

# Business & Investment Guide 2022

Colombia

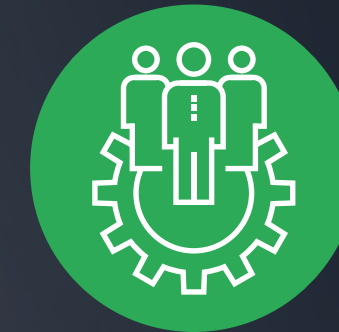
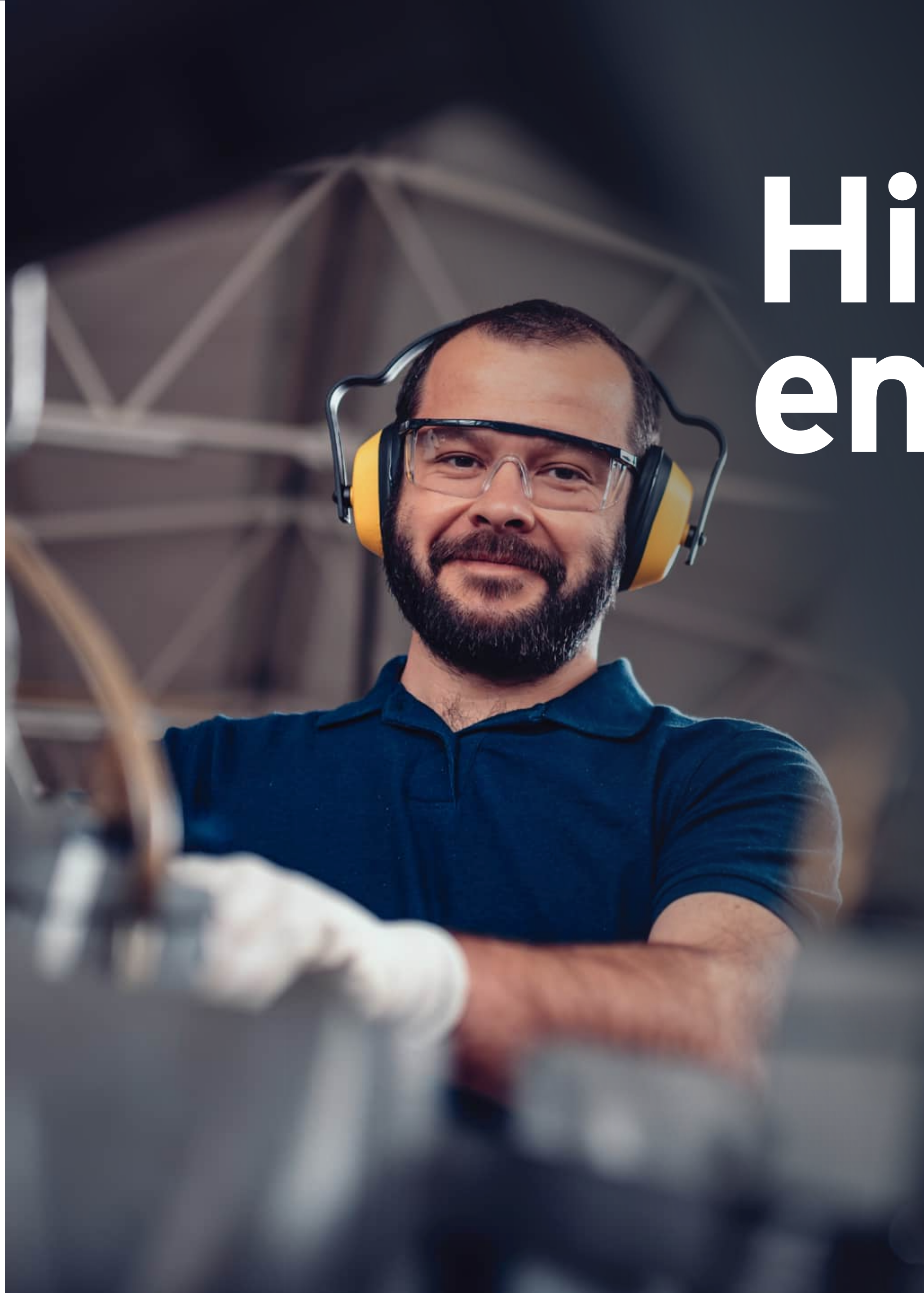
**EY**

