

Colombia

Introduction

In Colombia, the Second Section of Law 141, 1961 (the Labor Code) regulates collective employment relations within the principles and guidelines established in Articles 39, 55, 56, and 57, among others, of the 1991 Constitution. The Second Section of the Labor Code develops the principles to be applied in labor relations of a collective nature (e.g., association rights, collective bargaining, etc.).

Based on the freedom of association principle, in Colombia all employees have the right to form or join professional organizations working towards the defense of their rights and interests. Employees also have the right to retire from the unions at any time.

The constitutional legislation incorporates Agreement No. 87 of the International Labor Organization (ILO) regarding the right of employers and employees to constitute the organizations they deem convenient, as well as affiliating with these organizations. In addition, organizations of employees and employers are entitled to draft their administrative statutes and regulations, elect freely their representatives, and organize their management and activities.

In Colombia, private sector unions are weak. The tendency has been to reduce affiliations due to a series of factors, including the high rates of unemployment in Colombia and recent labor reforms liberalizing the terms and conditions of employment.

Trade Unions

Under Colombian collective law, trade unions may be composed by employees belonging to a company, industry, or a guild of varied occupations. The company union is the most common because it is formed by persons of different professions, jobs, or specialties rendering services to the same company or institution.

Trade unions of varied occupations can be constituted only in places where there are no other workers that perform the same activity, profession, or occupation in the minimum number required to constitute a guild union, and only while this condition persists.

The industry unions are those formed by workers belonging to the same industry but hired by different employers. Usually, these unions have national coverage and have active participation in the country's politics. The industries in Colombia with the strongest unions are oil, tobacco, metal, electrical, and textile industries. The public sector also has well-organized unions, such as the telecommunications sector.

Trade unions cannot have as their purpose the exploitation of businesses or activities with profit-making aims.

Constitution Of The Trade Union

In order for a trade union to exist, it must have at least 25 affiliated employees. To become part of a union, employees must be at least 14 years old and performing a labor-related activity. These requirements must be certified at the initial constitution meeting executed with the intent to become unionized employees, for which the employees shall sign a foundation minute. The foundation minute is one of the requirements that must be fulfilled to register the trade union before the Ministry of Social Protection.

Once the constitution assembly has been held, the employees must inform their employer and the Ministry of Social Protection about the constitution of the trade union, stating the names and identification of each one of its founders. This communication is a formality that must be met on a timely basis in order for the constitution act and the union privileges to take effect. However, the omission of delivering this communication neither invalidates the foundation of the union nor obstructs its registry.

In the assembly of constitution or in future meetings, the statutes of the trade union must be discussed and approved and the directive personnel of the union must be appointed. Minutes must be subscribed in order to evidence the approval of the statutes and the election of union directives.

Pursuant to the constitution assembly, the trade union will automatically have legal capacity. However, in order for the unions to act validly before third parties, they shall register before the Ministry of Social Protection. This registration must be performed within the next five business days counted from the constitution assembly. Legislation does not establish any legal consequences if the registration is not performed in this timeframe. Once the request for the registration is received, the Ministry of Social Protection will have 15 business days to admit or deny its registration.

Employees can constitute and be members of more than one company union; furthermore, they can be affiliated with different unions of the same classification or activity. From the employer's perspective, such situation, in practice, may represent an increase in union privileges. However, in the long term, union organizations may weaken as they proliferate.

Traditionally, Colombian regulations prohibited multiple affiliations with unions of the same classification or activity. Per ruling C-797 dated June 29, 2000, the Constitutional Court declared that the provisions containing such limitations were unconstitutional, as they threatened the union association right of employees.

Decree 2351 of 1965, which amended the Colombian Labor Code, prohibited the coexistence of more than one base union within the same company. However, such prohibition was also declared unconstitutional by decision C-567 dated May 17, 2000. In this case, the Constitutional Court considered that the employee's right to constitute union organizations as well as their effective enjoyment of union freedom was being limited.

The General Role Of The Trade Unions

The general role of trade unions in Colombia is to protect the affiliated employees' labor rights and ensure better economical and employment conditions for the employees and their families.

Unions represent the employees' rights and needs before their employer. Before 2008, the Colombian Labor Code provided that when, within a single enterprise, a base or company trade union coexisted with an industry or guild union, the representation of the employees for the collective bargaining agreement would be the union with the majority of the workers of that company. Per ruling C-063 dated January 30, 2008, the Constitutional Court declared that this provision was unconstitutional, as it unreasonably and disproportionately limited the collective bargaining or negotiation right for minority trade unions. Therefore, all the unions related to the enterprise are allowed to participate in the negotiation process.

