

Argentina

Introduction

Constitution Of The Argentine Republic

Section 14 of the Argentine Constitution establishes that all employees are entitled to associate themselves for lawful and useful purposes. Additionally, a 1957 amendment to the Constitution, incorporated into section 14, guarantees all workers “a free and democratic union organization by the mere registration with a special registry,” and further guarantees all unions the power to enter into collective bargaining agreements, to resort to settlement and arbitration proceedings, and to strike. The Constitution also guarantees union representatives the right to fulfill their duties as such and those related to the stability of their employment.

Additional Regulations

In addition to the Constitution, Argentina has several regulations that govern trade organizations and unions, as well as laws regulating workers’ collective rights and the relationships between employers and trade unions, including:

- **The Labor Organizations Law (No. 23,551):** The Labor Organizations Law regulates all matters related to the creation, operation, rights, and duties of workers’ associations, and the acknowledgment of their legal capacity as unions by the Ministry of Labor. Moreover, it establishes the rights and guarantees enjoyed by the union legal representatives and union delegates.
- **The Collective Bargaining Agreement Law (No. 14,250):** The Collective Bargaining Agreement Law governs all matters related to the execution, content, and application of collective bargaining agreements.
- **The Collective Negotiation Procedure Law (No. 23,546):** This law establishes a compulsory obligation to be followed by employers and unions in order to execute a collective bargaining agreement. The negotiation process begins with a communication from one of the parties (the union of the employers) to the Ministry of Labor and to the other party on the personnel and territory that is going to be covered by the collective bargaining agreement. A commission with representatives of both parties is then created in order to negotiate. The Ministry of Labor must approve the agreement in order for it to be enforceable.

The Mandatory Settlement Law (No. 14,786): This law establishes the mandatory settlement procedure that employers and unions must follow before adopting any direct measures, such as strikes, lock-outs, etc. The Ministry of Labor can order that either party take back the measure that led to the conflict during the negotiations.

Trade Unions

The General Role Of The Trade Union

Section 14 of the Argentine Constitution gives workers the right to associate on a free and democratic basis, which is acknowledged upon registration with a special register. Law No. 23,551 regulates this constitutional right and creates two kinds of trade union organizations: (i) registered workers' associations and (ii) registered workers' associations with "exclusive recognition."

Law 23,551 also establishes the requirements that workers must meet in order to create and register worker associations. To create an association, workers must:

1. Group themselves exclusively under the terms prescribed by law (i.e., they may only associate themselves to create an association of workers of the same occupation, rank, craft, or profession);
2. Adopt a bylaw that meets all the requirements prescribed by law in order to ensure that the association operates as a democratic organization;
3. Determine a specific jurisdiction within the Argentine Republic; and,
4. Register with the Ministry of Labor.

Law 23,551 authorizes plurality of workers' associations for the same category of workers, but it provides that only one of them may be granted "exclusive recognition" by the Ministry of Labor, which gives that association the exclusive right to be the representative of workers in a certain area or activity. In other words, several registered associations representing the same occupation, craft, rank, or profession of workers may exist, but only the most representative may have the government's authorization to represent all the workers of that same occupation, craft, rank, or profession vis-à-vis the employers.

In order to obtain this exclusive recognition, a workers' association must: (i) become the most representative of all the unions; (ii) be registered and have operated as such for a period longer than six months; and (iii) gather more than 20% of all the workers intended to be represented by it.

The Argentine system providing for exclusive recognition has been seriously criticized because it arguably contradicts the Argentine Constitution, which confers on workers the right to associate and freedom of choice. The system of exclusive recognition seriously restricts the power of registered workers' associations without such recognition in exercising typical union rights.

In practice, the system of exclusive recognition makes the principle of freedom of choice for trade unions unenforceable because workers' associations that are not exclusively recognized have no real power because:

- They cannot negotiate collective agreements;
- They cannot plan and call strikes;
- They cannot fix union contributions from the members of the represented activity, profession, occupation, or craft (although not affiliated);
- They cannot collect through check-off contributions;
- They cannot agree with employers within the collective bargaining agreement on contributions from employers to the union;
- They cannot create and manage the mandatory health and medical organizations for blue-collar workers; and,
- They cannot control the fulfillment of labor and social security laws.