Building a better  
working world



- Introduction
- Setting up a business
- Making investments
- Hiring employees
- Bringing foreign personnel
- Trading cross border
- Making cross border payments
- Keeping the accounting records
- Paying corporate taxes
- Paying personal taxes
- Relevant data


# Hiring employees




“The World Health Organization is proud of working side by side with the Government and the people of Colombia. Together we will succeed, together we will forge a more healthy, secure and fair future for our children and grandchildren.”

**Dr. Tedros Adhanom Ghebreyesus**


*WHO Director-General*

-  Introduction


---

-  Setting up a business


---

-  Making investments


---

-  Hiring employees


---

-  Bringing foreign personnel


---

-  Trading cross border


---

-  Making cross border payments


---

-  Keeping the accounting records


---

-  Paying corporate taxes

---

-  Paying personal taxes

---

-  Relevant data

---

## Territoriality and labor law

**Labor laws apply to all the inhabitants of Colombian territory, regardless of their nationality, who have been hired to perform an employment agreement in Colombia.**

Therefore, any employment agreement entered abroad and performed outside Colombian territory is not covered by the Colombian labor legislation. On the contrary, if an agreement is executed in Colombia or abroad but it is performed within Colombian territory, it shall be ruled by the Colombian labor law, and the parties thereof must be subject to national standard regulations.

## Employment agreements

**An employment agreement exists whenever an individual agrees to render a certain personal service to another individual or legal entity, in exchange for a remuneration.**



The existence of a labor relationship does not require a special formalization, it is presumed when the following conditions are met:

- 1** That the services are rendered personally by the employee;
- 2** Under a continued dependence or subordination of the employer; and
- 3** In return of a salary (remuneration) as compensation for the service.

Depending on the employment agreement executed between the employer and the employee, different obligations and duties should be observed. Employment agreements in Colombia may be for an indefinite term or open ended, for a fixed term, for duration of the work or hired services, or to perform occasional, accidental or transitory work over a period of less than one month.

The increasing use of technology has required changes in employment agreements, such as regulation in the use of personal electronic devices, adequate use of working tools and their use in disciplinary processes, which should be included in employment agreements as well as in the internal working regulations to prevent or facilitate conflict resolution.



-  Introduction
-  Setting up a business
-  Making investments
-  Hiring employees
-  Bringing foreign personnel
-  Trading cross border
-  Making cross border payments
-  Keeping the accounting records
-  Paying corporate taxes
-  Paying personal taxes
-  Relevant data

## Salary

The employer must pay a salary to his employees, which is any payment received by them in money or in-kind as a direct retribution for the service, regardless of the form or denomination that may be adopted (such as premiums, salary differentials, customary premiums, value of supplementary or overtime work, value of work during mandatory rest days, percentages on sales and commissions).



For 2021, the legal monthly salary is

**COP 1.000.000**  
(approx. USD 256),

and no employer can pay to an employee a salary below this value.

It is possible to exclude from the base for calculation of other labor benefits and claims, certain payments that are made by the employer, such as non-mandatory bonuses, vacations bonuses, Christmas bonuses, etc., which have been agreed by the parties in conventions or contractually for that they do not constitute a salary in cash or kind as long as it does not remunerate the personal service rendered. This listing is non exhaustive, so other type of benefits or assistance payments can be considered as non-salary payments.

Generally, salaries should be paid in Colombian currency (in the case of Colombian residents for exchange control purposes - please refer to the chapter on *Making cross border payments*) on a monthly, weekly, or daily basis, or by piecework. The parties can agree to pay the salary in cash and in kind, but the percentage of salary in kind may not exceed 50% of the total amount. If the employee earns the legal monthly salary, the portion received in kind may not exceed 30% of total salary.

