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VENEZUELAN LABOR RELATIONS

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One of the most important problems to be considered by American business men who are planning to do business in Venezuela, is the Venezuelan Labor Law which governs the conditions of work in that country. In the United States the benefits of labor are protected mainly by a contract negotiated between employees, acting individually or through a union, and management. Employment contracts for a particular business between employers and employed are, for the most part, a matter of free negotiation. There are of course minimum wage statutes, hours of labor laws and other similar regulatory legislation in the United States but labor benefits above the minimum set by such legislation are the result of private agreements. In Venezuela, however, the greater part of labor's benefits are a matter of statutory law. The pupose of this article will be to review such statutory law in order to demonstrate a system of labor regulation based on statute rather than agreement. Even the terms of a private contract are for the most part dictated by statute.

A. *General Provisions*:

All the enterprises, exploitations or establishments of whatever nature, whether these be public or private, established in the territory of the Republic are subject to the Venezuelan Labor Law and its regulations.

The Law divides all workers into two general classifications:

1) employees, and

2) laborers

An employee for the purpose of this Law and its regulations is *any person who works for the account of another and in whose work intellectual effort predominates over physical effort*, while a laborer is *any person who works for the account of another at a trade or by manual labor or in any kind of service in which the manual or material element predominates over intellectual.* (Articles 4 and 5 of the law and Article 7 of the regulations.)

The law considers watchmen, foremen, and the like as laborers because without doing manual labor themselves, they prepare or direct the work of other laborers.

The aforesaid distinction between an employee and laborer is most important in the Venezuelan Labor Law, for it serves as a basis for determining the maximum working day for a worker and what vacation he is entitled to.

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The provisions of the Labor Law are applicable to both the Venezuelan and foreign employees of a company.

B. *Indemnities due employees and laborers under the Venezuelan Labor Law.*

1) Dismissal benefits.

2) Notice of discharge.

Article 8 of the Labor Law provides that the labor contract may be executed for a *specified project,* for a *specified period* or for an *indeterminate period.*

A contract executed for a specified project terminates with the completion of the project.

A contract executed for a specified period cannot exceed one year for workers or five years for employees and shall automatically terminate upon the expiration of the period agreed upon.

A contract executed for an indeterminate period, whether made by employees or laborers, may be terminated by either of the parties, provided one of the parties gives notice to the other party, subject to the following conditions:

a) After one month of uninterrupted work, *one week's prior notice* to the other party must be given;

b) After six months of uninterrupted work, *prior notice of fifteen days* must be given; and

c) After one year of uninterrupted work, *one month's prior notice* must be given.

These notices may be omitted by either of the parties upon payment to the other of an amount equal to the salary earned by the employee during the period covered by the notice. The salary which must be paid in lieu of notice shall be calculated on the basis of the salary earned by the worker on the day of cessation of work provided the work done is not piece work, in which case the amount to be paid is calculated on a different basis.

Either party may terminate the contract without prior notice or payment of an indemnity for a just cause.

The following are justified causes for an employer to terminate an employment contract without prior notice:

a) Lack of respect or immorality on the worker's part while working;

b) Material harm intentionally or negligently caused to the machinery, tools, equipment or products of the enterprise;

c) Acts of omission or negligence which affect industrial security or hygiene;

d) Unjustified lack of attendance on the job during three days in *one month.*

Illness is considered as justification for lack of attendance. The Law provides that the employee is under a duty to notify, whenever possible, the employer of his illness, or any other cause that prevents him from reporting to work.

e) Serious lack of compliance with the obligations imposed under the contract;

f) Serious lack of consideration due the employer, by the members of his family, or his representatives;

g) Revealing of manufacturing and trade secrets when such information injures the employer; and

h) Abandonment of the job.

Under Article 32 of the Law, a worker or employee may terminate his labor contract without having to give prior notice to the employer for the following reasons:

a) Serious lack of respect due. ill treatment, insults, or immoral acts of the employer, members of his family who live with him, or his representatives to the employee or laborer;

b) Negligence by the employer or his representatives which may endanger industrial safety or hygiene;

c) Serious lack of compliance by the employer with the obligations imposed under the labor contract;

d) Lack of consideration by the employer to the worker;

e) Any other act which can be considered as indirectly discharging the employee.

