

PERU

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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

According to the Peruvian Constitution, the law must grant workers an adequate protection against arbitrary firing. Following this constitutional pronouncement, Supreme Decree 03-97-TR establishes that employees who work at least four hours per day and have worked longer than the three month legal trial period can only be fired due to fair causes contemplated by the law. If the worker suspects that he/she has been fired without cause or “arbitrary firing”, the worker can choose to sue his/her employer for reinstatement of work or for the receipt of severance pay due to “arbitrary” firing. This severance payment is equal to one and a half month’s pay for each year of the employee’s for up to twelve months pay total if the employee had been hired for an indefinite length of time. If a worker hired for a fixed term is fired, one and a half month’s pay must be paid to him for each month he would have worked before the contract’s expiration for up to the equivalent of twelve months pay.

A worker can be terminated without severance pay for what are considered fair causes. These causes include: the loss of his physical or mental faculties; sudden ineptitude related to job performance; deficient performance compared to the average performance of the personnel and the worker himself; the worker’s unjustified refusal to undergo a medical examination to perform its duties; judgment due to intentional crime or disability of the worker; and major faults specifically foreseen in the law. This latter category includes the non-compliance of duties on the job, decline in the performance, appropriation or frustrated appropriation of goods or services of the employer, neglect to disclose information, providing false information that may damage the employer, disloyal competition, going to work under the influence of alcohol or drugs, acts of violence, serious unruliness, intentional damage to the employer’s goods, and unjustified absence to work longer than 3 consecutive days or than 5 non-consecutive days during a period of 30 days or than 15 non- consecutive days during a period o 180 days, and repeated tardiness. If a worker considers that his firing is arbitrary, he/she is entitled to file a demand requesting his reinstatement on work or the corresponding payment of the firing compensation, in which case the employer must support its firing grounds.

The employer can also terminate the work contracts without firing compensation due to force majeure, economic reasons, technological reasons, or structural causes that make the cessation necessary. In these instances, the employer must obtain the prior authorization from the Ministry of Labor whose approval is based on an expert report by an auditor company that justifies the need for the dismissal.

In case of dissolution and liquidation of a company, or in case of bankruptcy declared by the competent authority, an authorization given by the Ministry of Labor is not required; rather, ten day notice prior to termination is sufficient.

2. Are there any formal requirements for terminating an employee or groups of employees?

The legal requirements are those mentioned above. The formal requirements are described below. If the employer decides to terminate work contracts due to force majeure, economic reasons, technological, structural or similar reasons, the employer is obliged to provide the corresponding union, or if there is none, the affected employees, with complete information on the reasons for the layoff as well as a list of all affected employees. After this notification, the employer must begin bargaining with the union or the affected employees agree on conditions for the layoff or other measures to be taken instead of the layoff. After such bargaining begins, the employer has to file an application before the Ministry of Labor for an authorization of the layoff, based on an expert report by an auditor company that justifies the need for the dismissal. After the workers review the expert report, they have 15 working days to present their own expert report. Subsequently, the Ministry invites both parties to a 3 day mediation hearing after which the Ministry issues the corresponding decision.

It is important to mention that for political reasons it is very difficult to obtain the authorization of the Ministry and that the majority of applications for an authorization for layoff are rejected. For this reason, employers in Peru almost always have to negotiate the termination of the work contracts. These negotiations often result in laid off employees getting better compensation than what is provided by law.

If the employer decides to terminate a work contract due to the commitment of major faults or other reasons attributable to the employee that are specifically foreseen in the law, the employer has to send the employee a letter explaining the reasons for the termination. The employee then has 6 days to contest the discharge. Only after expiration of such term or after receiving the contest, the employer is entitled to send a termination letter to the employee. If the employee considers the dismissal to be against the law, then he/she is entitled to file a suit against the employer for reinstatement on work or for severance pay. If the suit results in a finding of an “arbitrary” firing, the employer will be obliged to reinstate the employee or to pay the corresponding severance depending on which of these two remedies the employee have chosen at the moment he/she filed the suit. This lawsuit can only be filed before a Labor Court upon the first 30 days after the notification to the employee of the dismissal. In case the employee files a suit before a Civil Court alleging a violation of his/her constitutional rights, the term for filing the lawsuit will be 60 working days.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

The special legal requirements for a layoff caused by redundancy are those described above. The redundancy is referred to by law as “structural reasons for termination of the work contracts” and the layoff requires the previous authorization of the Labor Ministry, unless the parties reach an agreement by which means the employees accept to resign from their jobs.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

All the above mentioned legal regulations can be used by any laid off employee to challenge her termination.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

If the employer does not comply with the legal requirements for a layoff, the employer is not entitled to dismiss any employee. The laid off employee has the right to require his/her reinstatement at work or the payment of his legal compensation for an arbitrary dismissal. If the employer has not complied with the legal requirements, the Court will oblige him/her to reinstate the employee or to pay him/her appropriate compensation under the law. In addition, the Labor Ministry could fine the employee. If the employer does not comply with the reinstatement or the payment of the compensation ordered by a Court, the employer may be prosecuted for a crime.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

The most common mistakes by employers are the general non-compliance with the legal requirements mentioned above.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

None.