## Integral salary (all-inclusive compensation)

**Employers and employees may agree, in writing, the payment of an integral salary, provided the employee is earning an ordinary salary above 10 legal monthly salaries plus a payroll benefits factor that cannot be of less than 30% of the total salary.**

This amount will comprise:

- ▶ The salary to be agreed for regular work;
- ▶ Payment in advance of the value of the benefits, surcharges and other benefits that correspond to work performed at night, overtime on Sundays and holidays, legal bonuses, non-legal bonuses, severance, interest on severance, subsidies, supplies in species and, in general, those included in such stipulation, except for vacation, which must be paid both when enjoyed in time or whenever paid in cash.

The integral salary cannot be less than the

 **13** legal monthly salaries

composed by

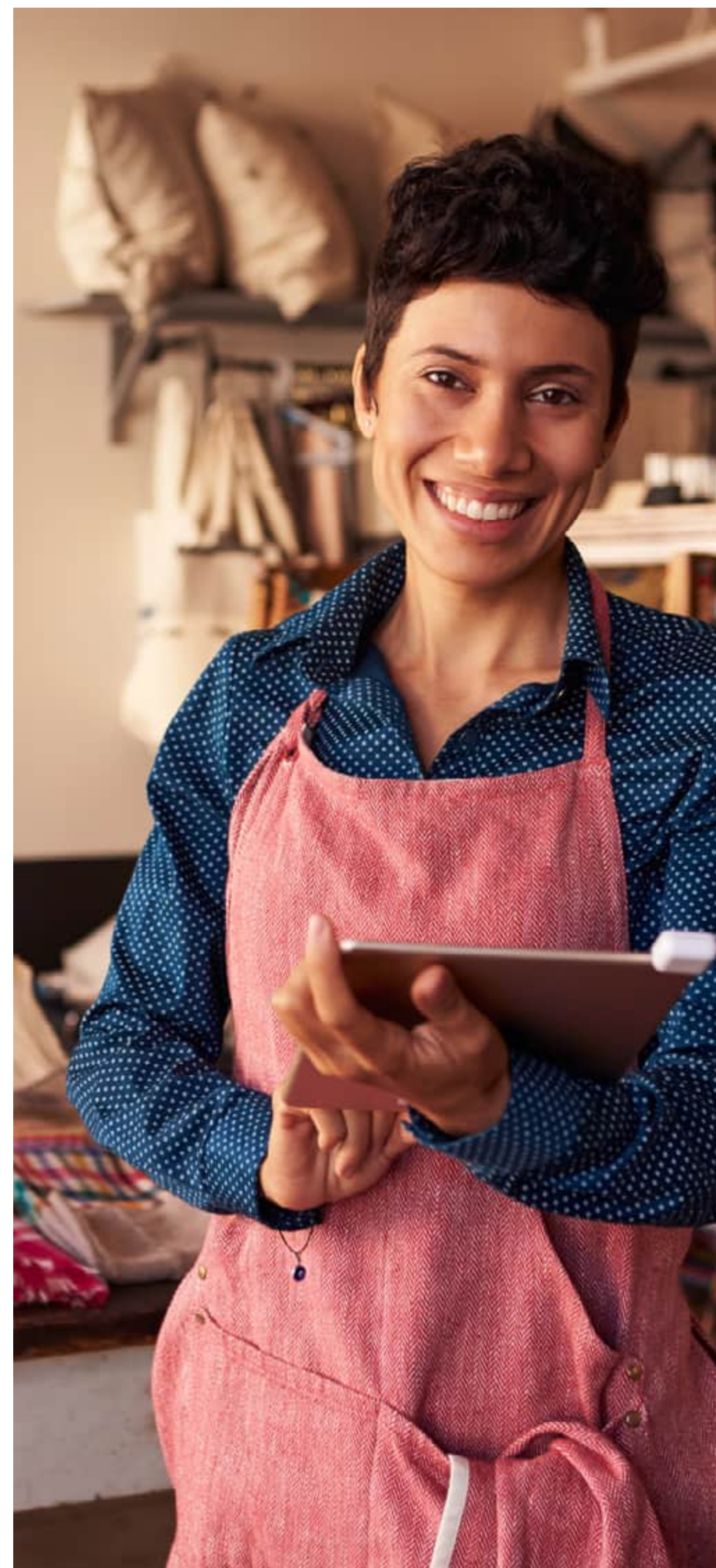
 **70%** as salary

 **30%** as benefit factor

However, the benefit factor has to be the benefit factor of the employer.