If an employer asks his employee to effect work clearly different from the work which he is supposed to effect under his contract or under the Law, or which requires a change of residence, unless, of course, same is provided in the respective labor agreement, or the nature of the work is such that it requires frequent changes of residence, the same will constitute an indirect discharge.

However, the following are not considered as indirect discharges:

a) When a worker is returned to his former job after he worked in a better job for a trial period. This trial period cannot exceed thirty days;

b) When a worker has been working in a higher post during the absence of the person assigned to the job;

c) The temporary change of a worker to an inferior job during a period of emergency provided the same salary is paid to him.

The individual labor contract may also be terminated by:

a) Mutual consent of the parties;

b) For reasons set forth in the labor contract;

c) For causes permitted by the common law applicable to labor contracts.

In case of termination of a labor contract for a justified cause, the party

who has given cause for such termination shall pay to the other, as an indemnity, an amount equal to the period of notice which would have been given if the employment had been for an indeterminate period. In the case where there is a labor contract for a specified period or project, if the discharge is effected without just cause before the period provided in the contract or the conclusion of the project, the party causing the discharge is under a duty to pay damages to the other.

In case a labor agreement is terminated for *force majeure* or for a cause beyond the control of the employer which requires the cessation or closing of the enterprise, the employer does not have to pay the indemnities set forth above, *i.e.*, liquidation of a business, destruction, fire, etc., etc.

The Law provides that further details regarding the application of the foregoing provisions to special mining and transportation companies will be enacted or provided for through special resolutions or in the Regulations of this Law.

1. *Length of Service Indemnity.*

The previous Law has been changed to provide that an employee who is discharged without just cause, or leaves his work for one of the causes indicated in Article 32 of the Law above referred to, or through some other cause beyond his control, he shall become entitled to receive a length of service indemnity equal to *one half month's wages for each year or fraction of year over eight months worked uninterruptedly for the first full year worked* and the same amount for every successive period of eight months of uninterrupted work. The salary payable as an indemnity shall be the same as that earned during the month prior to cessation of work. Under the previous Law this indemnity was only payable for each full year worked.

2. *Legal working days and maximum working days.*

It is important to know what days are considered by Venezuelan Law legal working days and what is the maximum working day, because in the first case, if work is effected during a legal holiday, extra compensation must be paid to the employees or workers and, likewise, if work is effected in excess of the maximum working day, a special compensation must be given to the laborers or workers by the employer.

According to the provisions of the Labor Law, every day in a year is a legal working day, with the exception of the following holidays: Holy Thursday, Good Friday, New Year's Day, April 19th, July 5th, July 24th, and October 12th of each year. These are known as National Holidays—and those days that may have been or are declared as holidays by the States or Municipalities within their respective territorial jurisdiction.

The Law provides that on National Holidays no work of any kind may be performed. However, any enterprise, exploitation or establishment, which

by reason of public interest or for technical reasons finds it necessary to work its employees or laborers during all or any of the holidays mentioned above, may be excepted from the above mentioned prohibition.

The Regulations of the Law enumerate the kind of work which is expected from compulsory rest on holidays by reason of *public interest* or for *technical reasons.*

If an enterprise does not work its employees or laborers these days, it must nevertheless pay them *a full day's wage.*

If an enterprise is authorized to work on these days, its employees and laborers must be paid double pay for each day worked.

Sundays are also considered as holidays or normal rest days, but an employee or laborer is not remunerated for these days. Therefore, if he works on Sundays, he is only entitled to a normal day's pay, provided he does not work overtime.

Regarding State and Municipal holidays, an employee or laborer is not entitled to a day's salary if he does not work on this day and only to an ordinary day's wage if he does work.

The Law distinguishes between the "normal working day" and the "normal rest day."

A *normal working day* is Sunday in those special cases where arrangements are made with a worker whereby he will normally work on Sunday and receive a compensating rest-day during the week.

A *normal rest-day* is any week-day in those special cases where arrangements are made with a man to work on Sunday. In these instances such fixed normal rest days are to be considered as "Sundays" insofar as special workers are concerned and alternately Sunday must be treated as a normal week day.

