AUGUST 2024

Quarterly Update for the LATAM Region

Our regular guide to what's happening in employment law across the region

Global HR Lawyers
Ius Laboris

Table of contents

Introduction

In this LATAM regional report, we take a periodic look at recent changes in labour law in selected Latin American countries.

This first edition of the report shows the dynamic movement of regulation in the region, related in some cases to seismic political and economic changes. For example, we cover the major 2024 labour reform in Argentina, which modifies a broad range of aspects of the individual employment relationship, such as the probation period, termination rules, and the establishment of a 'formalisation' of previously unregistered employment relationships.

The report also deals with legislative changes in Brazil, Chile and Peru, such as the new regulations on harassment and violence in Chile, the rules that authorise the withdrawal of pensions and severance pay in Peru, and the rules that regulate the shifts of working hours in Brazil. It also indicates that Mexico and Colombia are implementing wide-ranging changes in their labour legislation in political contexts of a change of government in Mexico and political instability in Colombia. Indeed, the report acknowledges that this situation has been endemic in the region in recent years, with instability and repeated revision of many aspects of labour legislation as a constant.

This report hopes to provide a general overview of what is happening in labour matters in the region and to help companies to have a reference framework for their decisions and actions.

Enrique Munita
Ius Laboris, Chile

Enrique is a founding partner and the head of the labour and employment practice in our Chilean firm. He is based in Santiago and is the primary contact for Ius Laboris clients with operations in Chile.

Argentina

Ignacio Funes de Rioja
ARGENTINA
ifr@bruchoufunes.com

Pablo Barbieri
ARGENTINA
pb@bruchoufunes.com

Major Labour Reforms

After a long debate, the administration of President Milei, elected in November 2023, finally got its first law passed on 27 June 2024.

This new law, formally titled 'Foundations and Starting Point for the Freedom of Argentineans', includes several titles, such as a Declaration of Emergency and State Reform, the dissolution of national agencies, privatisations, changes in administrative procedures, changes in the legal regime for public employment, promotion of registered employment, and a 'Labour Modernisation' reform.

There are also tax benefits and incentives for investors in the energy, oil and gas, forestry, tourism, infrastructure, technology and mining sectors.

Before this law, in December 2023, Milei issued a Decree of Necessity and Urgency with 366 articles, which also included a comprehensive labour reform. That Decree was put on hold due to injunctions and other measures filed by several unions. However, after a long negotiation period, and despite of its weak representation in the Congress, the Milei administration succeeded finding sufficient political support to pass these reforms.

The main aim of the labour reform is to reduce conflicts and inefficiencies in the labour market, and to promote job creation and the registration of employees that are in the informal market.

Measures to promote job creation

To promote job creation, the new law extends the trial period for indefinite-term employment contracts to six months. However, through collective agreement with the legally recognised union, the trial period can be extended to eight months for employers with 100 or fewer employees, and up to one year for employers with five or fewer employees.

The legal regime for seasonal agricultural workers has been changed so that these workers are now subject to a trial period and can be hired through agencies as temporary workers. The obligation to hire from the

union pool has been eliminated.

A chapter in the law is dedicated to simplifying the registration process for new employees. A special simplified regime for employers with up to 12 employees will be drafted by the labour authorities. Registration by a third party, even if it is not the primary employer, is now considered sufficient. This reduces risks for startups in Argentina, and for the use of employers of record. Similarly, the employment contract law has been amended to limit the liabilities of user companies when contracting employees from third parties.

Measures to encourage registration of informal employees

The reform allows employers to register informal (or partially informal) employment relationships that started before the law is published, without paying penalties or fines, without being included in the register of sanctioned employers, and (subject to limitations) without paying a substantial part of the social security debt for the employee. Particular regulations regarding this process are expected to be forthcoming.

Measures regarding severance and fines

The law helps to reduce the uncertainties related to labour costs, especially costs arising at termination. It eliminates certain regulations that were intended to encourage formal jobs in the private sector but in practice have only increased severance costs and led to litigation. In particular, all of the extra severance costs for deficient registration of the employment contract were eliminated.

The law further provides that, through a collective agreement, employers and legally recognised unions can agree to substitute the legally required severance payment with a special fund or system. Employers can opt to contract insurance or establish an auto-insurance system at their cost. The system can include payment for separation by mutual agreement.

