

E S C R I T O R I O

**PALACIOS**

**ORTEGA**

**& ASOCIADOS**

Luis Esteban Palacios W.  
José Manuel Ortega P.  
Arturo H. Banegas Masiá

Calle Guaicaipuro con Av. Ppal. Las Mercedes, Torre Forum, Piso 6, Ofic. A,  
Urb. El Rosal.  
Master: +58 212 951 3333 Fax: +58 212 951 2851  
Apartado Postal 1423 – 1010-A Caracas – Venezuela  
E-mail: general@palaciosortega.com

Francisco Casas O.  
Gilberto Jorge R.  
Valentina Zambrano Llovera  
Adolfo Ledo Nass

### **REQUIREMENT FOR THE OBTAINING OF THE WORKING VISA IN VENEZUELA**

The following provides information on the legal requirements for the obtaining of a working visa in and some relevant aspects of the labor regime in Venezuela. Thus, the following issues will be addressed:

1. Requirements for the obtaining of the working visa in accordance with the Venezuelan laws, and regularization of legal status in Venezuela.

Venezuelan laws provide for eight different types of visas: (i) business; (ii) investment, (iii) industrial business, (iv) Venezuelan Relatives (family), (v) pensioners, (vi) house employee, (vii) religious person y (viii) worker. Each one requires specific documents, established in the *Regulation of Visa Issuance Procedure*; Published in the Official Gazette No. 5.427 Special dated January 5, 2000 (thereinafter referred as the “Regulation”).

In accordance with Article 36 of the regulations, Ministry of Interior and Justice Affaire is the entity in charge of issuing the Working Visa (*visa de TRANSEUNTE LABORAL (TR-L)*), prior approval of the Ministry of Labor Affairs. Following are the requirements for the Working Visa:

“ARTICLE 37°- REQUIREMENTS TO BE FULFILLED IN FOREIGN COUNTRIES FOR GRANTING THE WORKING VISA:

“1.- THE CONSULAR SECTIONS OF THE VENEZUELAN EMBASSIES OR CONSULAR OFFICES SHALL RECEIVE ONIDEX’S AUTHORIZATION DIRECTLY FROM THE TELECOMMUNICATIONS COMPANIES OF THE ISSUING COUNTRY. SUCH AUTHORIZATION SHALL BE IN FORCE FOR SIX (6) MONTHS SINCE RECEPTION DATE.

“2.- APPLICANT TO WORKING VISA SHALL SUBMIT PROOF OF LABOR CONDITION BY MEANS OF DIPLOMAS, CERTIFICATES OF WORKING EXPERIENCE OR ANY OTHER DOCUMENT.

“3.- THE APPLICANT SHALL PRESENT A CERTIFIED COPY OF THE WORKING PERMIT ISSUED BY THE MINISTRY OF LABOR AFFAIRS IN VENEZUELA. ARTICLE 36 PROVIDES FOR CERTAIN EXCLUSIONS TO THIS REQUIREMENT.”

From the above provision it is clear that applicant must validate his/her labor condition in order to get the working visa, so that the experience and knowledge of the applicant is verified. This provision intent to prevent the breach of the immigration law in Venezuela.

In respect to the working permit, please note that the same must be obtained from the Ministry of Labor Affairs by the hiring employer entity in Venezuela. For this

---

---

purpose, the hiring employer entity shall present employment contract duly signed by the employee, as well as the identification documents of the employee.<sup>1</sup>

Additional requirements could be requested by the Ministry of Labor Affairs and/or the relevant Consular Section at its own discretion.

Please note that neither the labor legislation nor the Regulations establish limitations on the payment of the salary to an employee without working visa<sup>2</sup>. However, since foreign employees are required to maintain their legal status updated, we deem convenient to effect payment to foreign employees without working visa under a concept other than salary.

Article 38 of the Regulations establishes that the Working Visa (visa de TRANSEUNTE LABORAL (TR-L)) will be granted for one (1) year, for various entrances and no limit of stay. The Working Visa as well as the Working Permit can be renewed for the same period by the Ministry of Interior and Justice in Venezuela, previous ratification of the labor authorization of the Ministry of Labor Affairs.

Please be advised that according to Article 40 of the Regulations, the foreign person who has stayed in the territory of Venezuela for at least one uninterrupted year with a Investment Visa (TR-I); Venezuelan Relative Visa (TR-FV); Renting Visa (TR-RE); House Employee Visa (TR-ED); Religious Persons Visa (TR-REL) or Working Visa (TR-L) can request to the Ministry of Interior and Justice the Resident condition, which will be renewed every five (5) years.

## 2. Legal restrictions on number of foreign employees and corresponding salary.

Article 27 of the Organic Labor Law provides that:

“AT LEAST NINETY PERCENT (90%) OF EMPLOYEES AND WORKERS TO THE SERVICE OF AN EMPLOYER WITH TEN OR MORE EMPLOYEES SHALL BE VENEZUELAN. MOREOVER, THE COMPENSATIONS OF THE FOREIGN EMPLOYEES SHALL NOT EXCEED TWENTY PER CENT (20%) OF THE TOTAL SALARIES PAID TO ALL EMPLOYEES.”

---

<sup>1</sup> Please note that in accordance with the Immigration Law (*Ley de Extranjería y Migración*) the execution of an employment contract between the employee and the hiring employer company, as well as the notification of its execution to the National Immigration Registry are legal requirements needed for the stay of the employee in the country. En tal sentido recomendamos que se suscriba un contrato básico, con la aprobación del Departamento de Recursos Humanos de la empresa, en el que se establezca someramente las labores que los referidos ciudadanos prestaran y el tiempo durante el cual lo harán, a los fines de dar cumplimiento a las disposiciones de la Ley de Extranjería y Migración sobre la materia y que servirá además para tramitar la visa correspondiente.

<sup>2</sup> The territorial application of Venezuelan Labor laws shall be taken into account. In accordance to recent case law (Decision of the Social Chamber of the Supreme Tribunal of Justice, dated September 19, 2001. Case: Robert Cameron vs. Compañía Occidental de Hidrocarburos OXY), the law applicable to the labor relationship is the one where such relationship was agreed. Thus, if the labor relationship is agreed outside of Venezuela, the laws of such place shall govern the labor relationship, notwithstanding that the services are provided in Venezuela. (please take into consideration the restrictions of the International Private Law)

---

---

According to the provision previously mentioned, only ten per cent (10%) of a company payroll can be foreign; and such foreign employees cannot receive a percentage higher than twenty per cent (20%) of the total compensation and/or salaries. Breach of this provision will be sanctioned with a fine of between  $\frac{1}{4}$  and  $2\frac{1}{2}$  minimum wages, in accordance with Article 634 of the Organic Labor Law.