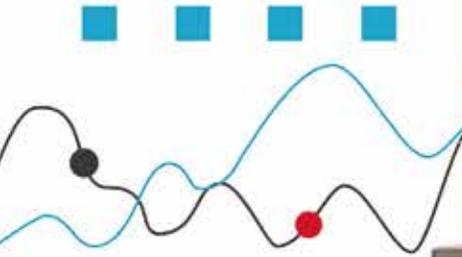
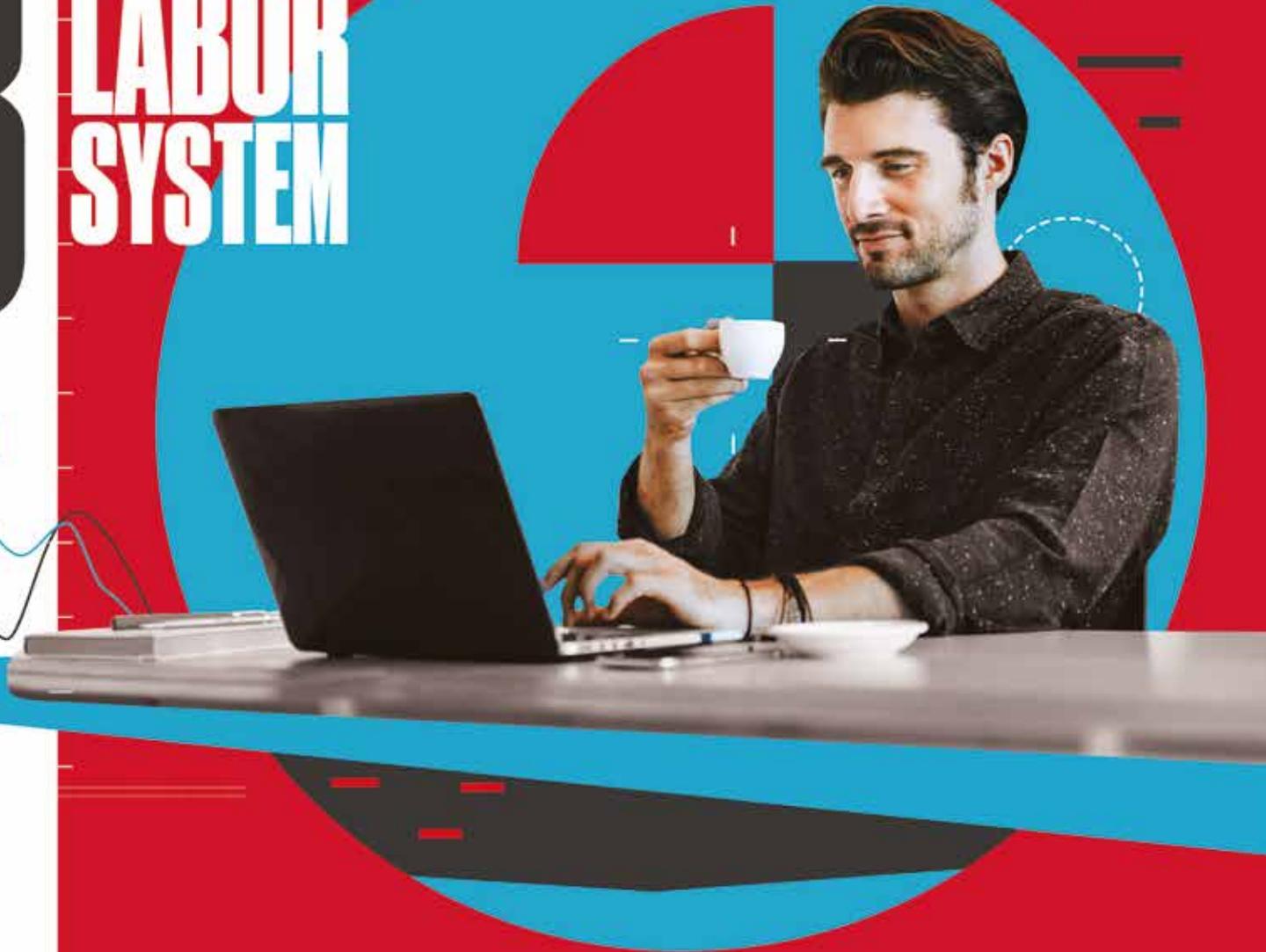


# 08

# LABOR SYSTEM



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## How does the labor system work in the Colombian territory?

There is no federal system in Colombia, thus labor norms apply throughout the national territory and are issued by the Colombian Congress. In the public sector case, some conditions apply to some public servants, which however do not apply to private sector companies.

## What should I know about the labor system in Colombia?

The norm regulating labor relationships in the private sector is the Work Code (Código Sustantivo del Trabajo or CST by its Spanish acronym), which is divided into two main parts: the first one regulates Individual Workers' Rights and the second regulates issues related to Collective Work Rights.

