

Legal Update

by **Allan Garro N.**

Liquidating Employees, That Letter is just a Reference.

Hiring an employee in CR involves a lot of responsibility, such as registering the person with Social Security, purchasing an insurance policy similar to Workman's Compensation with the national insurance company –INS–, giving vacation time, paying aguinaldo as well as paying separation pay when the relationship ends. The amount payable on separation depends on how the employment ends, causing considerable conflict, since the correct amount to be paid is often not clear to the parties involved. This can be confused further when a worker visits the Labor Ministry to get a calculation of their final liquidation.

Conflict usually arises when the worker appears in front of the employer with the calculation sheet entitled ESTIMACIÓN DE DERECHOS, thinking that this is some kind of order to pay, and the employer doesn't have a clear understand of the document. If analyzed carefully, it states in small print at the beginning *"Upon the petitioner's request and based exclusively on information provided by the petitioner, we estimate the possible amounts that could be payable to said petitioner..."*. The estimate is then divided into 3 different calculations shown as *a, b and c*, that include another small print warning: *a) Fixed rights that do not vary... b) Rights which are subject to documents proving the type of activity... and c) Extreme litigious rights. We DO NOT GUARANTY these rights or accuracy of the calculation.*

To be perfectly clear, at the bottom of the document, also in small print, it states: *"The above calculations depend on accuracy of numbers and facts provided by the petitioner. We warn that for settlement purposes, group a) rights normally don't vary, group b) rights tend to be low and group c) rights may not exist. Therefore, the total stated amount shall be considered only as a guide to reach a settlement"*. The calculation sheet provided by the Labor Ministry is only a guide to help the parties reach an agreement, so it's very important for the employer to understand this as well as to ensure the employee understands it also. It is perfectly legal to agree to an amount different to that shown on the calculation sheet.

As a general guideline here are the fixed items that usually have to be paid:

Vacations:

No matter how the relationship ends, the worker always has the right to payment proportional to the number of months worked, unless vacation time has been taken. Under the law the employee has the right to 2 weeks of paid vacations every 50 working weeks. If the employee has worked less than 50 weeks he or she has the right to be paid for one day per

month worked. Example: If an employee worked 6 months at a monthly salary of 250.000 colons per month, which divided by 30 equals to 8,333 colons per day, the amount owing is 6 days of salary or 49.998 colons.

Aguinaldo (Christmas bonus or thirteenth month salary)

No matter how the relationship ends, a worker has the right to receive payment according to the number of months worked to date, unless the employee was just paid Aguinaldo. Under the law the employee has the right to a full month of salary, payable between December 1st and 20th, provided the employee worked the entire year. If the employee worked less than a year the right to payment depends on the number of months actually worked. Example: An employee worked 6 months at a monthly salary of 250.000 colons. Divided by 12 (the number of months in the year) this is 20,833 colons per month. When multiplied by the number of months worked (6) the result is the amount to be paid, or 125.000 colons.

PREAVISO. (Advance notice)

If an employer wants to terminate a labor relationship, advance notice must be given. This depends upon the length of the relationship:

- ☒ Less than 3 months: No notice is required since this is considered a trial period.
- ☒ 3 to 6 months: 1 week's notice
- ☒ 6 to 12 months: 2 week's notice
- ☒ 1 year or more: 1 month's notice

Once notice is given the employee has the right to take one day per week off in order to look for another job. In case the employer doesn't want to provide advance notice the employee can be paid the equivalent in salary. When a worker resigns he or she is obliged to provide the employer the same advance notice, or they may be required to compensate the employer for having not doing so.

The employer is not required to pay preavisa when the worker commits a serious fault that would be considered a legitimate cause for firing under article 81 of the Labor Code.

CESANTÍA. (Severance pay).

If an employer wants to terminate a labor relationship severance pay is required. The amount depends on how long the relationship has lasted.

- ☒ Less than 3 months: No payment is necessary as this is considered a trial period. (This is only 1 month in the case of Domestic employees)
- ☒ 3 to 6 months: 7 day's salary
- ☒ 6 to 12 months: 14 day's salary
- ☒ 1 year: 19.5 day's salary.

The amount accumulates to a maximum of 8 years, regardless of additional time worked beyond that period. Workers can also claim for things such as overtime, worked holidays, salary differences, and so on. The important thing to understand is that the ESTIMACIÓN DE DERECHOS provided by the Labor Ministry is to be used only as a guide to reach an agreement and avoid legal action.

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