Besides the typical function of all the associations, those with exclusive recognition have the duty to represent and defend the interests of the workers against the employer and the government.

Therefore, workers' associations with exclusive recognition have exclusive rights that cannot be exercised by other associations. Unions with exclusive recognition also have higher political power because they are empowered to negotiate in the name of the activity they represent. Further, only unions with exclusive recognition can exercise the right to strike. Although the right to strike is guaranteed by the Argentine Constitution to all workers' associations, the law regulating this right only allows exclusively recognized unions to enjoy it, thereby causing some concern that the law is unconstitutional.

They also have a preferred financial condition, given by their power to manage the health care provider of the pertinent activity and by the possibility of imposing

mandatory contributions on all the employees of the activity, regardless of whether or not they are members of that union. This power to impose contributions has been seriously objected to, but, at present, judicial opinions have supported it.

From a political and economical viewpoint, this preferential situation places any other trade union seeking to contend for exclusive recognition with a recognized union at a severe disadvantage. In fact, the procedure required by law to try to obtain exclusive recognition makes it almost impossible for contestant unions to replace those with exclusive recognition.

The system of exclusive recognition has also been deemed to infringe Agreement No. 87 of the International Labor Organization (ILO) on the freedom of trade unions. The Experts' Commission of the ILO has determined that, in order to avoid abuse of the system, the representative capacity of trade unions must be determined according to previously established, objective criteria. Moreover, the Commission has set out certain guarantees that must be complied with in these cases, such as the right of any organization that could not obtain enough votes in a previous election to request a new vote after the expiration of a certain period or the right of a new trade union to request a new vote after the expiration of a reasonable term. Law 23,551 relies on objective criteria to determine representation, but does not meet the guarantees required by the Experts' Commission.

Workers' associations (with or without exclusive recognition) may be classified as a first-, second-, or third-degree organization. First-degree labor organizations are those created by employees of the represented activity, profession, occupation, category, or craft. In Argentina, there are two kinds of first-degree organizations: "*sindicatos*," which are first-degree trade organizations with a restricted territorial scope (e.g., within a province), and "*uniones*," first-degree labor organizations with national representation and regional offices or delegations in the different jurisdictions.

Second-degree organizations, called "federations" (*federaciones*), are composed of *sindicatos*; third-degree trade unions, called "confederations" (*confederaciones*), are unions formed by the federations, non-federated trade unions (*sindicatos no-federados*), and *uniones*. In Argentina, at present, only the General Labor Confederation (*Confederación General del Trabajo* or "CGT") is deemed an exclusively recognized confederation empowered to validly represent the federations, non-federated trade unions, and *uniones*.

The Scope Of Trade Union Rights In Businesses

Argentine law does not contain any provisions granting special powers to workers' associations to take part in the business of a company or for the creation of joint administration councils. There are, however, rules granting exclusively recognized workers' associations the right to be informed about certain aspects of the business related to the professional training of the workers and to all matters necessary to perform an appropriate collective negotiation.

The Function Of Trade Union Representatives

The managing and administrative bodies of the workers' associations have a minimum of five members, to be chosen by a direct and secret vote of the affiliates. To be eligible for election, candidates must: (i) have no criminal or civil disqualifications; (ii) have been affiliated for a minimum term of two years; (iii) have rendered services in said occupation, craft, profession, or activity for two years; and (iv) be at least 18 years old.

The primary duty of the representatives of workers' associations is to administer, manage, and conduct the association. Representatives of exclusively recognized workers' associations are also lawfully authorized to exercise, in the name of the association, all the rights granted by the laws (e.g., to enter into collective bargaining agreements).

