

## Legal update

### Venezuela enacts special bar against dismissals

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**December 2018**

#### **Labour**

On December 28, 2018, the president of the republic enacted Decree N° 3,708 (Decree on Special Bar Against Dismissals) in the Special Official Gazette of the Bolivarian Republic of Venezuela (GORBV) N° 6,419. The Decree on Special Bar Against Dismissals provides special protection against dismissals (Special Bar Against Dismissals) for a term of two years.

Below we point out the most significant aspects of the decree.

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#### **Special Bar Against Dismissals**

##### **Effective term of the extension of the Special Bar Against Dismissals**

Articles 1 and 8 of the Decree on Special Bar Against Dismissals enacted the Special Bar Against Dismissals as of December 28, 2018, for a term of two years, i.e., until December 28, 2020.

##### **Effects of the Special Bar Against Dismissals**

The Special Bar Against Dismissals means that employers cannot dismiss, impair the labour conditions of, or transfer a worker without just cause for a term of two years beginning on December 28, 2018. In order to dismiss, impair the labour conditions of, or transfer a worker, employers must obtain previous authorization from the Office of the Labour Inspector through a dismissal qualification process that shall begin before the corresponding Office of the Labour Inspector pursuant to Article of the 422 Organic Law on Employment, Male and Female Workers (Labour Law).<sup>1</sup>

Failure by the employer to make a request to dismiss a worker shall give the latter the right to ask for reinstatement and payment of unpaid wages and labour benefits or restoration of the infringed legal situation, as set forth in Article 425 of the Labour Law and 6 of the Decree on Special Bar Against Dismissals.

##### **Employees eligible and ineligible for the Decree on Special Bar Against Dismissals**

Pursuant to Article 1 of the Decree on Special Bar Against Dismissals, all public and private sector employees are protected by the Special Bar Against Dismissals. However, according to Article 5 of the Decree on Special Bar Against Dismissals, the following employees shall be expressly excluded from such protection:

- Management employees,<sup>2</sup> and;

- Temporary and occasional workers.<sup>3</sup>

Under the Decree on Special Bar Against Dismissals, job security of public servants shall be governed by the protection standards contained in the Law for Public Officers<sup>4</sup>.

## Sanctions

The Decree provides in Article 6 that an employer that dismisses, transfers or impairs the labour conditions of a worker protected by the Special Bar Against Dismissals, without first obtaining authorization from the Office of the Labour Inspector shall be punished according to the labour laws.

Additionally, pursuant to Article 6 of the Decree on Special Bar Against Dismissals, Labour Courts cannot proceed with administrative annulment actions against the reinstatement and payment of unpaid wages orders, unless the employer has complied with the order, in accordance with labour laws.

## Effective date

The Decree on Special Bar Against Dismissals became effective on December 28, 2018.

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## Footnotes

- <sup>1</sup> *Decree with Rank, Value and Force of Organic Law on Employment, Male and Female Workers*. Special OGBRV N° 6,076, dated May 7, 2012.
- <sup>2</sup> A management employee shall be understood to be the person who intervenes in the decision-making processes or orientations of the company, as well as the person who acts as representative of the employer before the other workers or third parties and substitutes him/her, completely or partially, in his/her functions. (Article 42 Labour Law).
- <sup>3</sup> According to the abrogated Organic Labour Law, temporary employees render services in selected seasons of the year and in continuous, uninterrupted working days, for terms that delimit their intended work (Article 114), and casual or occasional employees work once in a while and their work relationship end upon completion of the entrusted work (Article 115). Neither of those types of workers are established in the Labour Law currently in force.
- <sup>4</sup> *Law for the Public Officers*. OGBRV N° 37,522, dated September 6, 2002.

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