

ECUADOR

1. Government requirements

Registration requirements

In order to incorporate a company in Ecuador, it is necessary to complete some mandatory steps to operate under the local legislation.

According to the Superintendence of Companies, a public deed is required in order to set up a company. The public deed is recorded before the Mercantile Registry.

The following is required for the issuance of this deed:

- Name, nationality and address of the individual or legal entity who is setting up the company
- The corporate purposes duly specified
- Denomination and duration
- Amount of shareholder capital, the percentage of participation in shares/stocks, the nominal value, name and nationality of the subscribers of the capital
- Description of what each partner contributes as well as the amount of their payments in cash or assets; the value attributed to such assets and the part of capital not paid
- Company's address
- The opening of a capital integration account in the bank institution of their choice. The basic requirements may vary depending on the institution, however in general terms, the minimum capital for a limited liability company is USD400, USD800 for a corporation and USD2,000 for subsidiaries.

Finally, with the inscription on the Superintendence of Companies, the Tax ID Number shall be obtained before the Internal Revenue Services (SRI), which is the local Tax Administration.

Once the company is duly incorporated, it is required to obtain a user ID in the Social Security Web Page. For this procedure, a copy of the Tax ID number and the application form must be submitted and delivered to the Social Security Institute (IESS).

An additional registration before the Labor Ministry (SUT) is required in order to legalize contracts, dismissals, social benefit payments and any other labor requirements. This registration is performed online and no physical supporting documentation is needed or required.

To finalize the registration requirements, the company must obtain the operating permit issued by the Municipality, as well as the permission of the Fire Department.

Ongoing compliance requirements

Tax Administration

- Monthly Income Tax Withholding Return (Form 103) which includes employee taxable basis and income tax withheld
- Annual income tax withholding appendix (RDEP)

Social Security

- Monthly Social Security report information uploaded to the Social Security System

Labor Ministry System (SUT)

- Legalization of contracts and employee terminations
- Legalization of Social Benefits paid to employees (Once a year, when payment is made)

Deductions

a. Income tax

For Ecuadorian purposes, all earnings provided in cash, services or in kind are subject to income tax unless they are specifically exempted by law.

At the beginning of every fiscal year, the employer will make a projection of the annual income to be received by the employee and apply progressive tax rates in force to estimate the amount of income tax to be withheld¹. Taxable basis is calculated by summing income and deducting

the employee social security contribution and personal expenses reported by every employee through a specific form determined by local tax authorities.

Personal expenses are deductible up to 50% of the total income received by the employee and for a maximum of the amount equivalent to 1.3 times the exempt lower bracket of income tax for individuals (USD14,575.60 for 2021). For Galapagos region, the deductible amount is USD26,280.93.

Income tax progressive chart for individuals 2021			
Lower	Upper	Lower tax	Upper tax %
—	11,212.00	—	—
11,212.00	14,285.00	—	0.05
14,285.00	17,854.00	154.00	0.10
17,854.00	21,442.00	511.00	0.12
21,442.00	42,874.00	941.00	0.15
42,874.00	64,297.00	4,156.00	0.20
64,297.00	85,729.00	8,440.00	0.25
85,729.00	114,288.00	13,798.00	0.30
114,288.00	999.999,99	22,366.00	0.35

Personal expenses must be supported with sale receipts issued in Ecuador which must include complete personal information of the individual, spouse or dependent children.

The deduction for personal expenses could be applied for the following items:

- Housing
- Schooling, art, culture
- Health
- Food
- Clothing
- Internal Tourism

Personal expenses deduction is applicable if employees annual net income (remuneration less social security contribution) does not exceed USD100,000.00. In addition, employees with catastrophic, rare or orphan diseases can deduct personal expenses (health) up to USD22,424.00.

For Galapagos region, the deduction will be up to USD40,801.89 for disease cases.

The employer is required to issue an annual withholding form named "Form 107", which is considered the employees annual Income Tax Return as long as the employee does not receive other sourced income. The employer must deliver the Form to all employees, no later than 31 January of the following fiscal year.

b. Social Security

To determine the Social Security contribution basis (taxable amount), the following must be considered: the monthly basic salary plus the amounts received for extraordinary work, commissions, bonuses or any other remuneration of a normal nature in the industry or service.

