2018 was an eventful year for Latin America, with presidential elections across the region, including in Brazil, Venezuela and Colombia, potentially delivering far-reaching political changes. Meanwhile, the eyes of the world were on Argentina as leaders from 19 of the world’s top economies, as well as representatives from the European Union, gathered for the 13th G20 summit in December 2018.

Continued political instability in Venezuela created significant challenges for employers, including talent retention issues along with inflation, resulting in drastic minimum wage and food benefit increases. Inflation was also an issue in Argentina, resulting in significant salary adjustments, creating financial uncertainty for employers, and negotiations with trade unions resulting in non-remunerative benefits and bonuses being paid to offset pay increases.

Uncertainty also continued to prevail as a result of widespread legislative labor reforms, for example, in Chile and Brazil. The political landscape in 2019 will dictate whether further changes will be introduced or whether governments will provide clarity around the reforms which were introduced in 2018 and caused considerable uncertainty.

Gender equality issues are gaining momentum in Latin America, and while countries like Argentina, Brazil, Chile, Colombia and Venezuela require equal pay between men and women and have gender discrimination laws, the region’s gender pay gap, estimated at 29.8% according to the World Economic Forum, has been slow in narrowing. There remain few women on boards or holding senior positions in Latin America, and despite discouraging data on the gender pay gap, Colombia and Peru are currently the only countries with pay reporting obligations. However, a number of multinational companies have taken voluntary action in relation to this issue, and foreign investment in Latin American subsidiaries is also having a positive impact by pushing diversity and inclusion initiatives. These developments are likely to prompt Latin American governments to add gender pay issues to their legislative agenda in 2019.

Wider equality issues have also gained significance in Latin America, with enhanced disability protection rolled out in Chile with the introduction of a 1% employment quota of disabled persons in certain companies, and in Peru, with the introduction of new reasonable adjustment requirements and paid leave for parents of disabled children. Meanwhile, the Human Rights Campaign partnered with the world’s largest information technology employer in 2018 to launch a number of business workshops across Latin America to promote LGBT workplace inclusion.

The gig economy is also continuing to gain prominence across Latin America. While it is viewed as having a potential positive impact by providing workers with opportunities to earn wages above more “formal” and precarious employment models in Latin America, the informality of the working arrangement is creating difficulties and raising tensions between unions and employers. In Argentina, one local app, PedidosYa, has already classified its riders as employees causing unions to put pressure on two other digital platforms, Glovo and Rappi, who are treating their gig workers as independent contractors, to reconsider their approach. 2019 will undoubtedly see further movement in this area.

There has also been a shift toward increased flexibility in 2018, with the Labor Reform of 2017 in Brazil allowing split periods of vacation, flexible working hours and teleworking, while in Peru adjustments were also made to vacation allowance, permitting employees to take holiday in shorter periods.
LATIN AMERICA REGIONAL OUTLOOK

SPOTLIGHT ON: COLOMBIA

As employers adapt to and benefit from technical advancements in the workplace, the right to disconnect made headway in Colombia in 2018, as we saw rulings from the Constitutional Court protecting employees’ ability to “switch off” outside of working hours.

Employers in Colombia are now obligated to report to the Ministry of Work, through the registry system RUTEC, regarding the hiring and termination of foreign employees and contractors. Regulations regarding RUTEC became enforceable on October 9, 2018.

In an effort to be more accommodating of working parents, the Ministry of Health issued Resolution 2423 of 2018, which sets out the parameters for the operation and technical specifications of nursing rooms in workplaces. Companies with assets above 1,500 minimum monthly legal wages (COP 1,242,174,000 for 2019) or those with lower assets but over 50 female employees must comply with this resolution.

Horizon Scanning in 2019:

2019 is expected to bring a number of developments in employment law in Colombia, including changes to maternity leave. A draft bill is currently being discussed in Congress, which aims to broaden the maternity leave period and to extend the protection against dismissal.

Regulations on gender equality in the workplace are also likely to be introduced, along with enhanced regulation reflecting the government’s tech-orientated agenda.

Developments in immigration law are also anticipated given the significant increase in migration witnessed in 2018.

“In Latin America, employment and labor law trends will depend upon the circumstances and economic policies of each country, and employers will need to be responsive. For example, in Brazil and Chile, certain rules granting more flexibility could be developed or introduced, in an effort to promote growth and job creation. In Venezuela, retaining and attracting talent through compensation and benefit packages will be vital for employers.”

CARLOS FELCE
Partner, Baker McKenzie
ARGENTINA

Although the inflation rate is now decreasing, salary adjustments due to inflation became a significant issue in 2018, and negotiations took place between employers and trade unions to revise previous agreements accordingly. The government attempted to resolve this issue through a decree ordering employers to pay non-remunerative bonuses, which can be offset against salary increases.

The government also issued a decree ordering employers to report any dismissal without cause to the National Secretary of Labor within 10 working days prior to the dismissal taking place. This requirement will be in place until the end of March 2019. The decree is viewed as being "pro-employee" as the affected employee has the opportunity to cause difficulties during the termination process if he/she becomes aware of their imminent discharge.

Income tax was also introduced on payments made in excess of mandatory severance for directors and managers, which has impacted the negotiation of severance packages.

Horizon Scanning in 2019:

• Due to the presidential election in 2019, no major law reforms are expected.

• The gig economy, will continue to be a pressing issue in the Argentinian market. One local app (PedidosYa) has classified its riders as employees, paying them according to a collective bargaining agreement with appropriate employee benefits. Other apps such as Glovo and Rappi treat workers as independent contractors, but are facing pressure from trade unions to change this approach.