Union delegates are workers elected to represent exclusively recognized workers' associations inside a company. Delegates and the exclusively recognized workers' associations have a permanent and direct relationship. However, once elected as such, delegates must continue rendering their regular services to the company.

Delegates may act as official spokesmen of the workers in front of the employer, but they do not officially represent the workers (they may not sign any document in their name), nor can they enter into collective bargaining agreements. Only the exclusively recognized workers' association may legally represent all workers of the activity. However, pursuant to recent modifications to the laws governing collective bargaining agreements, delegates will be able to take part jointly with the representatives of the exclusively recognized workers' association in the negotiation process of a company's new collective bargaining agreement. Additionally, delegates may verify fulfillment of the legal or conventional rules and participate in the inspections ordered by the labor administrative authority.

Delegates are also entitled to hold periodic meetings with their employers or employers' representatives. Moreover, delegates are entitled to a certain number of monthly paid hours off, established in the collective bargaining agreement, in order to fulfill their duties.

There are no provisions in Argentine law allowing delegates to participate in the management of companies.

In order to be elected as union delegates, workers must have been affiliated with the exclusively recognized workers' association for at least one year, be at least 18 years old, and must have rendered services for the company in which they are to be appointed for at least one year.

The election of the delegates is held during a primary election called by the workers' association through a direct and secret vote of the employees intended to be represented. The elections are to be held at least 10 days before the expiration of the term of office held by the previous delegate. Notice of the election must be given to the workers 10 days in advance of the election.

Unless the collective bargaining agreement provides otherwise, delegates must represent a minimum of 10 employees. Two delegates may be appointed when the number of employees to be represented is between 51 and 100; and, when the number of employees to be represented is more than 100, one more delegate for each additional 100 employees may be appointed. Establishments having more than one work shift can also appoint at least one delegate per shift.

Exclusively recognized workers' associations are authorized to revoke the representation of delegates at their own initiative or at the request of 10% of the total number of represented workers.

Works Councils

There are no provisions in Argentine law for Works Councils.

Trade Union Employee Protection Rights

During the term of representation, traditional relationships between employers and representatives are suspended. Unless for a fair cause, representatives cannot be dismissed while holding their terms and for up to one year after the expiration of the term.

In addition, delegates may not be suspended from their work, their labor conditions may not be modified, and they may not be made redundant or dismissed during their terms of representation and up to one year after the expiration of the term. This protection is also extended to candidates – from the date the employee is nominated for the position and after the expiration of six terms subsequent to this nomination.

In order to dismiss, suspend, or modify the work conditions of delegates, candidates, or representatives, employers must file a legal action requesting the exclusion of the special protection in court. The employer's dismissal, suspension, or modification of employment conditions without previously filing this action in court empowers the delegates, candidates or representatives (as the case may be) to request the judge to reinstate them in their position and (in the case of delegates and candidates) to pay them all unpaid wages since their separation from the company, or, if appropriate, they may request the re-establishment of their modified employment conditions. Should employers refuse to reinstate the position or reestablish the employment conditions ordered by the judge, they shall be subject to fines until the final performance of the judicial order and during the whole term of office of the representative, delegate, or candidate.

Law 23,551 authorizes representatives and delegates (but not candidates) to either file the pertinent actions in court requesting reinstatement or re-establishment of their employment conditions or else consider themselves dismissed. In the last case, they are entitled to receive, in addition to the ordinary compensation for unfair dismissal, compensation equivalent to all the wages they would have received until the termination of their employment, plus the amount corresponding to one additional year of wages.

Argentine law provides for specific sanctions against employers that affect or impede the normal exercise of any union rights. The labor courts may impose these sanctions after following a special procedure, whenever the union, the delegate, or any worker files the pertinent action. The amount of the fine is up to the Ministry of Labor.

This special protection mechanism is intended to dissuade employers from any interference with union rights, such as the employer providing a subsidy to the union, an employer's unfair refusal to negotiate with the union, or an employer promoting or discouraging workers' affiliation with the union.