The social security contribution is compelled for the employee and the employer portions:

- The employee's contribution is equivalent to 9.45% of the monthly taxable amount.
- The employer's contribution corresponds to 12.15% of the employee's monthly taxable amount.
- The legal representative contribution is 17.6%, and it is withheld by the company.

2. Pension requirements

Social Security Pension

All employees registered in the Social Security System are entitled to a pension plan.

Employer Pension Plan

Under Ecuadorian Labor Code, employees who have worked for more than 25 years for the same employer are entitled to receive an employer pension. If employee is terminated by dismissal between year 20 to 25 a portion of the pension shall be paid. Pension amount shall be calculated by a certified actuary.

Ongoing compliance requirements

Social Security Pension

In order to receive pension plans, employees must have met one of the following conditions:

Age	Contributions (months)	Years of contribution
No age restriction	480 or more	40 years or more
60 years or more	360 or more	30 years or more
65 years or more	180 or more	15 years or more
70 years or more	120 or more	10 years or more

Employer Pension Plan

Pension accrual shall be calculated by a certified actuary.

3. Employment obligations

Employee's contract

As a general rule, all contracts signed with employees must be permanent contracts (not fixed time) with 90 days of trial time which would be used to verify their capability to accomplish with the position assigned and determine their continuance in the company. If a termination is made within the 90 days trial, no indemnification payments should be performed.

Permanent contracts must be registered in the Labor Ministry Web Page (SUT) within 30 days of the start date.

The Organic Law for humanitarian support published in the Official Gazette on 22 June 2020 establishes the emergency contract. This is an individual work contract for a defined time that can be used for the sustainability of production and revenues in an emergency situation or for new investments or business service/product lines, business expanding, modification of businesses, goods or services supply increase or in the case of needs of greater demand for production or services.

The contract will be signed for a maximum term of one year and can be renewed only once for the same term.

At the end of the contract term or if the termination is decided by the employer or employee before the term, the employee will receive the pending wages and the bonus for eviction.

If after the term of the contract the employment relationship continues, the contract will be considered indefinite.

There are other types of contracts that have a fixed time; however, they usually refer to a specific labor with a start and end date.

Maximum working hours

In Ecuador, the maximum working hours are eight per day, and these must not exceed forty hours per week.

In exceptional cases, due to business requirements and based on regulations issued by the Ministry of Labor, special working schedules might be applied in which working days and days off are consecutive.

Working hours may be distributed in a regular way on the five working days of the week and overtime is subject to additional payments.

Remuneration – components and benefits

a. Remuneration definition and payment Remuneration is compounded by all income received by the employee in cash, kind or services, including compensation for extraordinary work, commissions, and individual contributions to the Ecuadorian Social Security Institution

- IESS (when borne by the employer), as well as any other compensation associated to the industry or service.

The remuneration cannot be less than the Monthly Sectorial Minimum Wage established according to the law in force.

For the year 2021, the monthly minimum wage is USD400.

b. Overtime payments

Supplementary hours

The working hours that exceed the aforementioned limits are subject to the payment of a surcharge where the percentage varies according to the schedule in which they occur. Such hours cannot exceed four in a day nor twelve hours in a week.

If overtime takes place during the day or until midnight, the employer will pay the compensation corresponding to each of the additional hours plus a 50% surcharge. If these hours are incurred between midnight and 6 a.m., the employee will be entitled to a 100% surcharge.

Extraordinary hours:

The work performed on resting days and holidays must be paid with a 100% surcharge.

The surcharge for the payment of overtime is calculated according to the value of one working hour during daytime, applying the following formula:

Base salary/Number of regular monthly working hours (240 hours)

Sample:

Monthly base salary: USD5,000 Supplementary hours: 3

Extraordinary hours: 2

Amount per working hour = Monthly base salary (5,000) /240 = **USD20.83**

Surcharge for supplementary hours = Amount per workinghour (20.83) * 1.50 * Number of supplementary workinghours (3) = **USD93.75**

Surcharge for extraordinary hours = Amount per workinghour (20.83) * 2 * Number of extraordinary hours (2) =**USD83.33**

Supplementary and extraordinary hours must not exceed12 hours per week.