Increased severance is now the sole remedy for discriminatory dismissal based on race, ethnicity, religion, nationality, ideology, political or union views, sex or gender, sexual orientation, economic status, physical characteristics or disability. The remedy of reinstatement is no longer available. The increased severance is a minimum of 50% and can be raised to 100% in the case of gross discriminatory conduct. The burden of proof falls on the employee alleging discrimination.

Measures regarding independent workers

Particularly interesting for the gig economy, the scope of application of employment laws is now restricted when services are hired under civil contracts. There is no longer a presumption of an employment relationship when hiring professional services, so long as the contracts and payments comply with the applicable regulations.

Another innovation is the creation of a new status for up to three independent workers collaborating in a small business. These workers would be classified as independent (as long as there is no subordination), with a special social security regime that will be regulated by the executive branch.

Other measures

The new law simplifies the process for withholding

payments from third parties (i.e. contractors and subcontractors) when they have not fully complied with their obligations regarding payment of salaries, severance, and social security contributions. A procedure will be established by the tax authorities for withholding and making those payments on their behalf.

Pregnant women are now allowed to work until ten days prior to giving birth, thus extending the period of leave after the date of birth.

To reduce violence associated with strikes, participating in the occupation or blocking of the employer's premises is now expressly considered to be a fair cause for dismissal. Similarly, engaging in or threatening violence against workers who are not striking and damaging or withholding the employer's property are now presumed to be causes for fair dismissal.

Measures that were omitted from the new law

To obtain passage of the new law, the government had to negotiate and eliminate (or at least delay) some other reforms that were included in the suspended Decree. These include:

- limitations on the right to strike;
- restrictions on union dues;
- elimination of the special statute for salespersons;
- amending the rules on work certificates to allow digital certificates;
- modifications affecting the validity of agreements waiving employment rights;
- the principle of the most favourable law to the employee; and
- a cap on the interest rates applicable to employment law claims.

The changes to the law in this new reform are sweeping (although certainly not as sweeping as originally proposed in the presidential decree). The government is currently working on regulations to implement these legal changes. In addition, we anticipate that further reforms might be implemented in the next few months.

Back to top ↑

Brazil

Silvia Figueiredo Araújo
BRAZIL
silvia.araujo@veirano.com

Alternating Work Shifts

As a rule, standard work shifts are limited to eight hours a day. However, 'alternating' work shifts, where the employee alternates work between day and night, are limited by Brazil's Federal Constitution to six hours a day, unless otherwise agreed with the relevant union. For many years, the accepted interpretation was that unions can agree to alternating shifts up to the standard limit of eight hours a day.

However, since the 2017 Labour Reform, there has been controversy over what matters can be negotiated by unions, especially those that regulate labour rights differently from the law. The Federal Supreme Court has ruled that employers and unions can agree on limitations to labour rights protected by law, as long as absolutely inalienable rights are respected.

Recently, the Supreme Court ruled that unions and employers can negotiate alternating work shifts of more than eight hours a day, because this limit is not an inalienable right, and the Labour Courts cannot interfere in union negotiations.

Commissions for Sales in Instalments

The law on commissions in Brazil is silent on the calculation of commissions for sales made in instalments. The law states that the employee is entitled to commissions on sales that he or she made, but it does not draw any distinction between sales for which payments were made in cash or in instalments.

The Superior Labour Court has ruled now that commissions for sales made in instalments must be calculated on the total value of the sale, including interest and any financial charges, unless there is an agreement to the contrary.

Although this ruling is not a final decision, it has raised concerns for employers in Brazil, as many of them have not been including interest and financial charges in the basis for calculating commissions. Employers are now reviewing internal policies and considering union negotiations to address the issue in some cases.

Union Contributions

Traditionally, unions were entitled to a mandatory annual contribution of one day of the employee's salary. The Labour Reform of 2017 changed this, requiring the employee's express and voluntary prior agreement to pay the union contribution. This caused unions dues to fall drastically.

Unions filed several lawsuits against the new law, and recently the Supreme Court decided that collective bargaining agreements can impose a mandatory contribution to be deducted from the employees' salary, provided that it also guarantees the employee's right to refuse to pay the union contribution.

After this decision, collective bargaining agreements have imposed many requirements for how employees must raise a refusal to pay the contribution, including requirements that employers object to as unreasonable (e.g. tight time limits or requiring refusals to be made in person).

The Superior Labour Court has now decided to rule on a case concerning these requirements, and its decision will have binding effects on other cases. All other cases related to the same subject are suspended until the Superior Labour Court makes its decision, which is expected in the coming months.