-  Introduction
-  Setting up a business
-  Making investments
-  Hiring employees
-  Bringing foreign personnel
-  Trading cross border
-  Making cross border payments
-  Keeping the accounting records
-  Paying corporate taxes
-  Paying personal taxes
-  Relevant data



## Ordinary salary, fringe benefits and vacations

Colombian nationals or foreigners residing in Colombia who are hired through an employment agreement to be performed in Colombia who earn an ordinary salary (as opposed to an integral salary), are entitled to receive, in addition to their basic monthly salary pay, and overtime compensation for work on holidays as well as night work, the following fringe benefits and rest days:



### Legal services bonus

Every employer must pay a bonus equal to one month of salary per year of service (in two installments, one half in June and the second half before December 20) to all employees who have worked all the respective semester or pro rata to the time worked.



### Footwear and work clothes

Employers shall deliver every four months, free of charge, one pair of shoes and one dress for working to employees who earn up to twice the legal monthly salary. It is supplied on April 30, August 31 and December 20.



### Vacation pay

The employee is entitled to enjoy 15 working days per worked year or in proportion by worked fraction for resting and recreation purposes.



### Transportation aid

Employers must pay, in a monthly basis, transportation aid to employees who earn up to twice the legal monthly salary. While the employee is "working at home", this transport aid is changed to a connectivity aid.



### Interest on severance pay

It is equivalent to

**12% annual**

of the severance and it must be paid directly to the employee once a year in January.



### Severance pay (*cesantías*)

Employees are entitled to a severance pay consisting of one month of salary for every year of service provided (and pro rata for fractions thereof), which must be calculated until December 31<sup>st</sup>. If the salary is variable (e.g., if it includes commissions or incentive bonuses) or has changed in the last three months, the base to calculate the severance pay is the monthly average salary of the last year. Severance payment must be directed to the severance fund chosen by the employee, before February 15.

For 2021, the transport aid is








**COP 117,172**  
(approx. USD 30).





## Family day

**Employers must promote and facilitate one day each semester to its employees, to share with their family in a space provided by the employer or in a space provided by the Family Compensation Fund. The family day must be guaranteed as part of a workday without affecting mandatory rests.**

-  Introduction
-  Setting up a business
-  Making investments
-  Hiring employees
-  Bringing foreign personnel
-  Trading cross border
-  Making cross border payments
-  Keeping the accounting records
-  Paying corporate taxes
-  Paying personal taxes
-  Relevant data

## Working hours

Currently, the maximum duration of the legal ordinary workday is equal to eight hours per day. The maximum duration per week is equivalent to forty-eight hours.

From July 15 of 2023 the maximum duration per week will be equivalent to forty-seven hours, from July 15 of 2024 to forty-six hours, from July 15 of 2025 to forty-four hours and from July 15 of 2026 onwards to forty-two hours. Authorization from the Ministry of Labor for working overtime is required, when employees work for more than the maximum working hours.

As stated in labor law, nowadays, the ordinary working day (daylight) is from 6:00 a.m. to 9:00 p.m. while the working night is from 9:00 p.m. to 6:00 which must be compensated with a surcharge of 35% of the ordinary hours value. Also, overtime during the day shall be paid with a surcharge equivalent to 25% of the ordinary hour value. Overtime pay for night work is equivalent to 75% of the ordinary hour value.


Those employees that have functions of direction, trust or management as well as those employees who are engaged in discontinuous or intermittent or in activities of simple vigilance (provided they reside on the working place) are excluded from the rules regarding maximum workday.