In this connection it should be noted that monthly payroll workers do not receive extra pay for remunerated holidays, but they are entitled to overtime pay at the rate mutually agreed (minimum 25% extra) for work done in excess of normal hours. All workers, whether laborers or employees, daily payroll or monthly, are entitled to rest-days, either *normal* or *compensated.* Compensated rest periods must be given, where due, on a day in the week following that in which work was performed on a normal rest day or by a reduction of daily hours of work if freely agreed to by workers and employer, in a special arrangement made with the assistance of the corresponding Labor Inspector.

The Labor Law provides that the duration of the actual ordinary work of each laborer and of each salaried employee of either sex, shall not exceed eight hours per day or forty-eight hours per week.

The working week for employees of commercial establishments and office workers is limited to *forty-four hours.*

The foregoing provisions are not applicable to persons occupying positions of supervision, direction, nor in the case of confidential employees; nor to persons performing discontinuous labor or work that requires their mere presence; nor to those who perform functions which by their nature are not submitted to a limited day's work.

Nevertheless, these persons may not work for more than twelve hours daily and shall have the right, within this period, to a minimum rest of one hour.

The daily hours of work are deemed to be the time during which the personnel remains at the employer's orders.

In the daily hours of work there must also be included one-half of the time necessary to transport the worker to and from his place of work, when necessary, according to the Labor Law, and also when the worker cannot absent himself from his place of work, because of the nature of such work, this time is considered as working time.

The worker is considered to be at the disposal of the employer from the moment he arrives at the place where he is to perform his work or at the place from where he is to be transported for the account of the employer in conformity with the established time-table.

The actual day's work must be interrupted for at least half an hour's rest, and in no case can work be performed during more than five continuous hours.

The Labor Law provides that hours of overtime work must be paid for by an increase of at least 25% above the basis of wages agreed upon for the ordinary day's labor.

3. *Annual Vacations.*

Annual vacations must be granted after each year of uninterrupted service as follows:

Laborers ..... 7 working days
Employees ....14 working days

Sundays, Holy Thursday, Good Friday, New Year's Day, National State or Municipal Holidays are not working days and any such days which fall during the vacation period must, therefore, be added to the number of consecutive vacation days.

Neither the notice of termination of services, nor justifiable absence may be deducted from length of annual vacation, but the vacation period may be postponed for a period equivalent to the total of such justifiable absence.

Workers who are re-engaged within three months after their services were terminated, are to be granted their annual vacation as if their term of employment had not been interrupted, except that the vacation may be postponed for a period equivalent to the length of such interruption.

Unjustifiable absence can be deducted from the vacation period if such absences total seven days or more in the year.

Vacations must be taken within three months from the date on which the worker became entitled thereto.

Workers must be paid their full remuneration covering the vacation period at the commencement of the vacation. By "full remuneration" is meant salary or wages, plus food and lodging or the cash-value thereof, when such form part of the workers' remuneration.

A worker performing remunerated work during the period granted as annual vacation forfeits his right to receive remuneration for such vacation period.

Any worker whose services are terminated without having received the annual vacation, to which he is legally entitled, must receive the full remuneration corresponding to such vacation period.

C. *Liability to both Venezuelan and foreign employees for injuries or illnesses sustained while working in Venezuela.*

1. *Application of Law and Benefits.* The law is generally applicable to all forms of employment with a few exceptions noted hereinafter.

Compensable injuries are compensated at full wages. Full wages are payable, irrespective of the amount of earnings, even though the amounts were to exceed the maximum amount provided for a permanent total disability. It should be carefully noted, however, that payment of temporary compensation is limited to a six months' period.

There is no election involved on the part of either the employer or of the employees. No deductions or credits are allowable for the payment of temporary compensation in computing the amount due.

The Law defines an occupational accident and an occupational illness as follows:

"Occupational accidents are those functional or corporal lesions, permanent or temporary, immediate or subsequent, or death, resulting from the violent action of an exterior force which can be determined and which takes place during the course of work and is occasioned or brought about by same; an internal lesion brought about by a violent force occurring under the same circumstances shall also be considered as an occupational accident.

"Occupational illnesses are any pathological conditions resulting from the work which the laborer was effecting or from the environment in which he was obliged to work and which provoked a lesion or functional disorder, permanent or temporary, in his organism, the origin of such occupational illness being ascertainable by physical, chemical or biological factors."