Back to top ↑

Chile

Cristián Olavarría
CHILE
colavarria@munitaabogados.cl

‘Zero tolerance’ for harassment and violence in the workplace in Chile

In August 2024, a new law referred to as the ‘Karin Law’ will come into effect, named after a high-profile case of workplace harassment. This new law aims to ensure a work environment free from all types of violence and harassment, compatible with human dignity and with a gender perspective. It expands the obligations of employers relating to the prevention, investigation, and punishment of workplace harassment, sexual harassment, and violence at work.

The law incorporates the commitments made by Chile since its ratification of International Labour Organization Convention 190, which establishes the right of all persons to a workplace free from violence and harassment, including violence and harassment on the grounds of gender.

Among other aspects, the new law broadens the concept of workplace harassment. Until now, for conduct to constitute harassment, it had to be repeated over time. However, with this modification, a single act of workplace mistreatment is sufficient to be considered workplace harassment.

The law also creates and regulates the new category of ‘workplace violence’. This is defined as conduct carried out by third parties unrelated to the employment relationship (e.g. customers, users, or suppliers) that affects workers in the performance of their duties.

One of the new obligations imposed on employers by the new law is the prevention of harassing behaviours. This translates into the need to have a prevention protocol with the following objectives:

- identifying hazards and assessing any associated psychosocial risks;
- establishing measures to prevent and control such risks;
- establishing measures to inform and train employees on harassment and on the

prevention and protection measures that must be adopted; and

» establishing measures to safeguard the privacy and dignity of those involved.

This protocol must be included in employers' Internal Regulations of Order, Hygiene, and Safety (RIOHS).

Employers must have an investigation procedure for cases of sexual harassment, workplace harassment and violence. This procedure must also be incorporated into the RIOHS. The investigation process must adhere to the principles of confidentiality, impartiality, promptness, and gender perspective.

Finally, employers must inform their workers semi-annually of the channels available to report violations related to the prevention, investigation, and punishment of sexual harassment, workplace harassment, and violence at work.

Back to top ↑

Colombia

Catalina Santos
COLOMBIA
csantos@bu.com.co

Reduction of Working Time

A law that came into force in 2021 provides for a gradual reduction in the working time in Colombia from 48 hours per week to 42 hours per week. On 15 July 2024, the second reduction to a maximum of 46 hours per week was implemented.

Pension Reform

On 16 July 2024, a Pension Reform law was enacted. This law brings significant changes, including a new Comprehensive Social Protection System for Old Age, which (among other things) guarantees a basic 'solidarity income' for elderly people in conditions of extreme poverty and requires all workers to contribute to the public pension system 'Colpensiones'.

The reform establishes that for women, 50 weeks of contributions are recognized for each child (up to three children) and provides for a 30% subsidy for a life annuity.

Most of the provisions contained in the reform will become effective as of 1 July 2025.

Labour Reform

In 2023 the national government presented a wide ranging Labour Reform project, and many of the reforms are going into effect in 2024, including the following:

- **Night shift:** The night shift, which previously started at 21:00, will now start at 19:00.
- **Sunday and holiday surcharges:** The surcharge of 75% over the daily salary for work on mandatory rest days will gradually increase until reaching 100% in 2026.
- **Family day:** Employers are obliged under Colombian law to grant a 'family day' to employees every semester. The 2021 law reducing the working time (see above) provided that once the maximum working time reached 42 hours per week, the family day requirement would be abolished. The reform eliminates this provision and keeps the family day requirement.

