



International Law Section State Bar of Texas Annual Meeting

South American Labor Issues

June 10, 2010

Fort Worth, Texas



Topics

I. Recent Developments in South America Labor Law

- Brazil
- Chile
- Peru
- Argentina
- Uruguay

II. Labor Issues in M&A in South America



Basic Differences Between US and South American Labor Law

- Absence of employment at will doctrine
- Statutory severance regime
- More paternalistic approach to protecting employees/role of public policy
- Higher payroll taxes (typically)
- Less employer flexibility
- Historically greater importance of non-discrimination laws in US



I. Recent Developments in South American Labor Law



BRAZIL



Brazil

- 2010 Xerox Case – Arbitration clause in employment contract found invalid
- Case law on abusive outsourcing
 - Supreme Court Precedent 331 holds that recipients of services may have liability in event of non-payment by employer
- Pending bill in Congress to restrict outsourcing
 - Won't be able to outsource company's main activity
 - Joint and several liability for unpaid mandatory labor obligations



CHILE



Chile

- Adoption of new Labor Code of Procedure
 - Grants protection to fundamental rights protected by Constitution (e.g., worker privacy)
 - “Tutela” action
- Adoption of two non-discrimination laws
 - Equal pay for equal work
 - Disabilities Act



Chile (cont.)

- Greater penalties for employer violation of fundamental rights (additional 11 months of salary)
- 3 part test as to adequate employer protection of fundamental rights
- Employer's measures must be:
 - Proportional
 - Necessary
 - Non-discriminatory



PERU



Peru

- Ratification of FTAs with US and Canada
 - Labor Chapter
- Increase in Ministry of Labor inspectors from 100 to 400
- New labor law
 - US-style oral hearings
 - Expedited resolution of cases
 - Grants some extraordinary relief tools to plaintiffs
 - Unions given greater rights to appear
- Protection from abusive outsourcing
 - Employees may be able to hold client company joint and severally liable for unpaid labor obligations if employees working on-site
 - Personal services contract restrictions
 - Only applies to owed statutory benefits



ARGENTINA



Argentina

- Role of non-discrimination claims
- Whistle-blowing bill pending before Congress
- Restrictions on reduction of benefits under labor contract
- Restrictions on worker compensation settlements
- Kraft case



URUGUAY




Uruguay

- Salary boards
- Registration of CBAs with Ministry of Labor
- 2007/2008 laws to protect employees from delinquent outsourcing companies
- Protection of union representatives



II. Labor Issues in M&A

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- Labor liabilities and asset purchase agreements
 - Acquired rights doctrine
 - Constructive termination
 - Review of outsourcing contracts
 - Equal pay complaints in integration settings



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