## Right to disconnect


*As a general rule, employees have the right to disengage from work during non-work hours. The employer has the obligation to guarantee the right to disconnection from work and any clause or agreement that goes against or violates that right will be ineffective. Likewise, the Law obliges employers to have a disconnection policy. Failure to observe the right to disconnect from work may constitute workplace harassment.*

*The labor disconnection law is not applicable for employees who hold management and trust positions, those who due to the nature of the activity or function they perform must have permanent availability, employees who exceptionally have to deal with situations of force majeure or fortuitous event, in which it is required to fulfill extra duties of collaboration, when these are necessary for the continuity of the service if there is no other alternative.*




-  Introduction


---

-  Setting up a business


---

-  Making investments


---

-  Hiring employees


---

-  Bringing foreign personnel


---

-  Trading cross border


---

-  Making cross border payments


---

-  Keeping the accounting records


---

-  Paying corporate taxes

---

-  Paying personal taxes

---

-  Relevant data

## Flexible work



### Supplementary

Employees alternate between working at the office and other fixed place (at least two days a week) - Telework. This is regulated by law and imposes a series of obligations to the employer, such as informing the Labor Risks Administrator (ARL per its initials in Spanish) about its implementation, and providing all the working tools, including connectivity, software and energy.



### Autonomous

Independent workers or employees use technology to carry out their tasks, executing them from anywhere.



### Work from home

Since May of 2021, National Government enabled the modality of working from home, as an alternative for occasional, exceptional, or special situations. Employers are able to allow their employees to work from home for a period of up to three months, extendable for another equal period or until the circumstances that caused the special situation disappear.



### Mobile

Employees use mobile devices to carry out their activities without a specific place to perform them.



### Remote work

Under this modality, the employment relationship is carried out remotely through the use of technology, in a permanent basis. The employer must provide all the technological tools, equipment, connections, programs and assume costs of energy and internet/phone, as well as the maintenance required. The agreement of remote work will require electronic or digital signature of the parties. The remote employee may provide their services from anywhere, always in agreement with the employer.

## Parental leave

Maternity leave for every employed pregnant or adoptive mother in Colombia is granted for eighteen weeks. According to labor law, mothers are entitled to enjoy two weeks before the childbirth and sixteen weeks after said childbirth. Pursuant to the mother's choice, one of the two weeks before the childbirth can be enjoyed postpartum, which means that the maternity leave will last seventeen weeks after childbirth. Adoptive mothers are entitled to this maternity leave.

**The father is entitled to two weeks of paternity leave. In addition, parents may freely distribute among themselves the last six weeks of the mother's leave, if they meet the conditions and requirements set by law.**

## Termination of employment agreements


When ending an indefinite term employment agreement without fair cause, the employer must indemnify the employee in the following terms:

Characteristics	Indemnification
Employees who earn up to 10 legal monthly salaries.	<ul style="list-style-type: none"> <li>▶ <b>30 days</b> of salary when the employee has been hired for a period not exceeding one year.</li> <li>▶ If the employee has been continuously hired for more than one year, he/she will be entitled to twenty additional days of salary in addition to the basic 30 days of the first year and pro rata for fractions of a year.</li> </ul>
Employees who earn more than 10 legal monthly salaries.	<ul style="list-style-type: none"> <li>▶ <b>20 days</b> of salary when the employee has been hired for a period not exceeding one year.</li> <li>▶ If the employee has been continuously hired for more than one year, he/she will be entitled to 15 additional days of salary in addition to the basic 20 days of the first year and pro rata for fractions of a year.</li> </ul>


The indemnity may vary depending of the seniority of the employee with the company. The above rule only applies for employees who as at December 27, 2002, had worked less than 10 years with the company. Otherwise, the indemnity will be 45 days for the first year and 45 for each additional year or fraction thereof of work.

When terminating a fixed term agreement without fair cause the employer has to pay an indemnity equal to the amount of salaries still payable through the end of the term of the original employment agreement, or the amount of salaries corresponding to the time remaining for the agreed-upon task to be completed.