- **Flexible working hours:** The reform establishes employers must provide flexible working hours for employees who have care responsibilities for the elderly, minor children, people with disabilities or people with chronic and/or terminal illnesses.
- **Indefinite-term contract:** The reform requires indefinite-term employment contracts as the general rule, thus seeking to limit temporary employment contracts.
- **Contract for specific work:** If the work to be performed is not clearly established in the contract, or if the employee continues to work after the contracted work is completed, the contract will be deemed as an indefinite term contract starting from the beginning of the employment relationship.
- **Digital Platforms Employees:** The reform brings new regulations establishing rules and working conditions for employees on digital platforms.
- **Telecommuting:** The reform promotes telecommuting, stipulating that employers must hire a minimum percentage of employees under this modality, depending on the size of the employer.
- **Telework:** The reform changes the rules for the 'connectivity allowance' for teleworkers and regulates international teleworking.
- **Paid leaves of absence:** The reform extends paternity leave to six weeks and provides for paid leaves of absence for emergency or scheduled medical appointments, attending school obligations as a guardian, and attending to matters related to judicial, administrative or legal situations.
- **Indemnity for dismissal without just cause:** The reform establishes that for fixed term contracts, the indemnity is equivalent to the salary for the time remaining on the contract, with a minimum of 30 days. For contracts for a scope of work, it is equivalent to the time remaining to complete the work, with a minimum of 30 days. For indefinite term contracts, it depends on length of service, ranging from 45 days for the first year to 40 days per year for those with more than ten years of service.
- **Reinforced stability:** The reform provides for reinforced stability (i.e. it is not possible to terminate the employment contract without just cause and without the permission of the Ministry of Labour) for several categories of workers. These include 'pre-pensioners' (those that are three years or less away from eligibility to a retirement pension), the partner of a woman who is pregnant or has recently given birth (up to 18 weeks after delivery), and those who have been reassigned within the organisation due to a health condition.
- **Harassment:** The reform redefines workplace harassment (unacceptable conduct with the objective of causing physical, psychological, sexual or economic harm) and provides that to constitute harassment, the conduct does not need to be repeated. It also extends to harassment by any person regardless of their position at work or third parties, customers, suppliers, relatives or acquaintances.
- **Apprenticeship contract:** Apprenticeship is to be understood as a special fixed term contract, and the remuneration must be at least the minimum legal monthly salary.

- **Contractors and subcontractors:** Contractors must be truly independent (with their own business organisation), specialized in the contracted service or product.

- **Union Guarantees:** The reform provides a number of guarantees for unions, including the right to leave for union activities, communication with management, access to information and facilities for communication with employees, and protection against discrimination.

Right to disconnect

The Constitutional Court recently ruled that disconnection is a fundamental right for all employees, including directors and managers.

Sexual Harassment in the Workplace

The Congress recently passed a law adopting measures to prevent and address sexual harassment in the workplace.

The Law establishes that the employer must create internal prevention policies and reporting mechanisms for sexual harassment. Likewise, employers must take steps to prevent repetition of harassment. They must further inform the victim about his or her right to report to the Attorney General's Office and must immediately forward the complaint and report to the competent authority.

The employer must refrain from retaliation against the victim. Additionally, the victim is protected from unilateral dismissal for six months following the complaint, and if he or she is dismissed after six months, the employer has the burden of disproving any claim that the dismissal was due to the complaint. If the employer violates these rules against dismissal, it is subject to a fine of between 1 and 5,000 legal monthly minimum wages.

Finally, the employer must publish every six months the number of complaints processed, and the sanctions imposed, through the employer's physical and/or electronic channels.

Maternity protection

A new law establishes several measures to protect pregnant and breastfeeding women in the workplace by expressly approving Convention 183 of the International Labour Organization (ILO). Among these measures are:

- **Prohibition of harmful work:** Pregnant or breastfeeding women must not perform work that is harmful to their health or that of their child, as determined by the competent authority.

- **Maternity leave:** The law provides for maternity leave of at least 14 weeks, of which the first six weeks after childbirth is mandatory.

- **Protection against dismissal:** Dismissal of pregnant women without prior authorisation from the Ministry of Labour is prohibited.

- **Breaks for breastfeeding:** The breastfeeding woman has the right to one or more paid daily interruptions or a reduction of the working day.weeks after childbirth is mandatory.

Back to top ↑

Mexico

Jorge G. de Presno
MEXICO
jorgedepresno@basham.com.mx

David Puente Tostado
MEXICO
dpuente@basham.com.mx

Registry of Providers of Specialized Services or Specialized Works (REPSE)

The 2021 reform to the Federal Labour Law prohibited outsourcing in Mexico, except for the contracting of specialized services that are not part of the company's corporate purpose or its main economic activity. For this purpose, a system known as REPSE was established for the registration of providers of specialized services to other companies. The registration is valid for three years.

In March 2024, the processes to renew REPSE registrations began. Providers of specialized services must renew their registration according to the schedules set forth by the Labour Ministry (at least three months prior to their expiration) in order to continue providing services.

Failure to have an updated REPSE registration bars the provision of specialized services to clients, subject to fines ranging from MXN 217,140 to MXN 5,428,500 / (USD 12,063 to USD 301,583).

