

Peru: Regulations of the new agrarian labor regime law are published

In brief

Supreme Decree No. 005-2021-MIDAGRI was published on 30 March 2021, through which Regulation No. 31110 of the Agrarian Labor Regime Law and Incentives for the Agricultural and Irrigation, Agro-exporter and Agro-Industrial sectors are approved.

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Key takeaways

The main aspects of the Regulation are as follows:

Scope	<p>Personnel not within the scope of the law:</p> <ul style="list-style-type: none">• Administrative areas: provided that the functions are not performed mainly in the field or factories• Technical support: regardless of whether the functions are performed in the field or in factories
Employment	<p>Contracts of a temporary nature must be in writing, and must indicate their duration and the objective reasons justifying the temporary contract, in accordance with the general rules on the subject.</p>
Preference in hiring	<p>The right of preference in re-contracting exists when:</p> <ul style="list-style-type: none">• The worker is hired on the same crop line for two or more periods that together exceed two months in a year.• The worker is hired under the modality of intermittent, seasonal or similar contracts, twice consecutive or not.• The worker is hired by different linked companies under a seasonal modality that together cover a full year of services.

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	<ul style="list-style-type: none"> The worker is hired for at least two seasons in the same year, consecutively or not, to provide services whose joint seasonality covers the whole year. <p>Criteria for implementation:</p> <ul style="list-style-type: none"> Where the number of staff required is less than the total number of workers with preferential rights, objective criteria must be applied to apply the preference. Engaging in discriminatory practices is prohibited in the implementation of the preferential right. <p>Formality:</p> <ul style="list-style-type: none"> The employer must convoke within 15 days prior to the start of the provision of services. If the worker does not respond within the deadline, the preferential right expires.
<p>Remuneration</p>	<p>The Basic Remuneration (RB in Spanish) cannot be less than the Minimum Living Wage (S/930.00) when the day is equal to or greater than four hours a day. When labor is less than four hours a day, the RB cannot be less than the proportional amount of the Minimum Living Wage.</p>
<p>Bonuses and Compensation for Time of Service (CTS)</p>	<p>The worker can choose whether to be paid benefits on a daily or semi-annual basis.</p> <p>Daily payment:</p> <ul style="list-style-type: none"> The Daily Remuneration (RD in Spanish) is composed of the sum of the RB, bonuses and the CTS, dividing the result by 30. The monthly proportion of the bonuses (16.66%) and the CTS (9.72%) of the RB are updated according to the increases in the Minimum Living Wage. The RB, bonuses and CTS are recorded independently on the payroll and payment slip. <p>Semi-annual payment:</p> <ul style="list-style-type: none"> The worker must inform within five days of the start of the employment relationship his decision to receive the payment of the gratuities (in July and December) and CTS (in May and November) on a biannual basis, in accordance with the general labor legislation.

	<ul style="list-style-type: none"> Workers who have an employment relationship in force on January 1, 2021, must inform their decision in writing up to five working days after the entry into force of the Regulation. In the absence of communication, the daily payment is due. It can be modified subsequently only by agreement between the parties, starting on the first day of the following month or on the agreed date.
<p>Special Bonus for Agricultural Work (BETA in Spanish)</p>	<ul style="list-style-type: none"> It is equivalent to 30% of the Minimum Living Wage. It is not remunerative, nor pensionable, and does not serve as a basis for calculation of other benefits. It is affected by the fifth category income tax, if applicable. It cannot be used to replace conventional or unilateral benefits, nor remuneration complementary to the RB. It is paid on a monthly basis but can be paid proratedly by agreement. The days not worked are discounted proportionally from the payment of the BETA. The days of suspension of the employment relationship with payment of remuneration (holidays and vacation, among others) will be computable.
<p>Work day, weekly rest and holidays</p>	<ul style="list-style-type: none"> The working day, overtime work and night work are regulated by the provisions of the general regime. Similarly, compulsory weekly breaks and holidays are also regulated by the provisions of the general regime.
<p>Vacation rest</p>	<ul style="list-style-type: none"> The right to vacation rest is regulated by the provisions of the general regime. When the bonuses and the CTS are paid on a daily basis, the holiday remuneration is 30 RD and other remunerative concepts. If the vacation leave is less than 30 days, it is paid proportionally. When opting for the semi-annual payment of social benefits, the vacation remuneration is equal to the RB and other remuneration concepts. The calculation of vacations not taken and vacation compensation is carried out in accordance with the provisions of the general regime. In seasonal or intermittent contracts with an indefinite term, the vacation break is commensurate with the months and days worked. The vacation remuneration is granted at the rate of 8.33% of the RB, provided that the gratuities and the CTS are paid on a semi-annual basis.
<p>Profit sharing</p>	<ul style="list-style-type: none"> Workers have the right to participate in profit sharing from the first day of work.

	<ul style="list-style-type: none"> • Staff from the administrative and technical support areas are included.
Family allowance	The family allowance is paid in proportion to the days worked.
Transfer of staff	It is possible to use intermediation or outsourcing mechanisms only in the cases permitted by the relevant rules on this matter. In any case, transferring personnel is simply prohibited.
Working conditions for women and child labor	<ul style="list-style-type: none"> • The minimum working age is 18 years. • Workers enjoy effective protection against sexual harassment. • Employers should provide gender-focused human rights training to staff. • One training should be guaranteed at the beginning of the employment relationship, one annual training to all staff, one annual training directed to the HR Department, the Sexual Harassment Committee and those involved in the investigation and sanction. • Lactariums must be implemented in the work center according to current standards. • Women workers enjoy the right to pre-and post-natal rest, as well as breastfeeding leave. • Remuneration discrimination between men and women is prohibited. The employer must evaluate and group positions in tables of categories and functions objectively, according to current regulations.
Health insurance	<ul style="list-style-type: none"> • The hired worker who belongs to the Comprehensive Health Insurance (SIS in Spanish) does not lose coverage during the waiting period due to his membership in ESSALUD. • During the waiting period, ESSALUD covers accidental and sanitary emergencies, and Supplementary Work Risk Insurance (SCTR in Spanish) when hired. • Once the contract or the latency period is concluded, the worker automatically regains his membership in the SIS.
Contributions to ESSALUD	<ul style="list-style-type: none"> • To determine whether a taxpayer declared 100 or more workers in the previous year, the total number of workers declared between January and December of each year must be divided by 12 (months), or by the months for which it had declared in the fiscal year. • The number of workers and sales are determined as stated to the SUNAT, including rectifications.

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| | <ul style="list-style-type: none">• Employers who start activities apply the following rate: (i) 2021 - 2027: 6% and (ii) 2028 onwards: 9% |
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Keywords

Agrarian Labor Regime Law