

GARRIGUES

**Latin America
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Newsletter**

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Reduction of working hours: a global trend reaching Latin America

The reduction of working hours has been a key issue on the legislative agenda worldwide in recent years, and Latin America is no exception. While countries like Chile are already reducing the workweek from 45 to 40 hours and Colombia from 48 to 42, other jurisdictions like Mexico and Peru also have proposals on the table in this regard, but they have not yet been finalized.

Below, we present the main updates that this topic has generated in these four countries.

I. Chile

The reduction of working hours is already a reality in Chile. Law No. 21,561, published in the Chilean Official Gazette on April 26, 2023, established the gradual reduction of the maximum legal ordinary working hours from 45 to 40 hours per week.

Notwithstanding the possibility that employers can implement the reduction to 40 hours per week in advance, the law establishes a progressive application over time, according to the following deadlines:

- The first implementation stage took place on **April 26, 2024**, when the maximum ordinary working hours were reduced by 1 hour, from 45 to 44 hours per week.
- The second phase will be effective from **April 26, 2026**, where the maximum ordinary working hours will be reduced by 2 hours, from 44 to 42 hours per week.
- Finally, the third implementation stage will be on **April 26, 2028**, when the maximum ordinary working hours will reach 40 hours per week.

One of the pillars of this law is that the reduction of working hours cannot affect employees' remuneration, which is why companies cannot reduce employees' wages on the occasion of this new law.

In addition to reducing the maximum ordinary working hours, this new regulation incorporated other modifications, including:

- a. The circumstances under which employees can be excluded from the limitation of working hours have been restricted, covering only (i) managers, (ii) administrators, (iii) agents with administrative powers, and (iv) all those employees who work without immediate superior supervision due to the nature of the duties performed.

The Labor Directorate may determine whether a particular task falls within one of the above hypotheses in case of dispute and at the request of either the employee or the employer. The resolution of the Labor Directorate can be challenged in court.

- b. Compensation for overtime with additional days of annual rest.
- c. A new modality of working hours distribution based on a weekly average of 40 hours in a cycle of up to 4 weeks is established. It is allowed that there are weeks (maximum of two consecutives in the cycle) where the weekly working schedule does not exceed 45 ordinary hours. This schedule does not require authorization from the Labor Directorate but does require a prior agreement with the unions for affiliated employees.

- d. Two-hour bands to anticipate or delay the start of work by up to 1 hour for mothers, fathers, and persons responsible for the personal care of children under 12 years old.
- e. The possibility of distributing the weekly working schedule over 4 days of the week with 3 days of rest ("4x3").

Given its progressive implementation, companies have prepared to face the challenges presented by this new regulation, analyzing the best possible alternatives to ensure not only compliance with this law but also the continuity of services considering these current legislative requirements.

II. Colombia

Law 2101 of 2021 established the gradual reduction of the maximum legal working hours in Colombia from 48 hours per week to 42 hours per week. Notwithstanding the possibility that employers can implement the reduction to 42 hours per week in advance, the law provided for the alternative of implementing the reduction gradually, as follows:

- From July 15, 2023, a reduction of 1 hour, leaving the maximum working hours at 47 hours per week.
- From July 15, 2024, a reduction of 1 hour, leaving the maximum working hours at 46 hours per week.
- From July 15, 2025, a reduction of 2 hours, leaving the maximum working hours at 44 hours per week.
- Finally, on July 15, 2026, with the reduction of an additional 2 hours, the maximum working schedule will be 42 hours per week.

This regulation specifically established that the reduction in working hours would not imply a decrease in salary or an impact on employees' rights and guarantees.

In practice, this reduction in working hours translated into an increase in labor costs per hour worked, as employers are paying the same salary for fewer working hours. This, combined with the annual increase in the minimum wage, inflation, and productivity, generates an impact on the profitability and competitiveness of companies, especially small and medium-sized ones, which are the largest employers in the country.

At present, with the one-hour reduction that came into effect in 2023, the impact of increased costs and the challenge of implementing productive practices to adapt the maximum legal working hours to production needs or customer service, among others, is already being felt. In the medium term, the extent of the impacts of this regulation will depend on the adaptability of employers and employees, as well as the planning measures implemented to mitigate negative effects and enhance positive ones.