-  Introduction


---

-  Setting up a business


---

-  Making investments


---

-  Hiring employees


---

-  Bringing foreign personnel


---

-  Trading cross border


---

-  Making cross border payments


---

-  Keeping the accounting records


---

-  Paying corporate taxes

---

-  Paying personal taxes

---

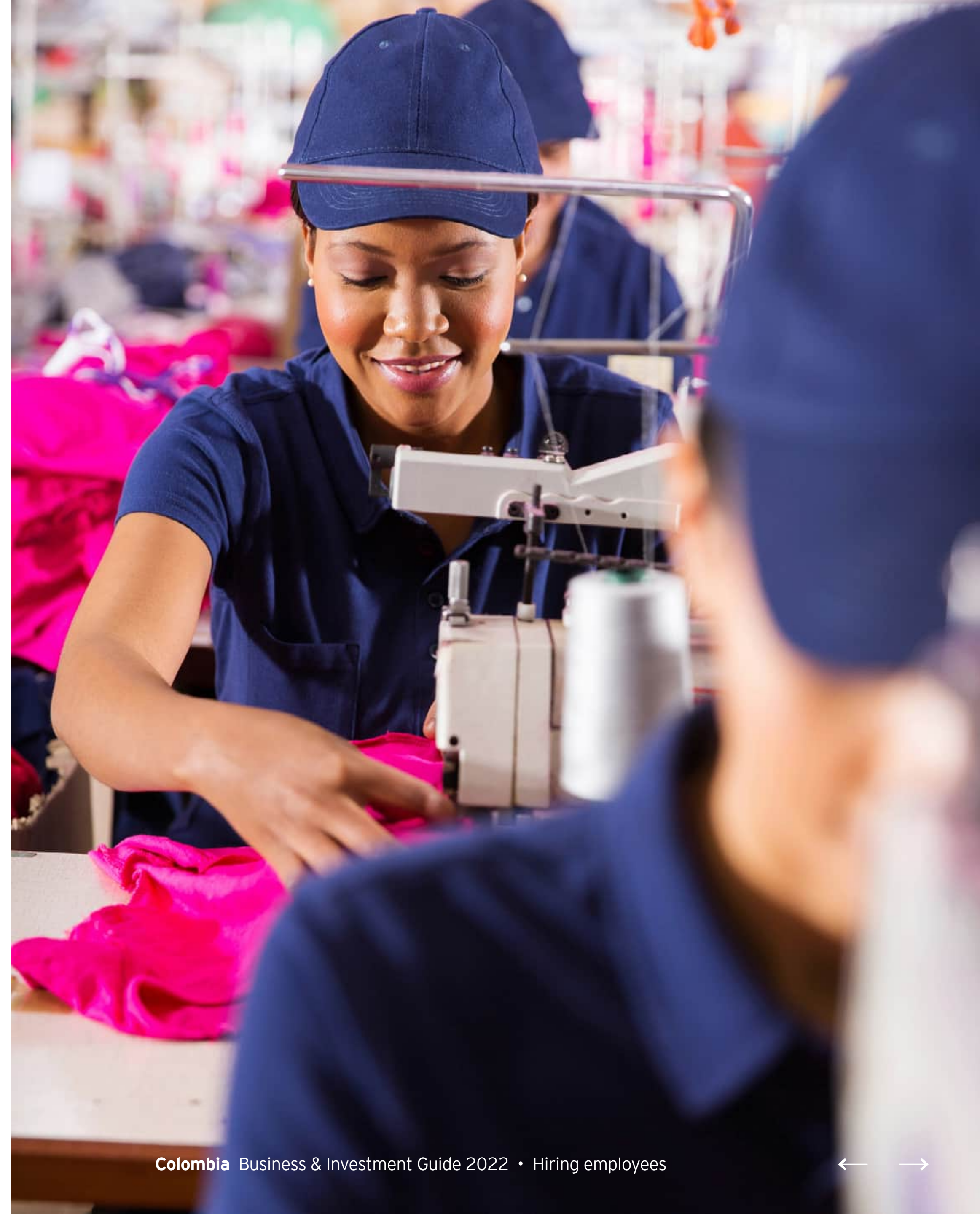
-  Relevant data

## Collective dismissal


Employer must obtain previous authorization from the Ministry of Labor to carry out a collective dismissal, otherwise, the termination of employment agreements would not have any effect.

