

Article

FRAMEWORK OF NGO LABOR LAW IN ARGENTINA

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As in most developing states, NGO activity in Argentina has increased considerably from the middle of the 20th century. Today it covers a wide scope of social interests, such as economic development and wealth redistribution, public health, environmental care, and human rights protection. The size and structure of the NGOs varies extensively, from small and unregistered grassroots organizations to company-supported foundations with administrative bureaucracies and financial resources that municipal governments would envy. But labor law and public policies aimed at promoting volunteering do not recognize the heterogeneous nature of the non-profit sector or the differences between that sector and the for-profit sector. In this article, we highlight three aspects of this unidimensional legal framework and their impact on the workforce of NGOs—employees as well as volunteers.

I. Public Registration and Volunteer Legislation

Under the Federal Government, the *National Center of Community Organizations* (hereinafter CENOC), which functions under the orbit of the Social Development Ministry in the Capital City, is responsible for registering and promoting the work of non-profit organizations, regardless of their size or purpose. The CENOC carries out its statutory obligations through numerous programs and direct actions, such as funding specific projects of grassroots organizations, tutoring and mentoring community leaders, and providing technical and technological support to small endeavors.

Most relevantly, the CENOC is in charge of registering all social institutions and systematizing their aims and their resources, including personnel. This task should be the cornerstone of its work, given the opportunities to increase the efficiency of state programs through synergy with local needs and efforts. Unfortunately, this goal is far from accomplished. Although much progress has been made, it is estimated that the 9,010 institutions registered to date represent less than 60 percent of the organizations in the state. In addition, only 5,023 of the institutions have juridical personality.² Informality, lack of organization, and geographical dispersal are the main difficulties.

Many NGOs suffer as a consequence, because all of the incentives and benefits stipulated by legislation apply solely to registered and juridically constituted institutions. Unregistered grassroots NGOs perform important work using many volunteers as is, but their impact would be greatly enhanced by the public support that registration could bring.

Legislation provides numerous incentives for volunteer service, particularly from the volunteer's point of view. Specifically, Law 25.855 of *Social Volunteering Promotion* indicates that volunteers are entitled to receive training and coaching by both the institution and the public

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² "Acerca de la Constitución del Tercer Sector en la Argentina," Ikei Iñiguez, Lopez Burgos, Mayer y Sola Álvarez, CENOC, 2013, in www.cenoc.gov.ar/publicaciones.

office (Article 6.b); are entitled to be reimbursed for all expenses made at the service of the organization (Article 6.e); must be granted insurance against labor illness and accidents (Article 6.g); and must be granted certification of the labor provided upon ending the relationship with the organization, which must be considered at the moment of applying to public service (Article 6.h). All of these are available only if the NGO registers with the CENOC, which then provides volunteers with official identification.

In sum, more NGOs ought to be registered in order to extend the application of the volunteering law. Undoubtedly, this is a task depending more on the political and administrative sphere than on the legal one. Nonetheless, such an effort must be made to strengthen volunteer service for NGOs, as it is the real engine of their work.

II. Labor Law for Dependent Employees

As was noted above, most of NGOs' manpower comes from volunteers. Of the 193,909 total NGO workers, according to the latest data published by the CENOC, 29,574 are payroll employees and 164,335 are volunteers. The employee category mainly comprises managers and administrative staff. As is typical outside Argentina, the positions generally entail regular to low wages and high volatility due to variations in financial capacity.³ Lack of proper registration and posing employees as volunteers can also be described as regular practices, although it should be noted that these practices are common among Argentina's small and medium for-profit companies as well. The national informality rate has been reported at 27% of the workforce in all fields of labor.⁴

The principal legal aspects of most labor relationships in Argentina—such as duration of the work day, licenses, vacations, and termination of contract—are regulated by the *Labor Contract Law* 20.744, in force since 1974. It has been interpreted by scholars to apply equally to lucrative and non-lucrative activities, as it defines *labor*, first, to encompass “all lawful activity rendered to someone capable to direct it, in return of a wage” (Article 4); and, second, as “the instrumental organization of personal, impersonal, material and immaterial means, ordered under a direction for the accomplishment of economical *or beneficial* ends.”⁵

Hence, non-profits are generally treated on the same basis as private businesses. The juridical nature of the contract is the same, and so are the circumstances surrounding the labor relationship. However, a different solution is necessary. Legislation should be enacted in order to provide the third sector with legal remedies suitable to their particular needs. In this light, it has been remarked that more flexibility should be given to the duration of the contract,

³ BACCARO Lucio, “*Civil Society, NGOs, and Decent Work Policies: Sorting out the Issues*,” International Institute for Labour Studies, ILO, Genève (2001), p. 12.