III. Mexico

According to data from the Organization for Economic Cooperation and Development (OECD), Mexico holds the record for being the country where the most hours are worked annually. However, this workload also translates into a high level of "burnout" or extreme work-related stress.

Currently, in Mexico, the working hours cannot exceed 8 hours per day for 6 days a week or a total of 48 hours per week. Additionally, it is recognized that employees must enjoy at least one day of rest per week.

During working hours, employees are required to be at the complete disposal of the employer and follow the established working hours, with the possibility of enjoying an intermediate rest period of at least thirty minutes.

To promote social justice rights for all employees, various legislative proposals to reduce working hours in Mexico were presented starting October 20, 2022. These proposals included increasing weekly rest days from one to two and reducing the weekly working hours from 48 to 40. In other words, the goal is for the workweek to comprise 5 working days with 2 mandatory rest days.

On April 25, 2023, a draft opinion to reform the Constitution and reduce working hours was approved with twenty-five votes in favor, none against, and five abstentions in the Constitutional Affairs Committee of the House of Representatives, just before the ordinary session period ended.

However, the legislative process was suspended because, in addition to being a constitutional reform that must be approved by most federal entities, it sought to hear the positions of both employees and employers. On one side, the labor sector supports the approval of the work reduction, while the business sector argues that it could significantly affect the productivity of companies, especially smaller ones.

In December 2023, the Political Coordination Board of the House of Representatives decided to postpone the vote until the next ordinary session period, allowing business chambers to analyze the proposal. Nevertheless, it seems that the initiative will remain "frozen" at least until after the country's general elections in June 2024.

If this reform to the Mexican Constitution is fully approved, it could mark a historic and significant event in employees' lives, as it has been 116 years since the last constitutional reform on working hours.

IV. Peru

In Peru, the ordinary working hours are a maximum of 8 hours per day or 48 hours per week, which might be above the average in the region. This constitutionally established limit allows the employer to set a daily work schedule within the legal maximums, according to their operational needs.

As is clear, under the legal maximum working hours, personnel subject to this schedule must record their entry and exit from the workplace and have the right to an overtime surcharge or to agree on compensation for overtime work. For this, companies must have an attendance control system to provide evidence of compliance with schedules and maximum working hours.

Notwithstanding this, trends toward reducing working hours are not foreign, and several legislative proposals have recently been presented to reduce the length of the workday by incorporating new mechanisms for paid rest. Currently, Congress is evaluating two bills related to working hours and overtime work, which, if approved, could have a significant impact on production and the determination of labor costs by employers.

A first proposal aims to include the employee's break time – at least 45 minutes according to local regulations – as part of the working hours, substantially shortening the effective working time. Including the break as part of the working hours, far from being a minimal cost to the employer

(according to the economic analysis of the bill), directly affects employees' productivity and, so, the labor costs assumed by the employer.

If this proposal is approved, the working hours would be reduced by almost 10% without it leading to a proportional reduction in salaries or other associated labor costs.

In the same legislative line, another recent proposal aims to incorporate a "micro break" of at least 20 minutes within the daily working hours during which employees are exempt from performing work-related activities. It is proposed that "micro breaks" could positively impact employees' health by reducing working hours, breaking the monotony of physical and mental tasks, which is considered to directly impact increasing business productivity, according to the proponents of the bill.

However, there are certain "gaps" in its application and possible incorporation into operations, as there is no clarity on whether the "micro break" time can be distributed throughout the workday, whether it can be used in blocks, or what the oversight mechanisms for this figure will be.

As we can see, recent legislative proposals related to working hours aim – although with different implementation mechanisms – to generate an assumption of the costs of employees' "unproductive" time. If this legislative trend materializes, it could significantly impact companies' production, overtime work costs, and even the need to hire additional personnel to meet business objectives.

Legislative Developments in Chile

New Labor Obligations Regarding Workplace Harassment, Sexual Harassment, and Violence

On August 1st, 2024, **Law No. 21.643** will come into effect, amending the Chilean Labor Code concerning the prevention, investigation, and sanction of workplace harassment, sexual harassment, and violence, also known as the “Karin Law.”

