Ecuador: Employment & Labour Law

This country-specific Q&A provides an overview to employment & labour law laws and regulations that may occur in Ecuador.

For a full list of jurisdictional Q&As visit here
1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful?**

First we need to specify that there are two ways that the employer may follow in order to unilaterally terminate an employment agreement:

- **Dismissal with a fair cause.** Which requires an administrative procedure (called Visto Bueno) and in case of approval the employer has no indemnification obligation to the employee.
- **Dismissal without a cause.** Which does not require a procedure or authorization and obliges the employer to pay an indemnification to the former employee.

In the first case of dismissal with a fair cause and, therefore, without economic compensation obligation proceeds prior to the administrative procedure called “Visto Bueno” before a Labor Inspector authority. This procedure lasts thirty days and the employer must prove that the employee incurred in one of the following faults:

- Repeated and unjustified absences of punctuality or attendance at work or abandonment of the latter for a period of more than three consecutive days, without fair cause.
- Serious indiscipline or disobedience to legally approved internal regulations;
- Lack of probity or immoral behavior
- Serious insults to the employer, his or her spouse or cohabitant partner, ascendants or descendants, or their representative;
- Worker’s manifest inadequacy with respect to the occupation or work for which he or she was engaged;
- Unjustified complaint against the employer regarding his social security obligations.
- Do not abide the safety, prevention and hygiene measures required
- Labor harassment.
- Revelation of secrets that affects the employer; and
- Induce the employer to conclude the contract by false certificates.

In the second case, of dismissal without a cause the employment relationship may terminate by the employer’s unilateral will at any time with the payment of the compensation provided within the law and sometimes improved by collective agreements. In these cases, the employer does not need a reason to lawfully terminate the employment relationship. Except for the case of the union leader and the woman in maternity status in which cases the employer cannot terminate the agreement without a cause.

2. **What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?**

There are no additional considerations for the case of large numbers of dismissals. Nevertheless, the union organizations (if existing) could make collective claims pretending the reinstatement of the workers who have been dismissed. These claims are roughly listened
by the authorities, but they may cause a conflicted period.

3. **What, if any, additional considerations apply if a worker’s employment is terminated in the context of a business sale?**

   If a worker’s employment is terminated in the context of a business sale, the employer will have to pay the legal compensations provided by the law for the dismissal without a cause.

4. **What, if any, is the minimum notice period to terminate employment?**

   There is no minimum notice period for the employer to terminate an employment relationship. Therefore, the termination of the employment relationship by the unilateral will of the employer does not require previous notice. It only requires the corresponding legal indemnifications payments.

   In Ecuador, as a rule every working relationship has indefinite duration. Before this reality, we had fixed period labor agreements that required a 30-day prior notice, but now these agreements are no longer valid.

5. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

   There is no minimum notice period.

6. **Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?**

   Under no circumstances can the worker be discontinued from providing services, not even assuring payment of the corresponding remuneration. Such action constitutes a dismissal untimely and unjustified. Exceptionally, when a dismissal with a fair cause procedure (Visto Bueno) is processed to prove a fair cause of dismissal, the authority may provide a suspension for the provision of services with the consignment in guarantee of the value of one month of remuneration, because that is the time it takes this administrative procedure.

7. **Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.**

   If it is a dismissal without a cause, there is no procedure prescribed in the law. The only requirement is to pay the legal indemnification to the former employee.

   If it is a dismissal with fair cause there is procedure (called Visto Bueno) before the
administrative authority for the approval or rejection of the dismissal. The procedure lasts 30 days and it has the following steps:

○ The employer presents its claim for the dismissal before the Labor Inspector.
○ The authority reviews the claim and asks the employee to defend himself
○ The employee answers the claim.
○ The Labor Inspector investigates and may receive evidence from the parties.
○ The Labor Inspector accepts or denies the request for dismissal with a cause.

○ This administrative decision may be subject of review before the judicial courts.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not follow the procedure, it is understood that he has operated a dismissal without cause so the employee will be entitled to claim the correspondent legal indemnification.

9. How, if at all, are collective agreements relevant to the termination of employment?

It is important to clarify that the collective agreements in Ecuador are negotiated by companies and not by branch of activity.

The collective agreement will be relevant if it includes an extend indemnity liability for agreement termination, as they often do.

10. Does the employer have to obtain the permission of or inform a third party (eg local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

There are two possible scenarios for this question.

○ If the employer wants to terminate the agreement with a dismissal without a cause, he/she does not need to inform nor obtain prior permission. The only requirements will be to pay the legal indemnification and to register the worker’s departure in the on-line platform (SUT) maintained by the Labor Ministry.
○ If the employer wants to terminate the agreement based on dismissal with a fair cause with no indemnification payment obligation, it is mandatory to follow the administrative procedure called Visto Bueno before the Labor Inspector and previously obtain its favorable approval resolution.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?
The Labor Code especially protects union leaders and women in the condition associated with motherhood. If they are dismissed without a cause and the Visto Bueno procedure, they can present a judiciary summary procedure claim for such dismissal to be declared ineffective. If the employee claim is favorable to their interests the judge can order the reinstatement of the employee to the job. The employer’s breach of this order has criminal sanctions. If the employee prefers the agreement termination, an economic compensation equivalent to twelve remunerations will be granted in addition to the general indemnifications provided for in the dismissal without cause.