⁴ VASAN Sudha, “*NGOs as Employers: Need for Accountability*,” *Economic and Political Weekly*, Vol. 39, No 22 (2004), p. 2197; ARIAS Omar, DEMOMBYNES Gabriel, MORENO Juan Martín, ROFMAN Rafael “*Informalidad, protección social y Mercado de trabajo en Argentina*,” in “*Aportes a una nueva visión de la informalidad laboral en la Argentina*,” World Bank and Ministry of Labor (2008), p. 86, available at http://www.trabajo.gov.ar/downloads/biblioteca_libros/aportes_a_una_vision_de_la_informalidad_laboral.pdf

⁵ VAZQUEZ VIALARD Antonio, “*Tratado de Derecho del Trabajo*,” Editorial Astrea, 1985, Tomo I, p. 152.

contemplating the possibility of determining its extension in advance, in accordance with the duration of a project's funding.⁶

III. Labor Taxation

As in other realms, tax law on labor in Argentina is identical for lucrative and non-lucrative entities. This is perhaps the most controversial element of non-profit legislation, as it relates to NGOs' funding difficulties. Argentinean NGOs, like other employers, commonly complain that tax pressure on labor becomes a deterrent for contracting long-term employees.

Labor taxes include contributions and payments to the following systems: Social Security (Law. 24.241), Healthcare (Laws 23.660 and 23.6614), Child and Family Support (Law 24.714) and the Public Unemployment Fund (Law 24.013). In addition, employers must acquire insurance against labor accidents and illnesses as well as life insurance for every employee. All of these payments can total 40 percent of the gross salary.⁷

There is consensus that such burdens cannot be reduced or eliminated for NGOs without jeopardizing employees' retirement or the Social Security funding system as a whole. Nonetheless, innovative approaches for addressing labor taxes can promote employment at NGOs. For instance, as in other legislation, the payment rate might be capped when the gross salaries paid by the NGO reach a certain sum.⁸

Although not addressed specifically to the third sector, two laws promote NGO employment by providing valuable financial resources. The recently enacted Law 26940 seeks to reduce informality and lack of registration. As an incentive, it cuts one-third of the labor taxes for companies with fewer than 80 employees. In addition, Law 26.476, in force since 2008, provides small and mid-size companies with a 50 percent reduction of labor taxes for every new employee hired for a twelve-month period, provided that the number of workers already on the payroll remains constant.

The long-term challenge is to adjust the tax burden in a way that recognizes the distinct nature of NGOs, so the payroll can remain as constant as possible despite oscillating income. Doing so may require a differential tax rate for non-profit institutions that removes time limitations on labor taxes reduction.

⁶ de NIEVES NIETO Nuria, "*Las relaciones de trabajo en las entidades sin ánimo de lucro (trabajadores asalariados, cooperantes internacionales, socios-trabajadores y voluntarios)*," *Revista del Ministerio de Trabajo e Inmigración* Nro 83, Madrid, p. 382.

⁷ "*Tributos vigentes en la República argentina a nivel nacional*," Dirección Nacional de Investigaciones y Análisis Fiscal, Subsecretaría de Ingresos Públicos, Secretaría de Hacienda, Ministerio de Economía y Finanzas Públicas (2014) at http://www.mecon.gov.ar/sip/dniaf/tributos_vigentes.pdf.

⁸ BATER Paul, HONDIUS Frits, KESSLER LIEBER Penina, "*The tax treatment of NGOs: legal, fiscal and ethical standards for promoting NGOs and their activities*," Kluwer Law International (2004), p. 321.