C. Labor benefits

Thirteenth remuneration (Christmas bonus)

Employees are entitled to receive a remuneration equivalent to the 12th portion of the annual remuneration, payable on a monthly basis or a one-time payment up to 24 December, depending on the employees' choice.

This remuneration is exempt for income tax and socialsecurity contribution purposes.

Fourteenth remuneration (Education bonus) Equivalent to one basic salary (USD400 for the year 2021),it is payable on a monthly basis or a one-time payment up to 15 March (if employees are located in the Coast Region) or 15 August (if employees are located in the Andean andAmazonian Regions). This remuneration is exempt for income tax and social security contribution purposes.

Vacations

Employees are entitled to an annual uninterrupted periodof 15 days of rest, including non-working days, as of the first year of employment.

Employees who have worked for more than five years in the same company or the same employer, will have the right to one day of vacation for each year that exceeds the fifthyear or he or she will receive in money the remuneration corresponding to exceeding days.

Reserve funds

From the beginning of the second year of employment, employees are entitled to receive the 12th portion of theirremuneration on a monthly basis. This amount could be paid to the employee whether on a monthly basis or paidto the Ecuadorian Social Security Institute every month, depending on the employee's choice.

Reserve funds are exempt for income tax and socialsecurity contribution purposes.

Profit sharing

Employees are entitled to participate in the profits oftheir employer for every fiscal year (1 January and 31 December). The percentage is equivalent to 15% of the company's profit and is distributed as follows:

a. Ten percent (10%) will be split for the employees of thecompany, without regard to the

remuneration received by each of them during the year corresponding to the distribution and will be delivered directly to the employees.

- b. Five percent (5%) will be delivered directly to the employees, in proportion to their family dependents, understanding these to be the spouse or partner in a de facto union, children under the age of eighteen years old and disabled children of any age.

Profit sharing must be paid by 15 April every year and is subject to income tax.

Especial conditions are applicable to mines, oil and gas industry employees.

Termination of the labor relationship

In general terms, the labor relationship may end by mutual agreement, untimely dismissal or by justified termination.

In case of mutual agreement or untimely dismissal, the employee will be entitled to receive an indemnification bonus for eviction, equivalent to the 25% of their last remuneration, calculated according to the effective working time (only entire years), as described below:

Last complete remuneration: USD5,000 Working time: 2.3 years

Last remuneration (5,000) * 25% * Full working years (2) Eviction = **USD2,500**

In addition to the eviction bonus, employees terminated by untimely dismissal shall receive a termination indemnification corresponding to one month of remuneration for every worked year (not only entire years). In cases where the individual has worked less than three years, they will receive at least three months of remuneration, as described below:

Last complete remuneration: USD5,000 Working time: 2.3 years

Last remuneration (5,000) * Working years (3)

Untimely dismissal indemnification = **USD15,000**

Additionally, the employer may terminate the employment contract with a justified motive, with the Labor Ministry's approval, in the following cases:

- For repeated and unjustified absences of punctuality or attendance at work or abandonment of it for more than three consecutive days within a month
- For serious misconduct or disobedience of the Internal Regulations legally approved by the Labor Authorities
- For lack of integrity or unethical conduct of the worker
- For serious injuries to the employer, their spouse, ascendants or descendants or their representatives
- For ineptitude of the worker regarding the performance of the labors for which he was contracted
- Unjustified complaint against the employer regarding to their obligations of Social Security
- For the lack of compliance with safety, prevention and health regulations

In the event that the reason relied on by the employer is proven, no compensation would be generated in favor of the employee.

4. Payroll requirements

Payment frequency

Payment frequency will be established in the labor contract. According to the Labor Code, payments depend on the type of activity/role performed, however, the most common are weekly for workers (physical activities prevailing) and monthly payments (intellectual activities prevailing).

Payslips

Payslips should be provided on a monthly basis in electronic or hard copy form.

5. Banking requirements related to payroll

Payroll payments must be done using Ecuadorian financial institutions in local currency (US dollars). If payments are made to foreign accounts, 5% of currency exportation tax will apply. Payments shall be made in accounts where the employee is the account holder.