The victims of labor accidents and of occupational illnesses have the right to receive from their employers the medical, surgical and pharmaceuti-

cal treatment, which may be necessary as a consequence of such accidents or illnesses.

In the case of death, the employer is under a duty to pay the funeral expenses, which must be proportionate to the social conditions of the deceased and to local customs.

These expenses shall not exceed in any case the sum of *three hundred bolivars* (Bs. 300.—).

The funeral expenses and the medical, surgical and pharmaceutical expenses cannot be deducted from the indemnities, which must be paid in conformity with the provisions of the Labor Law.

The following labor accidents and occupational illnesses are excepted from the provisions of the Labor Law and are subject to the provisions of the General Law:

1) Where an accident was intentionally caused by the victim;

2) Where the accident was due to *force majeure,* which is foreign to the work, should the existence of a special risk not be proven;

3) Where a person executed occasional jobs when these are distinct from the usual business of the employer;

4) Where a person executed a job for the account of the owner of a private residence; and

5) Where a person is a member of the family of the employer and works exclusively for him and lives under the same roof.

2. *Accident Reports.*—Are to be made within a period of four days by the employer to the Labor Office. Both accident and occupational illnesses are to be reported in the same manner. The report must be made by the injured or the victim of illness personally, if able; if he fails to do so when he was able, the employer is freed from certain responsibilities chargeable to lack of opportune medical, surgical and hospital attention. The Labor Laws require a doctor, or someone competent, to render medical and pharmaceutical attention, where a camp for employees is situated more than two kilometers from the nearest town for each four hundred employees and an additional medical practitioner for each additional four hundred or for each additional fraction thereof exceeding two hundred. As a rule, these doctors are quite well educated men and are able to take care of the clerical work involved in reporting of accidents and in rendering medical reports.

It is the usual practice to give the injured a receipt form which constitutes an acknowledgment of notice of the injury or illness.

3. Medical reports.—There is no official report form used. The attending doctor makes a narrative report to the Labor Office. Any good form would be acceptable as long as it is in the official Spanish Language. Some oil companies have prepared their own forms and they have been accepted by the Labor Office. Under the ordinary situation, the attending doctor, espe-

cially if he is a camp doctor, would be able to render a report on a standard form in English.

4. *Medical treatment.*—Obligatory for six months following the injury. The employer may continue treatment if he desires, or may take advantage of the law which provides that at the end of six months any partial or permanent disability shall be determined.

No temporary compensation is due after the lapse of six months. Only payments for permanency are obligatory after the end of the six month period. However, the employer can, if he desires, continue medical treatment and attention with the hope of reducing the disability in that manner, *but* he is not required to continue payment of temporary compensation if he continues medical treatment subsequent to the six month period.

When medical attention must be acquired outside of a staff or employed doctor at a camp or other work institute, the charges run very high compared to American standards.

5. *Classification of incapacities and schedule of indemnities.*—The Labor Law classifies the incapacity produced by labor accidents or occupational illnesses into the following: death, absolute permanent incapacity, absolute temporary incapacity, partial permanent incapacity and partial temporary incapacity.

The law does not consider as incapacities those physical defects arising from accidents or occupational illnesses which do not prevent the laborer or employee from executing the same class of work, with the accustomed efficiency of which he was capable before the occurrence of the accident or before becoming ill.

In the case of an accident or occupational illness which occasions death, the heirs of the deceased have the right to an indemnity equivalent to two (2) years' wages. This indemnity in no case may exceed *fifteen thousand bolivares* (Bs. 15,000.—), whatever the amount of salary may have been.

In the case where an accident or occupational illness results in absolute and permanent incapacity, the victim has a right to an indemnity equivalent to two (2) years' wages. This indemnity may in no case exceed *fifteen thousand bolivares* (Bs. 15,000.—).

In the case where an accident or the occupational illness produces absolute and temporary incapacity for work, the victim of the accident has a right to an indemnity equal to the wages corresponding to the days during which he is incapacitated. This indemnity in no case can exceed the salary corresponding to six months.

In the case where an accident or occupational illness produces partial and permanent incapacity, the victim has a right to an indemnity that shall be fixed taking into consideration the salary and the reduction in earning power caused by the accident, according to a schedule set forth in the law.