Collective dismissal qualification depends in the company's total employees and the percentage of labor agreements to be terminated without fair cause within a period of six months, as follows:


Percentage of labor agreements to be terminated without fair cause	Total number of employees
▶ <b>30%</b>	More than 10 employees and less than 50.
▶ <b>20%</b>	More than 50 employees and less than 100.
▶ <b>15%</b>	More than 100 employees and less than 200.
▶ <b>9%</b>	More than 200 employees and less than 500.
▶ <b>7%</b>	More than 500 employees and less than 1.000.
▶ <b>5%</b>	More than 1.000 employees.






-  Introduction


---

-  Setting up a business


---

-  Making investments


---

-  Hiring employees


---

-  Bringing foreign personnel


---

-  Trading cross border


---

-  Making cross border payments


---

-  Keeping the accounting records


---

-  Paying corporate taxes

---

-  Paying personal taxes

---

-  Relevant data

## Workplace harassment

Any persistent and demonstrable conduct before an employee by another employee or employer, seeking to infuse fear, intimidation, terror, distress, cause labor demotivation or lead to the employee's resignation is deemed as workplace harassment.

Law considers workplace harassment the following conducts:

- |   |  |   |
|---|--|---|
| <p>^ labor mistreatment,</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">1</p> | <p>^ labor persecution,</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">2</p>                     | <p>^ labor discrimination,</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">3</p> |
| <p>^ labor obstruction,</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">4</p>  | <p>^ labor inequity and labor deprotection.</p> <p style="text-align: right; font-size: 2em; font-weight: bold;">5</p> |   |

**Employees arguing being subject to workplace harassment conducts will have labor stability for six months.**



## Temporary services agencies ("TSA")

TSA's are entities who hire services with third-party beneficiaries to temporarily assist in the development of their activities through the work of individuals, hired directly by the TSA, which will act as the employer.

If the six months of the allowed extension are completed and the original cause of the specific service under contract subsists; this will not extend the contract and entering into a new one with the same or with different TSA for the provision of that service.


The user companies (beneficiary) can hire employees through the TSA only in three events:

- ▶ For occasional, incidental or transitional measures for a period up to one month;
- ▶ Replacement of employees on vacation, leave, sick leave or maternity leave; and
- ▶ To support increases in production for seasons for a period up to of six months, extendable up to six months.




-  Introduction

---

-  Setting up a business

---

-  Making investments

---

-  Hiring employees

---

-  Bringing foreign personnel

---

-  Trading cross border

---

-  Making cross border payments


---

-  Keeping the accounting records

---

-  Paying corporate taxes

---

-  Paying personal taxes

---

-  Relevant data

## Social security

The social security system includes the pensions system, the health system, the labor risks system and the payroll taxes contributions. Every employer is under the obligation to enroll its employees to the social security system and to make the corresponding monthly contributions on time.

As long as foreign employees are covered by the pension system in their home country or in another country, they would not be obliged to be enrolled and to pay monthly contributions to the pension system.

The obligation to contribute to the social security and payroll taxes are summarized in the following chart and notes:

	Basis	Rate	Employer	Employee
<b>Pension</b>	Salary (1) (2)	16%	12%	4%
<b>Health</b>	Salary (1) (2)	12.5%	8.5%	4%
<b>Solidarity fund</b>	Salary(1) (2) (3)	1%-2%	N/A	1%-2%
<b>Professional Risk</b>	Salary(1) (2) (4)	0.348% -8.7%	0.348% -8.7%	N/A
<b>SENA, ICBF, Family Compensation Fund (payroll taxes)</b>	Salary (5)	9%	9%	N/A

### NOTES

**(1)** Contributions to the social security system (pensions, solidarity fund, health and professional risks) shall be calculated over the ordinary salary earned by the employee. Nevertheless, if the monthly salary is more than twenty-five times the legal monthly salary, contributions to the social security regime will be calculated over the maximum basis of 25 legal monthly salaries. Non-salary payments agreed upon between the employer and the employee are not included in the bases to calculate social security calculations, if they do not exceed 40% of the employees' remuneration. If these non-salary payments exceed the 40%, the difference will be subject to social security contributions.