• The recent devaluation of the peso is likely to impact global mobility considerations as Argentina will be a more attractive location for foreign executives on assignment.

BRAZIL

2018 was a year of uncertainty for employers following the Labor Reform coming into effect in 2017. The main goal of the reform was to make employment contracts more flexible, enabling opportunity for negotiation of terms between parties including split periods of vacation, flexible working hours, the reduction of minimum meal breaks and teleworking. Other changes included the ability to incorporate an arbitration agreement into an employment contract (for those earning a minimum of two times the higher benefit provided by the Social Security per month as of December 2018), optional union contributions, mutual termination agreements and the possibility to negotiate a termination agreement outside of court. There remains a lack of clarity over how changes implemented by the new legislation will be interpreted by the labor courts. However, there is a clear move toward more flexible working arrangements.

Horizon Scanning in 2019:

Brazil will have a new federal government in 2019, and employers can expect the Labor Reform to be maintained with further clarification on its application.
CHILE

In 2018, employers suffered the consequences of the ambiguity of the 2017 Labor Reform, such as uncertainty over the ending of strikes and the scope of extension of benefits to non-union employees. The rolling out of the Disabilities Inclusion Act, requiring employers with over 200 employees (to be reduced to 100 on April 1, 2019) to have disabled persons make up at least 1% of their workforce, was another major feature of 2018. The Piñera government also introduced new bills seeking to promote employment, modernize immigration and reform pensions legislation.

**Horizon Scanning in 2019:**

- Parliamentary discussion of bills introduced during 2018, including the new "nursery law," which eliminates the current 20 female employee limit and requires all employers to contribute to a new nursery fund, and the pensions reform, which is likely to result in a higher financial burden for employers.
- The new Chilean administration is likely to make modifications to its predecessor’s 2017 Labor Reform, to provide clarity and certainty for employers.
- Increased litigation over *discrimination and breach of fundamental rights* in 2018 are likely to continue into 2019.

PERU

The key theme in 2018 was *equal pay*, with the new Equal Pay Act creating additional obligations for employers, including the requirement to keep staffing tables detailing positions held within an organization, and the introduction of new salary policies.

2018 also saw changes to vacation entitlement, which historically required employees, as a general rule, to take their holiday in periods not shorter than seven days. The new law allows employees to take half of their holidays in periods of less than seven days, while the other half must be taken in periods of at least seven days.

The Ministry of Labor also simplified the procedure for approving a foreign employee’s employment contract. Previous regulation required submission to the Labor Authority of all relevant documentation in person, with approval taking between five and 15 working days. Foreign employment agreements can now be registered online with automatic approval. This system was due for implementation in *January 2019*.

In 2018, disabled employees became entitled to reasonable adjustments during the recruitment process in relation to procedures and assessment tools used, as well as interview methods deployed. Employees with disabled children will also have a right to paid leave for up to 56 hours annually.

**Horizon Scanning in 2019:**

- Greater legal certainty is anticipated which will continue to drive foreign investment.
- Expect an increase in inspections related to the hiring of foreign employees and the new equal pay regulation.
- The social security and healthcare institution (ESSALUD) will be reorganized.
Due to significant inflation and various other challenges posed by the current situation in Venezuela, employers faced significant challenges attracting and retaining talent in 2018. With the general protection against dismissals, which was extended for another two years as of December 28, 2018, as well as certain other limitations, restrictions and sanctions, restructurings continued (and will continue) to require an increasing amount of caution and planning. It was also a year where the minimum wage and mandatory food benefit increased significantly in local currency. On September 1, 2018, the minimum wage was increased by 5,900% and the food benefit by approx. 757%, creating a significant financial impact for many employers across the country. On December 1, 2018, the National Executive announced another minimum wage increase equivalent to 150%.

In February 2018, the New Constitutional Law regarding Productive Workers’ Councils (CPTs) was published, actively promoting the formation and functioning of CPTs in certain sectors such as food, pharmaceutical and personal hygiene products manufacturing facilities.

**Horizon Scanning in 2019:**

- Employment law developments in 2019 will largely depend on the direction taken by the government in terms of its economic policy. If the policy essentially remains unchanged, trends in 2018 are likely to continue. If, however, the economic policy changes, and the economy starts to see signs of improvement, we could start to see less frequent and dramatic fluctuations to minimum wage and food benefit entitlements, among other changes.
ARGENTINA

- Multinational employers should review their benefit schemes as they face increased risks associated with benefits that should be considered remuneration in kind, such as the personal use of a company car.

PERU

- Ensure compliance with new obligations under the Equal Pay Act and with new disability legislation.
- Ensure correct documentation and compliance with legal restrictions on hiring foreign employees in light of procedural changes from January 2019.

BRAZIL

- Monitor case law on the application of the Labor Reform and keep a watching brief for changes to employment legislation introduced by the new federal government.

VENEZUELA

- Consider steps to attract and retain talent. For instance, review remuneration packages in light of recent inflation and the increase to the minimum wage. Such packages could be granted on a temporary basis, with a significant degree of flexibility, so adjustments can be made as new changes occur or when the political and economic climate stabilizes.

CHILE

- Expect modifications to the 2017 Labor Reform from the new Chilean administration.
- Watch for the outcome of parliamentary discussions of “nursery law” bills and for pensions reform.

COLOMBIA

- Take steps toward closing the gender pay gap by ensuring all changes are properly documented.
- Be prepared for audit processes being carried out by the Ministry of Work aimed at assessing outsourcing schemes, and by the UGPP (Pension and Payroll Taxes Management Unit) aimed at guaranteeing correct and complete payment of contributions to the social security system entities.