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Termination Traffic Lights

Americas 2015



Human resources play a crucial role in determining business strategy.

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This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

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Americas Termination Traffic Lights 2015

	Argentina	Bolivia	Brazil	Canada	Chile	Colombia	Ecuador	Mexico	Panama	Paraguay	Peru	USA	Uruguay	Venezuela	
Overall risk level on termination of employee	Yellow	Yellow	Yellow	Red	Yellow	Red	Yellow	Yellow	Green	Yellow	Red	Red	Yellow	Red	Overall risk level on termination of employee
Court attitude: employer/employee friendly?	Red	Red	Red	Red	Red	Red	Yellow	Yellow	Green	Red	Red	Yellow	Red	Red	Court attitude: employer/employee friendly?
Degree of protection from termination	Yellow	Red	Red	Yellow	Red	Red	Yellow	Yellow	Green	Red	Red	Yellow	Yellow	Red	Degree of protection from termination
Difficulty of following due process	Red	Red	Yellow	Yellow	Yellow	Red	Yellow	Red	Green	Yellow	Yellow	Yellow	Green	Red	Difficulty of following due process
Ease of transfer of employee on a transfer of undertaking	Yellow	Yellow	Yellow	Red	Yellow	Yellow	Yellow	Red	Green	Yellow	Yellow	Green	Yellow	Yellow	Ease of transfer of employee on a transfer of undertaking
Level of ex gratia payment	Green	Red	Green	Red	Green	Red	Green	Red	Green	Green	Red	Yellow	Green	Red	Level of ex gratia payment
Reinstatement	Yellow	Yellow	Yellow	Yellow	Green	Red	Yellow	Red	Green	Yellow	Yellow	Yellow	Yellow	Yellow	Reinstatement
Risk of union involvement or collective bargaining requirement	Yellow	Yellow	Red	Red	Green	Yellow	Yellow	Yellow	Green	Yellow	Yellow	Yellow	Yellow	Yellow	Risk of union involvement or collective bargaining requirement
Risk of government involvement	Green	Red	Green	Red	Green	Yellow	Green	Green	Green	Yellow	Green	Yellow	Green	Yellow	Risk of government involvement

CRITERIA	High risk jurisdiction in which to terminate employees considering the 8 factors below.	Medium risk jurisdiction in which to terminate employees considering the 8 factors below.	Lower risk jurisdiction in which to terminate employees considering the 8 factors below.	CRITERIA
Overall risk level on termination of employee	High risk jurisdiction in which to terminate employees considering the 8 factors below.	Medium risk jurisdiction in which to terminate employees considering the 8 factors below.	Lower risk jurisdiction in which to terminate employees considering the 8 factors below.	Overall risk level on termination of employee
Court attitude: employer/employee friendly?	Courts tend to be very employee friendly.	Courts tend to be reasonably employee friendly.	Only the very lowest level courts tend to be employee friendly.	Court attitude: employer/employee friendly?
Degree of protection from termination	Broad categories of employee protected by unfair or unlawful dismissal legislation and consequences of breach can result in an offence being committed, a fine or an order for reinstatement or reengagement.	Certain categories of employees protected by unlawful or unfair dismissal legislation but not all.	Few (if any categories of employees) protected by unfair or unlawful dismissal legislation.	Degree of protection from termination
Difficulty of following due process	High level. This includes consultation obligations, requirement to put reason for termination to the employee and give him/her opportunity to improve. This process may take many months. A court process may be required.	Medium level.	Low level.	Difficulty of following due process
Ease of transfer of employee on a transfer of undertaking	Not easy.	Relatively easy.	Easy.	Ease of transfer of employee on a transfer of undertaking
Level of ex gratia payment	Often several multiples of monthly base salary required to achieve a mutual separation.	1 to 2 times monthly base salary usually required to achieve a mutual separation.	Not generally a requirement to achieve a mutual separation.	Level of ex gratia payment
Reinstatement	Mandatory reinstatement ordered by the Courts.	Reinstatement ordered on occasion but not always.	Very unlikely to be ordered.	Reinstatement
Risk of union involvement or collective bargaining requirement	Often union involvement in terminations or some form of collective negotiation/consultation required.	On certain occasions depending on the level and number of employees terminated.	Low risk.	Risk of union involvement or collective bargaining requirement
Risk of government involvement	High risk.	Medium risk.	Low risk.	Risk of government involvement

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