Companies that are subject to the income tax and related taxes, consortiums, temporary unions, free trade zone users that have not signed legal stability agreements and trusts,

are exempted to pay the 8,5% of the employer's health contribution, but only over the payroll of those employees who earn less than 10 legal monthly salaries. There is still the obligation for the companies of paying the remaining 4% of employee's health contribution.

**(2)** In case of employees earning integral salary, 70% of salary will be the basis. However, if 70% of the integral salary is more than twenty-five times the legal monthly salary, contributions to the social security regime will be calculated over the maximum basis of 25 legal monthly salaries.

**(3)** The contribution to the Solidarity Fund only applies for employees who earn more than four legal monthly salaries. This payment is equivalent to 1% of the monthly salary, but in the case of employees earning more than 16 legal monthly salaries the rate will be increased as follows:

between 16 and 17 legal monthly salaries will pay an extra 0,2%; between 17 and 18 legal monthly salaries an extra 0,4%; between 18 and 19 legal monthly salaries an extra 0,6%; between 19 to 20 legal monthly salaries an extra 0,8% and between 20 and 25 legal monthly salaries an extra 1%. Contributions to the solidarity fund also have the ceiling of 25 legal monthly salaries.


**(4)** Actual rate depends on a legally established scale based upon the degree of risk represented by the economic activity the company undertakes. The social security office makes the classification at the moment of enrollment. Contributions to the professional risks also have the ceiling of 25 legal monthly salaries.

**(5)** Contributions to SENA, ICBF, Family Compensation Fund (payroll taxes) shall be calculated over the ordinary salary earned by


the employee, including any paid rest, such as vacations. In case of employees earning integral salary, 70% of salary will be the basis. Non-salary payments agreed upon between the employer and the employee are excluded of payroll taxes. Payroll taxes do not have any ceiling.

Companies that are subject to the income tax and related taxes, consortiums, temporary unions, free trade zone users that have not signed legal stability agreements and trusts are exempted to pay the 5% of the payroll taxes that is designated to the Colombian Family Welfare Institute (ICBF-3%); and to the National Learning Service (SENA-2%), but only over the payroll of those employees who earn less than 10 legal monthly salaries. There is still the obligation for the companies of paying the remaining 4% of the payroll taxes designated to the Family Compensation Funds.




-  Introduction


---

-  Setting up a business


---

-  Making investments


---

-  Hiring employees


---

-  Bringing foreign personnel


---

-  Trading cross border


---

-  Making cross border payments


---

-  Keeping the accounting records


---

-  Paying corporate taxes

---

-  Paying personal taxes

---

-  Relevant data

## Other minimum obligations at a glance

### Internal work regulations

Applies to commercial companies with more than five permanent employees, industrial companies with more than

**10 employees**  
and agricultural with more than  
**20 employees**

### Safety and hygiene rules

Applies for employers with more than

**10 employees**

### Safety and health at work system - SGSST

Applies to all companies with at least one employee.

### Coexistence committee and safety and health committee (COPASST)

Applies to all companies. However, the COPASST is not mandatory in companies with less than

**10 employees,**

but in any case, a responsible for health and security matters is required.

### Nursing family friendly rooms

Applies to companies with a capital equal or higher to

**1,500 legal monthly salary,**

or with a lower amount of capital but more than

**50 employees**

\* Companies with less than 1,000 employees must comply with this obligation by 2023.

### Labor disconnection policy

Applies to all companies with at least one employee.







Better Working  
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The better the answer.  
The better the world works.

