



ProInversión

Private Investment Promotion Agency - Peru

Labor regime of private activity in **Peru**

Peruvian labor legislation establishes common rights and benefits for employees in the private sector¹. However, in some cases, different conditions and rights are established depending on the industry (e.g. agricultural, mining, textile sector among others), occupation or activity (e.g. nurses' regime), or the number of employees in the enterprise (e.g. micro and small enterprises).

Labor contracts

Labor contracts are agreements between employer and employee that have three essential elements:

- 1.** Service that must be personal (cannot be delegated),
- 2.** Relationship of subordination between the employee and the employer,
- 3.** Wage that the employee receives for the work performed.

Types of contracts

- Indefinite Term Contracts: Constitute the general rule for hiring in Peru and do not have expressly defined duration.
- Fixed Term Contracts: For this form of contract, the legislation requires proof of an objective cause or motive that allows temporary hiring, such as in the case of:
 - Temporary nature contracts (e.g. start-up of a new business)
 - Accidental nature contracts (e.g. substitution of an employee)
 - Contracts for a specific work or service (e.g. seasonal services)

¹ Supreme Decree N° 003-97-TR and its amendments.

General rules

- **Workday for employees:** 8 hours per day or 48 hours per week maximum.
- **Working overtime:** Is paid with a surcharge to be agreed but for the first 2 hours it may not be less than 25% per hour, calculated on the remuneration received by the employee. For the remaining hours, it shall not be less than 35% per hour.
- **Night shift:** From 10:00 p.m. to 6:00 a.m. The employees cannot be paid less than the monthly minimum wage plus a surcharge of 35% as minimum.
- **Minimum living wage:** S/ 850 (Approximately US\$ 250).
- **Trial term:** All the contracts aforementioned allow a trial term of 3 months. During this term, the employee has no right to indemnity in the event of arbitrary dismissal. This trial term can be extended to 6 months for qualified employees or those in position of trust and to 12 months for management staff.

Main employee benefits



1. **Vacation time:** The employee has the right to enjoy 30 calendar days of paid vacation per year of service. The wage paid during vacation is equivalent to the employee's regular monthly wage.



2. **Gratuities:** According to Peruvian legislation, the employee has the right to the payment of 2 gratuities per year, the first in July (Independence Day holiday) and the second in December (Christmas). Each gratuity is equivalent to the monthly wage that the employee is receiving at the time that the bonus is paid.



3. **Social health insurance:** The employer is obliged to pay a contribution to the public health system in order to allow it to provide healthcare services to the employees. This contribution is equal to 9% of the monthly wage of the employee, and it is responsibility of the employer to declare and pay it.



4. **Household allowance:** Is a monthly payment of 10% of the current minimum living wage. It is paid to employees who have one or more dependent children under the age of 18, or children over 18 enrolled in vocational, or university education.



5. **Profit sharing:** Enterprises that have more than 20 employees and that develop activities that generate business income are required to distribute a percentage of their annual income before taxes among their employees. This percentage depends on the enterprise's principal activity:

Enterprise activity	Percentage
Fisheries, telecommunications, and industry	10%
Mining, wholesale and retail businesses, and restaurants	8%
Other activities	5%



6. Severance pay: Is a social benefit called Compensación por Tiempo de Servicio - CTS that seeks to cover the contingencies arising from the termination of employment. This compensation is accrued from the first month of the beginning of the employment relationship. The employer must deposit the CTS in the bank account indicated by the employee, twice a year (May and November). The amount to be deposited every six months is the 1/12 of the remuneration for each complete calendar month of services during the semester. In this sense, the amount that will be deposited in a year for each employee will be approximately one monthly wage.



7. Pension System: The employee may choose to join the National Pension System (SNP) or the Private Pension System (SPP). The applicable rate of the SNP is 13% of the monthly wage of the employee and the rate of the SPP is on average 13.2% of the monthly wage of the employee. This contribution is assumed by the employee but the employer is responsible for its collection.

Termination of employment contract

Causes of termination of the employment contract:

- By agreement between employer and employee.
- Resignation of the employee, who shall provide a written notice 30 days in advance.
- Retirement of the employee.
- Permanent absolute disability or death of the employee.
- Completion of the project or service or expiration of the agreed period, in the case of fix-term contracts.
- Dismissal in the terms allowed by law.

Types of dismissal

DISMISSAL	DESCRIPTION	COMPENSATION
Justified	Based on a cause specified in the law relating to the conduct or skills of the employee	No compensation
Arbitrary	Based on a cause different from the ones which are specified in the law	The employee has the right to ask for compensation
Void	The dismissal violates the fundamental rights of the employees	The employee can choose between compensation and the replacement in the workplace
Indirect	The employee is subject to acts of hostility equivalent to dismissal	The employee has the right to ask for compensation

The compensation is equivalent to 1½ of the monthly wage for each complete year of services with a maximum of 12 wages.



Foreign staff

The general labor regime for private activity in Peru is applicable to the hiring of foreign personnel, with the same rights and benefits recognized for local employees.

Regarding the contract period, in this case the maximum term is 3 years but extendable by similar periods of time. Once subscribed, the labor contract shall be approved by the Ministry of Labor and Work Promotion of Peru.

As a general rule, foreign employees must not exceed 20% of all staff. Similarly, the total remuneration received by foreign employees must not exceed 30% of the payroll. Exceptions to these limitations may be made in the case of professionals, and specialized technical personnel, or for management personnel of a new business activity, among others.

The limits on number of personnel and remuneration amounts are not applicable, among others, to:

- Foreign employees who have a wife, children, parents or siblings with Peruvian nationality,
- Foreign employees whose country of origin has a reciprocity agreement with Peru,
- Foreign employees who are dedicated to the international transportation services, whether it is via ground, air or maritime with a foreign flag and registration,
- Foreign investors, with a permanent investment of at least 5 Tax Unit (UIT)² during the term of the labor contract.

² For 2016, 1 Tax Unit = S/. 3 950 (US\$ 1,170 approximately).