Profit Sharing

The Mexican Federal Constitution mandates that every employee is entitled to participate in the company's profits each year, provided that they comply with certain requirements. The current stipulated percentage stands at 10% of each employer's business pre-tax earnings.

On 3 April 2024, the Supreme Court of Justice ruled that it is constitutional for profit sharing plans to set a maximum limit of three months of the employee's salary or the average of the profit sharing received in recent years, whichever is more favourable to the employee. This will impact the calculation process to determine the amounts to be paid as profit sharing to employees, which must be made before May 31 of each year.

Fines for failure to make welfare contributions

In April 2024, an amendment to the Federal Labour Law was published establishing fines for employers who do not comply with their obligation to make

Luis Antonio Álvarez Cervantes
MEXICO
lalvarez@basham.com.mx

mandatory contributions on behalf of their employees to the National Workers' Welfare Fund Institute. The fines range from MXN 5,428.50 to MXN 162,855 (USD 301.58 to USD 9,047.50).

Reform to the crime of labour exploitation

On 7 June 2024, a significant reform to the Human Trafficking Law was published. Under this reform, forcing employees to work hours that exceed the limits established by the Federal Labour Law is considered a violation that can constitute the crime of labour exploitation.

The new reform also introduces stricter penalties for employers who force their employees to work beyond the legally allowed hours. These penalties include prison sentences ranging from three to ten years and fines ranging from MXN 542,850 to MXN 5,428,500 (USD 30,158 to USD 301,583). The penalties are more severe if the exploited employees belong to indigenous or Afro-Mexican communities.

Under the Federal Labour Law, the maximum hours for an ordinary shift are 48 hours per week for a day shift, 45 hours per week for a mixed shift, and 42 hours per week for a night shift. These hours can be extended under extraordinary circumstances, but the extension must not exceed three hours per day or occur more than three times per week (allowed overtime). The first nine hours of overtime must be paid at double the regular rate. Employees are not obligated to work beyond these legally allowed overtime limits. If employees do work beyond these limits, they are entitled to triple the regular salary for the additional hours.

The rationale behind the reform is that employees can work overtime voluntarily, provided they receive the appropriate legal compensation. Thus, if employees choose to work additional hours beyond the ordinary schedule and are compensated correctly, it will not constitute a crime.

Back to top ↑

Peru

Luis Vinatea
PERU
lvinatea@vinateatoyama.com

Pension Fund and Compensation for Time of Service (CTS)

In the months of April and May, two new laws were published.

One authorises workers and self-employed individuals to make voluntary withdrawals of up to 4 UIT (PEN 20,600) from their individual accounts in the private pension system. This is the seventh time in the last five years that such withdrawals have been authorised.

The other new law authorises workers to take unlimited withdrawals from their compensation for time of service (CTS) deposits. This is the third law in the last four years authorising unlimited withdrawals of these deposits.

According to Congress, these withdrawals are intended to stimulate the country's economy. At a labour level, these measures will reduce the funds available to workers against events such as old age and unemployment, which were already affected by previously authorised withdrawals.

In June, Congress also approved a legislative initiative to reform the pension system, both public and private, at the national level. This reform would include a mandatory contribution to workers' pension systems. Despite the Congressional approval, the political nature of this reform makes its ultimate outcome unpredictable, as it could still be vetoed by the Executive Branch.

Parental Protection

In June, Congress approved a legislative initiative that strengthens protection against the dismissal of pregnant or breastfeeding workers, provides special protection against dismissal for working fathers of newborns, and increases paternity leave days (among other changes).

This initiative was vetoed by the Executive Branch on 8 July. Now, Congress will have the sole final decision on the future of this initiative, as it may decide to approve it through the legislative insistence mechanism (which bypasses the need for the approval of the Executive Branch). Although

there is no certain date for when this could happen, employers must monitor the future of this initiative, which would significantly impact the management of employment relationships for working parents.