In addition, law has provided the following roles to the trade unions:

1. Study the characteristics of the respective profession and wages, benefits, fees, or protection systems to prevent accidents and other working conditions relating to their affiliated employees to pursue their improvement and their defense.

2. Propel the rapprochement between employers and workers on the bases of justice, mutual respect, and subordination to the law.
3. Execute collective bargaining agreements and union contracts, ensure compliance by their members, and exercise the rights and actions that arise from them.
4. Advise affiliated employees in defending the rights derived from their labor contracts or their professional activities, and represent them before the administrative authorities, employers, or third parties.
5. Represent in court or before any authorities or agencies the common economic interests of the general association or the respective profession, and represent those interests before the employers and third parties in the event of collective conflicts that could not be resolved by direct settlement, by seeking conciliation.
6. Promote technical education and general members.
7. Provide relief to members in case of unemployment, sickness, disability, or calamity.
8. Promote the development of cooperatives, savings banks, loans and mutual aid, schools, libraries, technical institutes, placement offices, hospitals, field trials or sports, and other appropriate agencies for professional, cultural, and solidarity purposes established in the statutes of the union.
9. Be intermediaries for the purchase and distribution of consumer goods, raw materials, and working elements.
10. Acquire and hold title to any property and furniture required for the exercise of all activities.

The Scope Of Trade Union Rights In Businesses

Unions are authorized by law to enter into collective bargains on behalf of the employees affiliated with the union. By means of bargaining agreement unionized employees negotiate with their employers greater labor benefits for them and for their families. No more than one collective bargaining may exist in each company. In addition to the provisions agreed upon between the parties, the collective bargaining agreement must indicate the enterprise or establishment, industry and

trades covered, the place or places where it is to govern, the date on which it takes effect, its duration, the causes and methods of its renewal and termination, and the responsibility for nonperformance.

The collective bargaining agreement must be in writing and produced in as many copies as the number of the parties, plus one, to be deposited with the Ministry of Social Protection. The bargaining agreement shall be invalid until these formalities are complied with.

Collective bargaining between employers and labor unions whose members do not exceed one-third of the total number of workers of the given enterprise is applicable only to members of the union which executed the bargaining and to those who adhere thereto or subsequently become members of that union. When one of the parties to the bargaining is a union whose members exceed one-third of the total number of workers of the given enterprise, the provisions of the bargaining extend to all workers of the enterprise, whether unionized or not.

Within 60 days prior to the date of expiration of the collective labor convention, either party can propose a date for the collective negotiation by submitting a petition sheet with the proposed stipulations for the new bargaining agreement (this is commonly known as “denunciation” of the collective labor convention).

With such denunciation, the collective conflict commences with three representatives appointed by the union and by the employer company that shall enter into discussions within the five days following the presentation of the petition sheet. This negotiation stage is called “direct agreement;” and its duration is 20 calendar days, which may be extended upon mutual consent of the parties up to another 20 calendar days. If the parties reach an agreement, they must record it as the new text of the collective bargaining agreement, therefore terminating the collective conflict.

When differences continue after conclusion of the direct arrangement stage, the employees may opt to declare a strike or to submit their differences to arbitration.

Works Councils

In Colombia, Works Councils do not exist.

Enforcement Issues

Trade unions cannot directly or indirectly restrict freedom of work. It is forbidden for trade unions of all kinds to:

1. Directly or indirectly compel workers to join the union or retire from it, except in cases of expulsion on grounds provided for in the statutes and fully proved.
2. Invest any social funds or assets on purposes which are different from those of the association or if, even if invested for these purposes, involve expenditures or investments that have not been duly authorized in the manner provided by law or the statutes.
3. Promote cease or stoppages at work, except in cases of strike in accordance with the law and of strike attributable to the employer for breach of obligations towards its workers.
4. Promote or support campaigns or movements designed to de facto ignore collectively, or particularly by the members, the legal precepts or acts of a legitimate authority.
5. Recommend or sponsor any act of violence against the authorities or in prejudice of employers or third parties.