Should the illness or accident produce partial and temporary incapacity, the victim has a right to an indemnity that must be fixed, taking into consideration the salary, the reduction of earning power caused by the accident and the days that the incapacity lasted. This indemnity in no case may exceed the salary corresponding to six (6) months.

The Law indicated that the salary which shall serve as a basis for calculating the aforesaid indemnities must be the salary which the victim has the right *to collect on the date the accident occurred or the occupational illness commenced.*

When a worker is incapacitated by one and the same accident and later by another of a different nature, or even death, the indemnities corresponding by reason of the latter shall be paid independently of those that might have been already paid by reason of the former.

In all cases the limits of incapacities, absolute and temporary, shall be fixed by curing of the wounds, within the first six months or by the expiration of this term, should the lesions have not yet become healed.

If an accident or illness produces partial and temporary incapacity for the work, the laborer or employee has the right to an indemnity equal to the difference between the wage he is earning and those which by reduction of earning power he might earn during the period the incapacity lasted.

Likewise the employer may utilize the services of the laborers or employees on work that can be performed by them in accordance with their usual tasks, depending on the extent of their temporary incapacity. In this case the following information should be sent by the employer to the Labor Inspector: Name and surname of the employee or laborer; the kind of work he performed and the salary earned; what kind of work he is doing by reason of the incapacity; the place where he actually works and the date.

The law provides in those cases where an enterprise has hospitals, clinics or similar establishments declared fit by the Ministry of Sanitation and Social Welfare to give medical, surgical and pharmaceutical treatment, said enterprise may demand that the treatment referred to above be given in their establishments, and the injured may not claim that such be given elsewhere.

However, if the victims of accidents and occupational illnesses repeatedly refuse to subject themselves to the prescriptions, diets and treatment indicated by the attending physicians, the enterprise will be exempted from responsibility in this regard.

Illnesses of a non-occupational nature, which are contracted as a result of residing at the places where the work is being effected and which constitute endemic diseases at such places, such as malaria, ankylostomiasis and others, do give the right to medical, surgical and pharmaceutical treatment, but do not give the right to any indemnity.

The Law defines an occupational illness as that illness or intoxication produced by the substances indicated in the table appearing in Article 258 of the Regulations of the Law, when the illness or intoxication is contracted by the worker employed in the corresponding profession, industry or job indicated in said table.

Article 121 of the Labor Law refers to the medicines and therapeutic supplies which must be kept by an enterprise which has fifteen (15) or more employees.

Article 122 refers to enterprises which have more than three hundred (300) laborers.

Any employee or laborer who is rendered unfit to continue working on account of an accident or illness suffered in the services of an enterprise, has a right to remain under treatment at the camp, while his illness endures, provided that the illness be not of a venereal, cancerous, tubercular or analogous nature.

In this regard the Regulations provide that enterprises referred to in Article 121 must have on hand, in quality and quantity the following medicines and supplies in order to render first aid in cases of accidents:

Absolute Alcohol
Alcohol for burning
Tincture of iodine, triple
Physiological serum
Polivalent anti-snake bite serum
Ampoules of camphorated oil, for injection
Zonite or other similar disinfectants
Gauze, simple
Bandages
Hydrogen dioxide
Hypodermic syringes with needles
Adhesive tape
A pair of scissors
A pair of pincers

When an enterprise is located in a malaria region a sufficient quantity of drugs for the treatment of malaria for the protection of the workers against mosquitoes should be furnished. The employer must furnish these free of charge to the workers and is under a duty to see that they must make adequate use of same.

Back cases not otherwise classified are computed on a percentage of a loss of use to the entire body.

6. *Termination of cases*:—In the ordinary case this involves merely a narrative stipulation to be filed with the Labor Office.

There is no such thing as a compromise agreement or joint petition

whereby a disputed or contested case may be compromised and closed forever. The running of the two year statute of limitations closes a case. The statute starts to run on the date of accident.

A case settled and closed by stipulation may be reopened any time within the two-year period by the injured, but not thereafter, and this limitation also runs from the date of accident.

All indemnities for permanent disabilities or incapacities are paid in a lump sum, and may not be paid by any form of installments.