In any case of termination of the agreement for discrimination against other employees without the qualities stated above, there will be an equal additional economic compensation of twelve remunerations.

Labor harassment in Ecuador is prohibited by law and, in case it is committed, it may be considered as a fair cause to end the employment relationship on behalf of the employee of employer. In this case the procedure detailed in question 7 will be mandatory for the employer.

Employers have the obligation to incorporate harassment prevention programs and non-compliance with this obligation has administrative penalties imposed by the Labor Ministry.

12. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

In this case the former employee may present a judicial claim against the employer in order to obtain the general dismissal without a cause indemnification plus the additional economic compensation of twelve remunerations. Besides this economic sanction, there may be other criminal or civil responsibilities and consequences for the employer.

13. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

The categories of worker with special protection on the termination of employment are as follows

- The union leader and the woman associated to a motherhood condition have special protection in case of discrimination and termination of the employment. In these cases, there may be one of two consequences: 1) the judge may order the reinstatement of the employee to the job position or 2) the judge may order the additional economic compensation of twelve remunerations.
- In any case of termination of the agreement for discrimination against other employees without the qualities stated above, there will be an equal additional economic compensation of twelve remunerations.
The sick worker with a rest medical certificate, who suffers a dismissal without a cause has an additional compensation of six months of remunerations.

If a worker is dismissed in the process of forming a trade union, or at the end of a lawful strike, he/she is entitled to an additional compensation of twelve-monthly remunerations.

If a disabled qualified worker is dismissed without a cause, he/she is entitled to an additional compensation of eighteen monthly remunerations.

14. **Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

No, they have no special protection.

15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

The financial compensation for employment termination relationship without a cause is determined in the Ecuadorian Labor Code and it is equivalent to a monthly remuneration for each worked year or fraction of worked year. The minimum financial compensation is 3 monthly remunerations and the maximum is 25 monthly remunerations.

There is an additional bonus equivalent to 25% of the last monthly remuneration for each year of work.

This bonus has to be paid in every case of termination of the employment relationship including employee resignation and in case of termination with a fair cause.

16. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.**

No, it is not possible. Article 326 numeral 2 of the Ecuadorian Constitution establishes that labor rights are irrevocable and that any stipulation to the contrary shall be null and void. This means that even if the worker signs an agreement that implicitly or explicitly involves a waiver of rights, he may claim recognition of his/her rights before the judge, who shall grant them.

It should be noted that the Ecuadorian Constitution admits the transaction in labor matters with the exception to waiver labor rights. Which means that if the worker agrees to receive (not waive) an equivalent benefit in exchange for a contractual or law right, such an agreement would be valid.

17. **Is it possible to restrict a worker from working for competitors after the**
termination of employment? If yes, describe any relevant requirements or limitations.

The Labor Code prohibits the worker from competing with the employer while the employment contract is ongoing. However, it is common for employment agreements and the termination agreement acts to include a non-competition obligation into the future. It is strongly discussed whether such prohibitions are enforceable as this affects the right to work and the free competition.

18. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes, it is possible. Professional, industrial and business secrets are protected by law. It is highly recommended to explicitly determine in the labor agreement the confidential information that the employer wants to protect. The disclosure of confidential information carries civil and criminal responsibilities.

19. Are employers obliged to provide references to new employers if these are requested?

The employer is obliged to provide free of charge to the worker, as many times as requested, written certificates related to his/her work. When the employment relationship is terminated by any circumstance, the employer shall be obliged to provide a written reference that certificates:

- the time of service
- services provided
- remunerations received

20. What, in your opinion, are the most common difficulties faced by employers when terminating employment and how do you consider employers can mitigate these?

The workers’ rights prescribe in three years counted from the termination of the employment relationship. So, when this occurs, claims are often filed even for the fulfilment of ordinary obligations due during the working relationship such as the remuneration payments, holidays, etc. Only the presentation of the signed payment roles serves to counteract those claims so it is highly recommended that the employer take necessary precautions so that digital documents may be sufficient evidence even if they do not have the worker’s signature.

The main procedure for the employer to terminate the employment relationship with fair cause (called Visto Bueno) is complicated and uncertain because the decisions of the administrative authority can be reviewed by the judges. It would be optimal if a legal reform allows the employer to determine the existence of a fair cause of termination of the employment relationship.
21. Are any legal changes planned that are likely to impact on the way employers approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

In Ecuador there has been no flexibilization of the labor law, except for a 1991 legal reform that established contractual figures for casual, occasional and seasonal workers. Now we are going through a crisis of unemployment and half of the population does not have a job. There are announcements regarding law modifications, which would make it easier for employers to hire workers.