

Venezuela

Introduction

Article 95 of the Constitution of the Bolivarian Republic of Venezuela of 1999 (the “Constitution”) sets forth the freedom of unionization as a constitutional right of the employees, without distinctions and without previous authorization, to freely constitute the union organizations that they deem convenient for the defense of their rights and interests, as well as the right to join or not to join said organizations, in accordance with the law. The Constitution further provides that union organizations will not be subject to administrative intervention, suspension, or dissolution and that employees are protected against any interference or discrimination activity which is contrary to the exercise of this right.

In 1982 Venezuela ratified Convention 87 on the Freedom of Association and Protection of the Right to Organize (“Convention 87”), issued at the International Labor Organization (ILO). Convention 87 guarantees the right by both workers and employers, without distinction, to establish and, subject only to the rules of the corresponding organization, join organizations of their own choosing without previous authorization. It further provides that: (i) workers and employers’ organizations shall have the right to set forth their constitutions and rules, elect their representatives in full freedom, and organize their administration and activities and formulate their programs; (ii) public authorities shall refrain from restricting or impeding the lawful exercise of this right; and (iii) workers and employers’ organizations may not be dissolved or suspended by administrative authorities. Furthermore, in 1968 Venezuela ratified Convention 98 on the Right to Organize and Collective Bargaining (“Convention 98”), also issued at the ILO. Convention 98 sets forth the right by workers to enjoy protection against anti-union discrimination activities in respect of their employment; in particular, it provides that: (i) workers’ employment may not be subject to the condition that the worker refrain from joining a union or that the worker separates from a union; and (ii) workers are to be protected against dismissal or other prejudice by reason of union membership or participation in union activities. Convention 98 further provides that workers and employers’ organizations must be protected against any acts of interference by each other or each other’s agents or members in their establishment, functioning, or administration. Acts designed to promote the establishment of workers’ organizations under the domination of employers or

employers' organizations, or to support workers' organizations by financial or other means in order to place said organizations under the control of employers or employers' organizations, are deemed to constitute acts of interference.

According to Article 23 of the Constitution, treaties, pacts, and conventions relative to human rights, signed and ratified by Venezuela: (i) have constitutional hierarchy and prevail internally to the extent they contain provisions relating to their exercise and enjoyment which are more favorable than those provided for in the Constitution and the law of Venezuela; and (ii) are of immediate application by the courts and other public entities.

Trade Unions

Types of Unions

In Venezuela, the Organic Labor Law of 1997 (the "OLL") and its Regulations of 2006 (the "OLL Regulations") are the main pieces of legislation governing unionization.

According to the OLL, unions in Venezuela are voluntary organizations classified as worker unions and employer unions. In turn, worker unions or trade unions are classified as follows:

1. Company unions, those which organize workers of a given company or firm;
2. Professional unions, those which organize workers of a specific profession or occupation;
3. Industrial unions, those which organize workers of a specific type of industry; and
4. Sector unions, those which organize workers of a specific commercial, agricultural, production, or service sector.

Company unions may be formed with 20 or more workers providing services for the same employer; professional unions may be formed with 40 or more workers providing services in the same profession or occupation or in similar or related professions or occupations; industry unions may be formed with 40 or more workers providing services for companies of the same industry; and sector unions may be formed with 40 or more workers providing services for companies in the same sector. When trade unions are to have a regional or national character, they

must be formed with 150 or more workers. Finally, independent workers may also join already existing professional, industry, or sector unions, and may organize their own unions with 100 or more independent workers. According to Article 40 of the OLL, independent workers are those who work without being in a situation of dependency with respect to one or more employers.

Unions are free to form federations, and federations may organize confederations. Five or more unions may form a federation, and three or more federations may form a confederation. Union federations and confederations may represent the organizations that integrate them, and have the same rights and powers corresponding to unions with respect to their members.

The General Role Of The Trade Union

According to the OLL, trade unions generally have, among others, the following purposes: (i) protect and defend the professional or general interests of their members before public authorities and entities; (ii) represent their members in collective bargaining and conflicts, and specially in arbitral and conciliation proceedings; (iii) promote, negotiate, enter into, review, and modify collective bargaining agreements and request their enforcement; (iv) represent and defend their members and workers who so request even if they are not members, in the exercise of their rights and interests in administrative proceedings relating to them, in judicial proceedings without prejudice to the need to comply with all requirements for judicial representation, and in their relationships with their employer; (v) monitor compliance with provisions protecting the workers, especially pre-vision, social, and hygiene provisions; prevention, conditions, and work environment provisions; provisions on the construction of housing for the workers; and provisions relating to the creation and maintenance of social services and healthy and improvement activities during free time; and, among others, (vi) those provided for in their by-laws or resolved upon by their members, for the better achievement of their purposes.