7. *Investigation*:—When proper notice has been given (or at the time notice is received if witnesses are still available), a *caporal* (who is a shift boss or a straw boss) should proceed to interview at least two witnesses who have knowledge of the accident, and write up a summary memorandum of the testimony of the witnesses. Due to the fact that the ordinary laborer (obrero) is unable to read and write, there is no method or manner of obtaining a signed statement and in very few communities are there short-hand reporters capable of making a transcript. The courts do not have what we know as official court reporters and in the case of work being done away from well settled communities, which is usually the case, a summary digest of the testimony of the witnesses is all that can be prepared. This summary is filed with the Labor Board, is given considerable weight if properly prepared and done within time. When the circumstances are otherwise than outlined, with the witnesses scattered or the facts disputed, it still seems to be the practice to interview the witnesses and reduce the conversation to memorandum form. This is done by attorneys investigating in serious and contested cases where the witnesses are unable to read and write.

The medical reports referred to above naturally form an important part of the investigation, especially where they are initiated by the Company or regularly employed doctor; therefore they should be made at all times.

8. *Disputed cases*:—Where the employer refuses to pay, by denial of accident, the labor inspectors of the Labor Office will investigate, but many times they do so anyway. Hearings are usually had at the place of accident or as near as may be possible. Where practicable, the employer may introduce witnesses and evidence bearing on the facts of the accident, or lack of same, after which the Labor Office makes what is termed an *administrative decision.*

If the employer refuses payment on medical grounds, the Labor Office appoints an examining doctor; the injured may select a doctor, and the employer uses his doctor, all of whose reports are rendered to the Labor Office from which an administrative decision is then entered.

If the employer is dissatisfied with the decision, he simply refuses to pay. This throws the burden upon the claimant to appeal to the following courts:

Court of the First Instance;
Next the Superior Labor Court;
Lastly the Cassation Court;

this latter step only on a question of law principally as to procedure in the lower courts.

Although the injured has the burden of carrying the appeal, the costs are not required of him in advance and that presents no impediments or prejudice to the injured.

Very few cases are litigated beyond the administrative decision. The cost is not justified in view of the amounts awarded. Hearings being held at the place of accident usually add a disproportionate amount to the expense.

9. *Occupational Disease*:—Such provisions as exist in the Law currently in effect do not involve most companies. There is a good prospect that a number of areas will be declared endemic zones, which would have the result of making malaria contracted while working in such zones, compensable as an occupational disease. No such zones have yet been declared and there is no way of knowing when a regulation will be made. Probably not within the next twelve months or so.

The schedule of indemnities would be on the same basis for occupational disease as for injuries by accident.

For the most part, this type of case would be medical only, and according to information, as time goes on, the health of the native employees improves with better food and better living conditions so that with a longer experience in operation and a longer period of time during which the same employees are retained, the hazard from this source becomes less.

10. *Ordinary Law cases*:—Failure to exercise proper care under aggravating circumstances will remove an injury from the provisions of the Labor Law and make it what we would term an employer's liability matter. These exceptions are rare, but it is noteworthy that cases excluded from the Labor Law are such that they are thereby automatically established from a technical standpoint as cases of employer's liability at the common law. They are thereby made into a question of nothing more than the extent of damages.

Foreign companies doing business in Venezuela are well aware of the personal responsibility involved in this type of case because it carries with it the possibility of the person in charge of the operations being jailed and prosecuted under the penal code.

In regard to those cases referred to above, under paragraph 1, the opposite beneficial rule applies so that, for example, if an injured man is excluded from the application of the labor act through his own intentional act, then, although he can bring an action at common law, it cannot prosper, because there are no grounds.

D. *Social Security Law*

1. *General Comments*: What is termed a Social Security Law became effective October 19, 1944, in the Federal District, which embraces principally the capital city of Caracas. In addition to this district, a small part of the State of Miranda, which adjoins the Federal District and contains some industrial activity, is included in the application of the act. Thereafter, as soon as the authorities can make the necessary arrangements, additional areas and states will be brought under the term of the law.

The terms of the new Social Insurance Law are such that it very definitely amounts to a state monopoly. It fixes a tax upon all employers, and following that provides certain definite benefits to all employees, including sickness and maternity assistance.