Telework

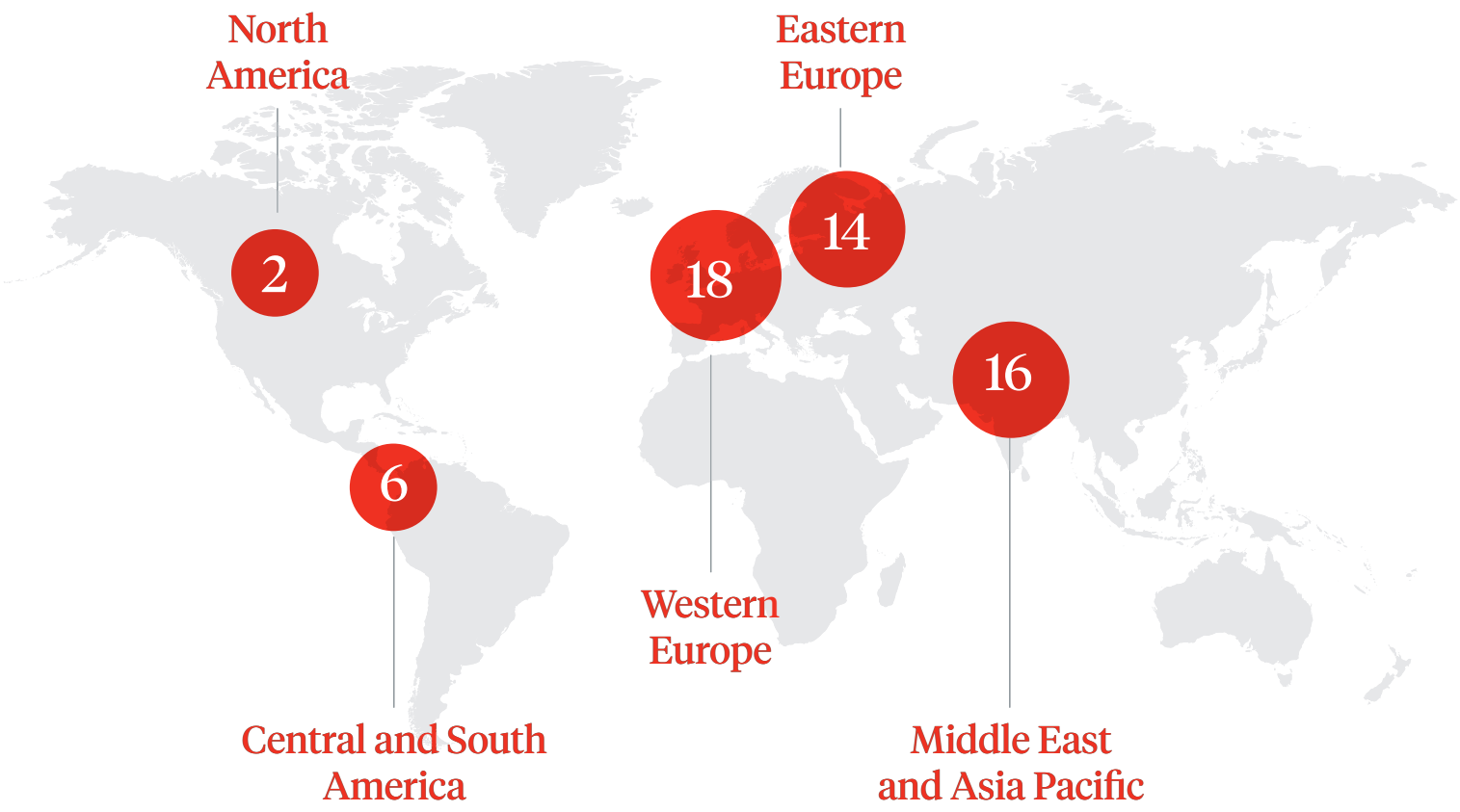
In June, Congress approved a legislative initiative that slightly modifies the rules on telework. These modifications were ratified by Congress in July; they only specify that teleworkers must justify the periods in which they are absent from the workplace. However, the implementation of these modifications will require employers to adjust their policies and employment contracts.

Collective Bargaining

In April, a Supreme Decree was published which regulates the evaluation process for workers' requests and the examination of the economic and financial situation of employers, as well as related matters. The Decree deals with the requirements and procedure for the issuance of labour economic opinions in the context of collective bargaining in the private sector.

Back to top ↑

Ius Laboris
Geographical Coverage



We understand the challenges of managing a national and international workforce

- Ius Laboris is a close-knit alliance of leading employment law firms working together in one global practice.
- Ius Laboris brings together the finest team of dedicated specialists, advising multinational companies in the major commercial centres across the world, from immigration to individual contracts, and from restructuring to pensions, our expertise covers all aspects of HR law.
- We are an integrated alliance, sharing experience, knowledge and training.
- International employment law is our core business.

@iuslaboris
/iuslaboris
iuslaboris.com
info@iuslaboris.com

Global HR Lawyers
Ius Laboris