



## PREVENTIVE LABOR AND EMPLOYMENT PRACTICES

### **PREVENTIVE LABOR PRACTICES: HOW TO AVOID RISKS WITH HEALTHY EMPLOYMENT PRACTICES.**- By: Rogelio Navas Rodríguez, Esq., Costa Rica Labor Attorney

– Although hiring personnel usually evidences growth in any business, it comes along with obligations and duties, as well as risks, that may result in considerable loss for the company if such are not taken into consideration, prevented or foreseen. For example, hiring employees as independent contractors may initially represent savings for the employer, but it is not a recommended practice, as sooner or later the company may face retroactive payment of labor-related duties, unpaid salary taxes, interest and fines, plus other possible penalties such as temporary closure of the business. Likewise, in the event of a lawsuit by an employee who was hired as an independent contractor, the company could end up paying -without having even considered it in its budget- thirteenth month bonuses (also known and Christmas bonuses, “aguinaldo” in Spanish), vacation accrued in previous periods, notice, severance, interest, legal costs and wage indexation.

It is also important to bear in mind that there are faults such as lateness or tardiness, inappropriate use of IT resources, unauthorized use of Intellectual Property or disclosure of confidential information, and employee harassment (“Mobbing”), among many others, that are not expressly regulated in the Costa Rican Labor Law. In those cases, application of disciplinary actions may be difficult if such have not been previously typified as faults or offenses. A termination for an offense that has not been yet classified as such may be nullified by a competent Court, resulting in payment of severance, legal costs, wage indexation and even lost wages as indemnity for the losses and damages caused.

For such reasons, at our firm we have dedicated a considerable part of our practice in labor law to the prevention of the above mentioned risks. By periodically reviewing and updating the existing policies and Employee Manuals, the creation of new policies and manuals and the establishment and implementation of an appropriate legal structure, reducing the risks associated with wrongful employment practices is possible. Avoiding economic loss and lengthy legal proceedings is feasible when the rights of employees are fully respected, employment duties and obligations are met and employer’s rights are put in practice.

Among the practices that are recommendable to employers to prevent risks and contingencies are the following:

- **Creation and implementation of a customized “Employee Manual”**, which would include all the policies that the employees must abide to, as well as indication of the faults and offenses that are not expressly regulated by Costa Rican Labor Law but to which disciplinary action will be associated. This Manual must also establish certain rules that are



mandatory for the management and administrative staff to allow the correct handling of the human resources of the company. Some of the policies that should be included in the Employee Manual are the following: (i) use of company property; (ii) use of confidential information and intellectual property; (iii) lateness and absenteeism; (iv) use of alcohol and drugs; (v) sexual harassment; (vi) job abandonment; (vii) applicable disciplinary actions; (viii) granting of vacation time; (ix) overtime; (x) handling of employee information; and (xi) payment of work-related expenses, all of which are truly important for the healthy and correct operation of the company. If the company already has Employee Manuals, periodical revisions are recommended to update the existing policies and adapt them to the company's current needs.

- **Employment agreements:** According with the Costa Rican Labor Code, it is mandatory to have written employment agreements for each employee. Such agreements must include the basic employment conditions. The policies and employment terms that the employer may need to change in the future must not be included in the Employment Agreements, but in the Employee Manual, so that the employer is able to use its *ius variandi* (right to unilaterally change the employment conditions).

- **Independent contractor agreements:** Hiring independent contractors for certain services is always necessary in any company. Nevertheless, this modality must only be used when the supplier or provider of the services is actually an independent contractor. If you need to learn more about the difference between an independent contractor and an employee, check our Hiring Personnel section.

If you should need more information or help concerning this or other matters, do not hesitate to contact us at: <http://www.navaslegal.com/contactenos/>, and we will gladly assist you.