2012.

Operations that qualify under this category provide services in various industries, including telecommunications, energy, hospital, pharmacy, public transportation, hospitality, restaurant, food, and entertainment.

2. **Companies with Continuous Shifts (Art. 176 of the LOTTT).** One of the two mandatory days of rest can be fixed on a day other than Sunday and need not be consecutive for companies that require 24-hour operation through continuous shifts. When the employee is required to work a six-day workweek, the employee must be compensated by receiving an additional paid vacation day in lieu of the day of rest.

For both of these exceptions, the work performed on a Sunday must be paid at a premium.

Overtime Restrictions

Under the LOTTT, overtime work can be performed only by previous authorization, or via a subsequent notification in cases of emergency or unforeseen circumstances. The new regulations establish that the Ministry of Labor may modify the overtime limit or authorize overtime for employees working in the healthcare industry or providing essential services where overtime is required on a regular basis due to the specialized technical or professional nature of the job. Employers must report annually to the Ministry of Labor all overtime work performed by each employee during the year.

The Ministry of Labor, in consultation with the relevant trade union organizations, must approve or deny requests for overtime modification within 48 hours of receipt.

Fluctuating Workweek Overtime Allowed for Various Industries

Under Article 6 of the new regulations, the workday may be extended to 10 hours when an employee's time fluctuates from week to week due to the nature of the employer's industry, as long as the total number of hours worked during an eight-week period does not exceed the average of hours worked by the general workforce. Fluctuating workweeks are allowed for industries whose volume of work substantially increases during certain seasons of the year. Generally, companies engaged in activities for tourism, agriculture, or other seasonal work qualify under this rule.

Fluctuating workweek overtime can be authorized if:

- The request identifies the employees who will work in a given season;
- The collective bargaining agreement, if any, authorizes such modification to the workday;
- The employees do not work more than two seasons during a one-year period; and
- The workday is limited to 10 hours, during which the employees will be entitled to a meal and rest period of one hour.

Special Modifications to the Workday and Workweek

Article 175 of the LOTTT allows special modifications to be made to the regular workday and workweek in particular circumstances and by private agreement between the employer and the employee. Notwithstanding such agreement:

- The workday is limited to 11 hours, during which the employee will be entitled to a meal and rest period of one hour;
- The employee will be entitled to two consecutive days of rest for each seven-day period; and
- The total number of hours worked during an eight-week period cannot exceed an average of 40 hours per week.

The private agreement must be filed with the Ministry of Labor for approval.

Meal and Rest Periods

Employees are entitled to a meal and rest period for every five hours worked. This period can be divided into equal parts under a private agreement between the employer and the employee.

Compensation for Working on a Day of Rest or Holiday

When work is performed during one or both of the mandatory days of rest, the employee will be entitled to enjoy that same number of days of rest during the following week, in addition to the days of rest that would already be mandatory for that following week. If work is performed on a holiday, employees will be entitled to premium pay even though they will not be entitled to take that day of rest on another day.

Posting Requirements

The daily work schedules must be conspicuously posted in the workplace, identifying the days of rest and the meal and rest periods required under the law.

Final Recommendations

Companies with operations in Venezuela or with employees performing some work in Venezuela should consult with knowledgeable employment law counsel to determine whether their practices fully comply with these new wage and hour requirements. As part of any compliance-related effort, employers should review their policies and train their payroll staff to manage any modifications to the statutory workday and workweek rules. As the new amendments to the wage and hour provisions became effective on May 7, 2013, employers are advised to seek legal counsel as promptly as practicable to avoid any penalties.

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