### • Part regulating Individual Workers' Rights:

- General principles
- Individual employment contract
- Probation period
- Employment contracts with special types of workers
- Work and workplace regulations

- Salaries
- Working hours
- Mandatory rest periods
- Common benefits
- Special benefits
- Rules protecting benefits
- Health and safety at work

### • Part regulating collective work rights:

- Labor unions
- Collective work conflicts
- Collective labor agreements and labor union agreements

## How do employment contracts work?

The CST is the norm that contains the types of employment contracts on which the relationship between the worker and the employer is established. There are two types of employment contracts:

- Depending on the type of agreement:
  - Verbal contract
  - Written contract
- Depending on the duration:
  - Fixed term
  - Indefinite term
  - Service provision contract
  - Occasional, casual or temporary work contract

## Salary

This is an essential element of any employment contract. According to article 23 of the Work Code, it is the remuneration received for the services rendered by the worker. In Colombia there are two types of salaries:

- **Ordinary salary:** A payment remunerating ordinary work. Whenever applicable, some additional elements should be added to this payment, such as overtime, work done during mandatory rest periods, commissions and a percentage of sales if agreed in the contract, customary bonuses, permanent lodging expenses and in general any customary or occasional payment considered a direct remuneration of the employee's work.

- **Integral salary:** A remuneration that, in addition to the ordinary salary comprises employee benefits, severance payments and their interests, service bonuses, extraordinary bonuses, subsidies, additional payments for night shifts, extraordinary, or holiday and Sunday work payments, in-kind payments, and in general everything included in this category, except for holidays.

**Salary exception agreements: The employers and the employees may explicitly agree that some cash payments will not be considered salary, such as meals, accommodations, clothing, and extraordinary bonuses.**



**Per diem: Expenses incurred should the worker have to travel to a location other than their original work location. They include travel expenses, meals, and related expenses.**

### Social benefits

Payments the employer is required to make to workers, in addition to salaries. They cannot be waived or negotiated below the values indicated by the law. They are the following:

- **Severance subsidy:** A benefit paid by the employer, which is deposited to a severance fund selected by the employee. Interests accrue on such deposits. The benefit paid by the employer is equivalent to one month of salary for every year of work or proportionally thereof.

- **Severance interests:** The amount the employer pays the worker equivalent to 1%/month of the applicable severance, calculated from January 1 to December 31 of each year.

- **Service bonus:** Equivalent to 15 days of salary, paid by the employer to the worker twice every year. Calculated every six months, it is paid proportionally to the time worked.

- **Shoes and work clothing:** An in-kind payment the employer makes to the worker every four months, to purchase the proper clothing and shoes required for the work. Employees earning less than two minimum salaries are entitled to this subsidy.

- **Transportation subsidy:** Paid to workers earning less than two minimum legal salaries.

### Working Hours

Time during which an employee dedicates his/her effort, skills, and competences to the work they were hired for. The CST regulates working hours as follows:

- **Ordinary:** Working hours agreed between the employer and the worker. In the absence of a collective agreement, they are the maximum legal working hours.

- **Maximum legal working hours:** 8 hours a day, 48 hours a week. There are some exceptions, such as supplementary or overtime work, according to which the additional effort by the worker is remunerated. Overtime compensation is paid for each hour in excess of the ordinary shift, as follows:





- **Day work:** work carried out between 6 AM and 9 PM.



- **Night work:** work carried out between 9 PM and 6 AM.

The following table shows the rate of such additional payments:

Type of overtime	% Extra-Payment
Night	35% over the day work value
Additional day of work	25% over the ordinary daily pay
Additional night of work	75% over the ordinary daily pay

\* Source: Work Code (Código Sustantivo del Trabajo)

### How does the probationary period work?

Its purpose is for the employer and the employee to familiarize themselves with their qualities and conditions during a specific period of time and to assess the convenience of continuing with the labor relationship. In no case will this time exceed two months.

During this time, which should be agreed to in writing, either party may terminate the work contract without advance notice and without any compensation.

### How do social security and non-fiscal payments work?

Social security consists of a number of institutions, norms, and procedures implemented for the progressive realization of programs and plans the State and society have developed in order to improve the life quality of the population. They aim to protect people from contingencies that affect their economic capacity and health, with the aim to ensure the individuals' well-being and their integration in their community.

In order to be entitled to the benefits of the social security system, affiliation and contributions are required.

- General Pensions System
- General Health System
- General Labor Risks System

Non-fiscal payments are payments some companies have to make to certain entities for every worker they have hired. Their purpose is financing the government social activities.