In Venezuela there are no reported decisions in labor and employer's liability cases which would have any value. There are few appeals, and they are more in the nature of stating merely what the Court decided. In civil code countries, such as all Latin American countries are, the doctrine of *stare decisis* does not prevail. The code constitutes the only authority and while the decision of other courts or previous decisions may be used for their persuasion, there is no duty on the tribunals to follow any previous decisions; hence, a new or fresh presentation of a point may prove successful even though the case immediately preceding was decided otherwise.

1. All companies doing business in the country, regardless of their size or number of workers employed, must distribute among their employees and workers 10% of the net profits earned at the end of the respective fiscal year.

This 10%, once arrived at, must be distributed among all employees and workers in proportion to the amount of salaries or wages earned by each employee and worker.

Any employee who has started to work after the beginning of the fiscal year or leaves before the end of same, becomes entitled to a participation in the profits in proportion to the *number of full months worked.*

In no case can the participation by any employee or worker exceed two months' wages.

2. *How are profits calculated?*

Let us take an enterprise that had a gross income of Bs. 100,000 during the fiscal year. How are profits arrived at?

From the Bs. 100,000 there must be deducted all general expenses had during the year, i.e. operating expenses, home office overhead, depreciation of equipment, taxes etc. and 6% of the invested capital. When an amount is arrived at, 10% must be set aside as a reserve fund.

Gross income	Bs.	100,000.—
Operating expenses, depreciation of	Bs.	50,000.—
	Bs.	50,000.—
If invested capital totals 500,000		
6% thereof is equal to	Bs.	30,000.—
	Bs.	20,000.—
10% of Bs. 20,000.00 as a reserve	Bs.	2.000.—
Total net profits	Bs.	18,000.—
10% of the net profits	Bs.	1,800.—

to be distributed among all employees and workers according to earnings.

The words *invested capital* seem to mean *total amount* invested in the enterprise. Therefore, if a Company has an investment of Bs. 500,000.00, this amount must be taken into consideration and 6% thereof deducted.

3. *When are payments made?*

Profits must be distributed by an enterprise within a two month period following the date on which the respective yearly balance sheet has been prepared. This means two months after the close of the *fiscal year* since under Venezuelan Law enterprises doing business in Venezuela are obligated to prepare an annual balance sheet at the end of the fiscal year. (Article 39 of the Venezuelan Commercial Code).

4. *Deposits to be made by the employer.*

25% of the bonus due each employee or worker must be deposited to his account in the Labor Bank or any other institution designated by the Federal Executive. This deposit must be effected if the amount to be paid over to the employee exceeds Bs. 50.00. The remaining 75% must be paid over to the employee; however, he may instruct, if he wishes, that the employer deposit all or part of the amount in the bank aforesaid.

5. *Withdrawals of amounts deposited.*

1. An employee or worker can withdraw the amount deposited to his account only when the total thereof amounts to Bs. 2,000.— or where five yearly deposits have been made.

2. A worker on the other hand can withdraw such amounts as may be absolutely necessary in the following cases:

a) to pay for all or part of a house or farm.

b) in case of absolute or permanent incapacity duly proven.

c) in case of his death, his heirs may withdraw amounts deposited immediately.

A worker can instruct the bank to invest the sums deposited to his account in mortgage debentures. The amounts deposited are not subject to garnishment. To be withdrawn, they must be withdrawn by the worker personally or his *duly authorized representative.*

6. *Obligations of the employer.*

After the end of the fiscal year of each company and *within the period of three months* thereafter, the company must send to the Labor Inspector of its jurisdiction *a statement in duplicate* of the amounts paid as a share in the profits and the amounts deposited with the respective vouchers.

7. *Obligations of the employee or worker.*

The employee must notify the bank holding amounts on deposit for his account any change which he *may make of employers.*

8. *Right of employees.*

Employees have the right to request an inspection of the books of the company that employs them provided an absolute majority of employees and workers ask for same. For this purpose they will request the inspection from the respective Labor Inspector, so that he can, within a reasonable time, appoint expert accountants to verify the books of account of the company in question.

These experts shall be vested with the character of public employees.

The right of inspection however does not give the employee and workers a voice in the management.

The provisions above outlined leave small ground to be covered by the usual employment contract.