The objective of this law is to regulate the prevention, investigation, and sanction of workplace harassment, sexual harassment, and violence.

Key Aspects:

- **Modification of the Concept of Workplace Harassment:** Unlike the current regulation, the behavior can now manifest either once or repeatedly.
- **Incorporation of the Concept of Workplace Violence:** This refers to violence exerted by third parties unrelated to the employment relationship, to the detriment of an employee.
- **Requirement to Include a Prevention Protocol:** A protocol for preventing cases of sexual harassment, workplace harassment, and violence must be incorporated.
- **Amendments to the Internal Regulations of Order, Hygiene, and Safety:** Companies must incorporate a prevention protocol and a new procedure covering the prevention, investigation, and sanction of sexual harassment, workplace harassment, and violence.

Updates on Work-Life Balance and Teleworking

Law No. 21.645, effective since January 29th, 2024, amends the Chilean Labor Code regarding personal, family, and work-life balance and regulates the teleworking or remote work regime under special conditions.

Aiming to allow employees to better balance their personal and work lives, the law introduces several updates.

Key Aspects:

- **Priority Granting of Legal Holiday Days:** During the school vacation period set by the Ministry of Education, employees who are the primary caregivers of a child under 14 years old, or an adolescent under 18 years old with a disability or in a situation of severe or moderate dependency, will be prioritized.
- **Employer's Obligation to Offer Teleworking or Remote Work:** Employers must offer teleworking or remote work to employees who are primary caregivers of a child under 14 years old, or a person with a disability or in a situation of severe or moderate dependency, regardless of age. It is required that the care work performed by the employee is unpaid.
- **Employer's Obligation to Conduct Information, Education, and Awareness Actions:** Employers must implement measures to follow the current regulations on work-life balance.

Continued Processing of the Universal Nursery Bill.

Currently, the Universal Nursery Bill is under discussion, aiming to expand and regulate the right to nursery services for employees with children under two years old in Chile, regardless of gender.

Key Aspects:

- Both men and women will have the right to this benefit.
- Creation of a Nursery Fund: Through a 0.2% contribution on taxable wages, payable by the employer.
- Coverage by the Fund: Up to 4.11 Monthly Tax Units (UTM) for annual enrollment and monthly nursery fees.
- Administration of the Fund: Managed by the Social Security Institute (IPS), which will collect contributions from companies.

Legislative Developments in Colombia

Employes could access to the government incentives for Hiring Specific Populations as of June 2024

Employers who generate new hires for a term not less than six months and contribute to Social Security can benefit from these incentives.

The Ministry of Labor issued Decree 533 of 2024, aiming to promote formal employment. Economic incentives are directed at all employers who have generated new hires for a term not less than six months and provided they have contributed fully to the integral Social Security System for that month. The incentives are as follows:

- For Hiring Young People (18-28 years old): A 30% incentive of one (1) Minimum Monthly Legal Wage (SMMLV), i.e., \$390,000 for 2024, for each additional formally hired employee.
- For Hiring Women Over 28 Years Old Earning Up to 3 SMMLV: A 20% incentive of one (1) SMMLV, i.e., \$260,000 for 2024, for each additional formally hired employee.
- For Hiring Men Over 28 Years Old Earning Up to 3 SMMLV: A 15% incentive of one (1) SMMLV, i.e., \$195,000 for 2024, for each additional formally hired employee.
- For Hiring People with Disabilities: A 35% incentive of one (1) SMMLV, i.e., \$455,000 for 2024, for each additional formally hired employee.

Employers will receive a maximum of twenty-four incentives per new employee hired, and only one monthly incentive will be recognized per employee.

It is highlighted that a employee hired to replace another previously employed will not be considered an additional employee, and employers can apply for these benefits starting in June of this year.

Finally, it is noted that the Ministry of Labor has not yet issued the necessary regulations to access the incentive.

Legislative Developments in Mexico

Review of the 1997 Labor Reform to Ensure Dignified Pensions and Reduce Retirement Age

On February 5, the President presented a constitutional reform initiative to the pension system to create a so-called Welfare Pension Fund to compensate for the “distortions” generated by the 1997 Afore scheme to the detriment of forty-five million employees.