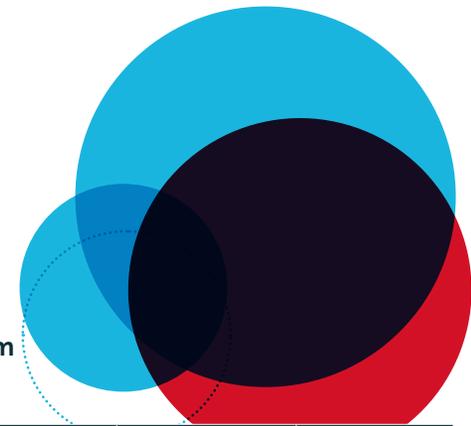
- 4% to the compensation fund or the family subsidy fund

- 3% to the Colombian Family Welfare Institute (ICBF)
- 2% to the National Learning Service (SENA)

### What is the cost of an employee with a minimum salary in Colombia?

Concept	%	Amount (COP)
Minimum salary (articles 145 to 148 of the CST)		\$828,116
Transportation subsidy (Law 1 of 1963)		\$97,032
Health (Article 204 of Law 100 of 1993)	8.5 %	\$70,390
Pension (Book I of Law 100 of 1993)	12 %	\$99,374
ARL (Level I) (Decree 1295 of 1994)	0.52 %	\$4306
Non-fiscal (Decree 923 of 2017)	9 %	\$74,530
Bonus (Articles 306 to 308 of the CST)	8.33 %	\$77,065
Severance (Articles 249 to 258 of the CST)	8.33 %	\$77,065
Severance interests (Law 52 of 1975)	12 % (on severance values)	\$9248
Vacation (Articles 186 to 192 of the CST)	4.17 %	\$34,532
Personal elements (Article 230 of the CST)	5 %	\$41,406
Total		\$1,413,064

\* Source: Work Code (Código Sustantivo del Trabajo)





### What types of leaves of absence are there?

- **Maternity leave:** 18 paid weeks around childbirth.
- **Paternity leave:** Eight working-days paid leave. The Health Provider Entity (EPS) the worker is affiliated to makes this payment.
- **Household emergency:** There is no specific definition of what this is; however, common sense dictates that it is a serious circumstance affecting the worker's family circle. No norm regulates the length of this type of leave.
- **Mourning license:** Created by Law 1282 of 2009, it grants the worker five business days of paid leave of absence, should

a member of their close family group passes away.

- **Other licenses:** Include the worker peers' funeral, performance of official duties (such as acting as a trial juror), time off during an election day and time off work for union duties.

### How can an employee be justifiably dismissed?

1. Identify the justified reason.
2. Obtain sufficient evidence demonstrating the employee's fault.
3. Notify the worker so that they may present the evidence required in their defense.
4. Receive the worker's evidence, evaluate it, and decide accordingly.

5. Should the decision be to dismiss the worker, deliver the dismissal letter, clearly indicating the reason.
6. When the employee's job falls under the "stability protection" category, the employer must request an authorization from the work inspector.
7. Terminate the work contract and pay the applicable salaries and benefits.

### How do collective rights work?

Labor unions are associations comprised of a minimum of 25 workers from public or private companies, grouped together to defend social, economic, and professional interests related to their work.

They can be:

- Enterprise unions
- Industrial unions
- Craft unions
- General unions

**All labor unions are entitled to freely prepare their bylaws, which should be filed before the Ministry of Work.**

- **Legal rights of labor union members:** Defined in article 405 of the CST, this gives certain workers the right to not be dismissed, be subject to worse work conditions, or be transferred to other areas of the same company or to a different municipality without a justified reason previously accepted by a labor court.

- **Collective bargaining:** A process of negotiation between the employer and a labor union. It starts with a formal petition, previously approved by the labor union assembly. A circumstantial jurisdiction is established once the bargaining process starts, meaning that, until the collective conflict is resolved, the workers having

submitted the petition or being part of the labor union cannot be dismissed unless for justified reasons that have been verified by a court.

## How does outsourcing or intermediation operate in Colombia?

### • Simple intermediaries:

Employer representatives hiring services to perform work for and on behalf of the employer. There are two types of intermediation:

- Simply getting two parties in contact for them to execute the work contract.
- Grouping together or coordinating work that uses the facilities, equipment, machinery, tools, or other work elements from the employer, for their own benefit and for ordinary, inherent, or related activities. In this type of intermediation, the workers are subordinated to the intermediary on behalf of the employer.

### • Employment agencies:

Entities created in order to facilitate job-hunting in the public or private sector. This type of intermediation is allowed by Law 50 of 1990, regulated by Decrees 3115 of 1997 and 722 of 2013.

### • Independent contractor:

When the owner or beneficiary of a project hires a third party (an independent contractor) to perform the work or provide a service for a specific price, assuming all risks, working with its own means and with technical and directive freedom and autonomy. The following elements should be demonstrated:

- The contractor has technical and directive autonomy, which means they are responsible for the workers, both at a managerial and contractual level.

- The contractor assumes the risks of the service being provided.
- The contractor performs the work with their own means, including their own personnel.



More information  
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