Sanctions for the above-mentioned breaches are as follows: (i) if the breach is attributable to the same union, constitutes an act of their directives, and the infringement has not been consummated, the Ministry of Social Protection will force the union to reverse its determination; (ii) if the offence has been committed already or if the order to avoid the offence was not obeyed, the Ministry of Social Protection will proceed to impose fines equivalent to the amount of one to 50 times the minimum monthly legal wage; or (iii) if despite the fine, the union persists in the violation, the Ministry of Social Protection can apply to a labor court to dissolve and liquidate the union, and cancel the registration of the association.

Applications for dissolution, liquidation, and cancellation of registration of association must be made before the labor judge in the domicile of the labor union, according to the following procedure: (i) the request made by the Ministry of Social Protection should present a statement of facts and evidence that supports the facts; (ii) once the request is received, the judge, no later than the next day, shall notify the trade union; (iii) the union, after notification, has five days to answer the demands and

submit evidence deemed relevant; (iv) the judge will rule on the evidence within five days; and (v) the judge's decision may be appealed before Superior Court, which must decide within five days after receiving the process.

If the act or omission is attributable to any of the directors or members of the union, and has committed the act or omission in his or her capacity as such, the Ministry of Social Protection will notify the union to implement disciplinary sanctions provided for in the statutes. After expiration of the term specified in the order of the Ministry of Social Protection, which shall not exceed one month, without penalties, it is understood that there is a breach of the union.

Trade Union Employee Protection Rights

Union Leaves

Unions leaves are part of the guarantees of employees establishes by law to ensure the proper management by the union representatives. For employees of the private sector, the union leaves are established from two perspectives: as an obligation of employers in execution of the labor contract and as a mean to allow the performance of the activities related to the management of the trade unions. The union leaves can be created or agreed through collective bargaining. When the conflict between the union and employers is decided by Arbitration Court, the arbitrator can create union leaves, if and only if, they do not have the nature of permanent leaves.

For public employees, the law does not authorize the granting of union leaves.

Privileges

Colombian labor laws provide that employers cannot unilaterally terminate employees based upon their trade union membership. Union privilege is the guarantee of employees to have labor stability, and to impede dismissal, diminishment of labor conditions, or transference to other facilities or a different place of work, without a just cause qualified by a labor judge.

There are several types of union privileges for founders or directors of a union. Founders are guaranteed labor stability from the day of constitution of the union until two months after its registration (which cannot exceed six months). Directors are guaranteed labor stability for the term of their appointment plus six months, which applies to the following employees: (i) the principal and alternate members

of the board of members and vice-directors of any trade union, up to a maximum number of five principals and five alternates; and (ii) one principal and one alternative member of the sectional committee.

There is a special union privilege called “circumstantial,” which protects the employees presenting the petition sheet (unionized employees and beneficiaries). In these cases, the protected employees cannot be dismissed without just cause during the period of presentation of the petition sheet until the termination of the collective conflict.

Colombian labor law provides a special labor proceeding, through which employers request authorization from the labor judge to terminate the employment agreement of these protected employees with just cause. If an employee with union privilege is dismissed without authorization from the labor authority, termination of employment has no legal effect, and the employer will be obliged to reinstate the employee with the payment of salaries and social benefits owed for the period of unemployment.

Strikes

Article 56 of the Colombian Constitution recognizes the right to strike as fundamental. Employers are not permitted to use strike-breakers.

Only in cases expressly excluded by law will a strike be deemed illegal (possibly resulting in the dismissal of union officers), including the following:

- When incurred in essential public service entities.
- When it pursues purposes other than professional or economic ones.
- When the stages to legally vote for a strike have not been complied with.
- When it exceeds the legal term or duration.
- When it is not limited to the peaceful suspension of work.
- When it demands from the authorities the execution of some act which falls within the union’s functions.

Pursuant to Article 429 of the Colombian Labor Code, a strike is defined as a collective, temporary, and pacific suspension of work, by the workers of an establishment or enterprise, for economic and professional purposes, proposed to their employers, and following the legal procedure to invoke it.

Currently, the right to strike in Colombia is mainly determined by the existence of a collective conflict. The date (or stage) of the strike must be decided by the union members within 10 days following the failure to resolve the issues after negotiations in accordance with the procedure set forth under the law.

The decision to go on strike requires the affirmative vote of the majority of the employees of the given enterprise (or of the union members when such members make up more than half of the employees of the given enterprise). Strikes are only legal if they begin two to 10 days from the date of the resolution authorizing a strike.

The Ministry of Social Protection and the President can intervene in disputes through compulsory arbitration when the strike is declared illegal or exceeds 60 calendar days.