The initiative proposes that employees earning less than the average salary of Mexican Social Security Institute (**IMSS**) workers will be entitled to the fund supplement to reach 100% of their last salary. Those earning more would receive at least the average mentioned and could receive more if their individual account balance allows.

There is significant controversy over this fund, as it is intended that the resources to finance it come from the retirement and housing savings of IMSS employees aged seventy or older that have not been claimed. It is clarified that only funds from inactive accounts would be taken. These unclaimed funds, which would be transferred to the Pension Fund, are estimated to amount to up to \$40 billion pesos, according to government and the Mexican Afores Association estimates. The Pension Fund will be a public trust with the Bank of Mexico acting as trustee, constituted by the Ministry of Finance and Public Credit within 60 days following the initiative's entry into force.

Mexico Admits Two New Labor Complaint Procedures Under the USMCA

In April, the Mexican Government admitted two new complaint procedures presented by the United States Government under the Rapid Response Labor Mechanism in Specific Facilities (**RRM**) of the United States-Mexico-Canada Agreement (**USMCA**) for alleged violations of free association and collective bargaining rights.

In total, Mexico has received twenty-four labor complaints through the RRM under the USMCA, twenty-three from the United States and one from Canada. Of these, four were not activated (one from Canada), and twenty from the United States were admitted. The states where the companies subject to the RRM are located include Nuevo León, Jalisco, State of Mexico, and Veracruz.

Supreme Court Validates Maximum Limit for Profit Sharing to Employees

On April 3rd, the Second Chamber of the Supreme Court validated that the amount of employees' participation in company profits (PTU) has a maximum limit of 3 months of the employee's salary or the average of the PTU received in the last 3 years, whichever is more favorable to the employee, as established by: (a) Article 127, Section VIII of the Federal Labor Law reformed in the Decree published on April 23, 2021, which regulated labor subcontracting, and (b) the Guide to Comply with Profit Sharing Obligations issued by the Ministry of Labor and Social Welfare.

Regarding the law, the Chamber, unanimously, emphasized that Congress has the authority to legislate on labor matters and issue provisions concerning the PTU as the one in question.

Regarding the 3-month salary limit, it was highlighted that this limit is not absolute, as it allows the possibility of considering the average amount delivered to the category, position, level, or post of the employee during the last 3 years, always favoring the best option for the employee without retroactively affecting employees' rights, since the Constitution does not provide a minimum limit for such purposes, so this variable can always be modified.

Legislative Developments in Peru

Benefits for Female Workers: Cancer Prevention and Strengthening Specialized Oncological Care

On January 20, 2024, Supreme Decree No. 001-2024-SA was published, having the Regulations of Law No. 31561, the Law on Cancer Prevention in Women and Strengthening Specialized Oncological Care.

Key Aspects:

- Develops the Procedure for female employees to exercise their right to a paid leave (1 day per year) to undergo medical exams for the early detection of breast and/or cervical cancer.
- The worker must submit a request three business days in advance and present the appointment scheduling certificate. Additionally, following the appointment, the employee must obligatorily submit the attendance certificate within three business days after the medical appointment.

Pension Fund Withdrawal: Law Authorizing the Withdrawal of Funds from Private Pension System Affiliates Up to Four Tax Units (UIT) Approved

On April 18, 2024, Law No. 32002 was published, authorizing the withdrawal of funds by affiliates of the private pension system up to the amount of four tax units (UIT), that is, up to S/ 20,600.

Law Authorizing Employees to Freely Dispose of 100% of Their Compensation for Time of Service (CTS) Approved

On May 17, 2024, Law No. 32027 was published, authorizing employees to freely dispose of 100% of their CTS to meet their needs due to the current economic crisis. Remember, the CTS is an employee's benefit deposited in a bank account and can only be released upon termination of the employment relationship.

Key Aspects:

- One-time Authorization Until December 31, 2024, employees are authorized to freely dispose of 100% of the CTS deposits made in financial entities and accumulated as of the disposition date.
- Withdrawals can be made in total or partial amounts. Employees have the right to make partial withdrawals as they deem necessary, provided it is done before December 31, 2024.

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