Constitution Of The Trade Union

Trade unions are required to organize by registering themselves with the competent Labor Inspector's Office of the Ministry of the People's Power for Labor and Social Security (the "Ministry of Labor"). In order to do so, they must request their registration and enclose to their petition a copy of their Articles of Association, a copy of their by-laws, and the list of founding members, all signed by the Board

of Directors. Workers organizing a union in a number sufficient to do so are protected against dismissal, deterioration of work conditions, and transfers immediately upon their filing with the Labor Inspector's Office of a document signed by them manifesting their desire to form a union. Any workers who subsequent to that manifest their intent to adhere to the formation of the union, will also be protected against dismissal, deterioration of work conditions, and transfers immediately upon their filing with the Labor Inspector's Office of a document notifying their adhesion. This protection is to last until 10 days after the registration or denial or registration of the union, but in any event cannot extend for more than three months. Workers who manifested their intent to form a union must file with the Labor Inspector's Office their formal request to register the union in formation, together with the corresponding documents, within the 30 days following the filing of their intent.

Within the 30 days following receipt of the workers' request for registration of the union, the Labor Inspector must register the union if all documents are in compliance with the legal requirements. If any requirement is missing, the Labor Inspector must notify the workers to allow them to cure the defect or provide the missing requirement within 30 days. If they fail to cure the defect or provide the missing requirement, the Labor Inspector will refrain from registering the union. Certain appeals may be exercised against this decision. The Labor Inspector may refrain from registering the union only in the following cases: (i) if the union does not have as its purposes the ones provided for in the OLL; (ii) if the union has not been formed with the number of members provided for in the OLL; (iii) if the documents that must be attached to the registration petition are not attached or present deficiencies or omissions; and (iv) if the union to be registered is to have the same name of another union that has been already registered, or if the name of the union to be registered is so similar to that of another registered union that the similar names could induce confusion.

The union will acquire legal existence for all purposes of the OLL when registered with the Labor Inspector's Office.

The Scope Of Trade Union Rights In Businesses

As indicated before, trade unions may negotiate collective bargaining agreements (*convenciones colectivas de trabajo*). As a matter of fact, according to the OLL, trade unions are the only type of workers' organizations that may enter into collective bargaining agreements. Coalitions of workers, which are temporary associations

of workers for the defense of their rights and interests, may not negotiate collective bargaining agreements but collective accords (*acuerdos colectivos*). According to the OLL Regulations, the existence of a collective accord may not impede the negotiation of a collective bargaining agreement. However, under certain conditions, the existence of a collective bargaining agreement will impede the successful processing of a collective bargaining agreement petition against the same employer.

For trade unions to be able to force the employer to negotiate a collective bargaining agreement at a decentralized level, they must have the support of the absolute majority of the workers interested in the negotiation. In addition, there are certain legal provisions under which the Ministry of Labor may call for a Regulatory Labor Meeting (*reunión normativa laboral*) or collective bargaining negotiation involving a sector of activity at a local, regional, or national level. The majority of the employers and workers of said sector activity must be involved in order for the Regulatory Labor Meeting to be validly called for.

The Function Of Trade Union Representatives

Members of the unions' board of directors or union directors (*directivos sindicales*), are entitled to represent the union and to negotiate during the collective bargaining process. However, collective bargaining, collective conflicts, and other acts exceeding the simple administration require approval by the union's members meeting (*asamblea de miembros*), which is the unions' most powerful body. There are several rules in the Venezuelan labor legislation governing the functioning of unions' members meetings and board of directors.

Works Councils

By the time this article was written, there were no legal requirements in Venezuela mandating or regulating the establishment of Works Councils. However, a Bill of Law regarding Workers' Councils exists, and it is not clear whether or not the same will be passed within the next few months or years.

In any event, the Organic Law on Prevention, Conditions and Work Environment provides for the election of Prevention Delegates (*Delegados de Prevención*) by the workers, whose primary functions relate to the promotion and monitoring of compliance with occupational health and safety rules at the workplace. These

Delegates, together with the members appointed by the employer, integrate the Occupational Health and Safety Committee that must comply with several functions relating to occupational health and safety.

Trade Union Employee Protection Rights

Trade union directors are protected against dismissal, deterioration of work conditions, and transfers up a certain number, which ranges from seven to 12 trade union directors, depending on the number of workers of the corresponding company. The by-laws of the trade union must indicate which of its board of director members will enjoy this protection. This protection lasts from the date of their election through the lapsing of three months after the expiration of the term for which they were elected. According to the OLL, this term is to be established in the unions' by-laws, but the same cannot exceed three years; however, according to the OLL, this provision is not applicable to federations and confederations.

Other Types Of Employee Representation

As indicated before, the Venezuelan labor legislation also recognizes the coalitions of workers, which are temporary organizations not requiring registration, usually formed for the negotiation of specific agreements with the employer or for the attention of specific workers' concerns. They may enter into collective accords. However, various provisions in the Venezuelan labor legislation give priority to trade unions over workers' coalitions, and collective bargaining agreements (which are also preeminent over collective accords) may only be negotiated by trade unions.