



# WorldLink

Linking people management professionals around the globe

## TRANSFORMING THE PERFORMANCE MANAGEMENT PROCESS

By Nestor Astete

The HR function is going through critical transformation processes. The so-called Fourth Revolution, digital transformation, the future of work, the experience of the collaborator and the speed of change requires us to re-evaluate HR's role in an organization. Although we should consider redefining all HR objectives, policies and procedures in general, we should start with the performance management process.

In multiple conversations with those responsible for HR—at family businesses, in medium and large companies, and even at multi-local corporations—I find that the concepts and terms used in their performance management systems are unclear, and, as a result, organizations create different performance management processes with different definitions. These processes are confusing for employees, and this causes the performance management system to lose credibility.

It is common for senior leaders to comply with performance management processes even though they don't believe that the processes help them make good decisions about their employees. Moreover, it is common to hear leaders say that the organization's performance management system does not work and that it exists only to fulfill an HR goal.

I have also met HR managers who had set goals to implement a performance management system in their organization but who had not made sure that the CEO and the executive team really considered this strategic and important for the future of their organizations—or whether they even thought this should be an HR-owned initiative.

HR must clarify whether performance management systems exist only to fulfill a goal, or if they are, in fact, systems that will have immediate impact on the adjusting numbers, finding new strategies, amending plans, searching for quick application solutions, defining individual development and succession plans, and managing critical positions and key people, etc.

HR must determine if managers are convinced that performance management is part of their responsibility to evaluate and provide feedback to their employees. If not, HR must consider how to change that perception. This is more important than any performance management system itself.

Evaluating people's job performance is personal, and it is a mistake to set averages and manage people based solely on how they did on their evaluation. It is necessary to define terms and processes and to determine how to apply them consistently throughout an organization.

Once it has been determined that the organization is ready to start a companywide performance management system, launching it may seem daunting. It is recommended to start performance management assessments from the top of the organization and work one's way down to the next hierarchical levels each year. This, however, should not be done without support from the top that performance management is important to the organization's bottom line. Just saying that performance management is now a company strategy without connecting it to the bottom line is a mistake.

#### Let's differentiate the concepts:

1. **SMART goals:** SMART goals are specific, measurable, attainable, relevant and time-bound. SMART goals should be directly related to the results to be obtained by an employee or team. SMART goals do not assess or measure an employee's quality of knowledge, skills, competencies and abilities. Furthermore, SMART goals do not assess an employee's potential, understanding potential as the ability to assume greater responsibilities and more complex challenges in higher positions in the organization.
2. **Competencies:** On the other hand, human resources should have measurements in place that compare people's competencies with defined competencies needed for their positions, along emotional intelligence tests, psychometrics or other solutions. These help HR identify gaps to improve and develop employees, so they can better fulfill their SMART goals.

#### Performance measurement then becomes:

SMART goals + the management of competencies necessary for the position, but this is not enough. What is talent management? It includes management of potential. So, the measurement should be:

SMART goals + management of competencies + a person's potential.

With this approach, the company has identified and measured the three fundamental components of employee evaluation and will be able to design and develop methods for the management and improvement of each employee, understanding that the improvement of the individuals' aspects is their sole responsibility. Measuring individuals' potential is still subjective. However, we can count on insights and predictive models that help us define this concept.

What good does it do to have employees who meet their goals and who have the necessary skills and the potential to assume greater responsibilities if they lack enthusiasm and the desire to go beyond the minimum to have an extraordinary performance and to be acknowledged for it?

#### What Is Commitment Management?

An individual's commitment is not related to a period of time in which he or she performs (or does not perform) a particular task. That commitment is identified by individuals and teams so that they can enjoy the day-to-day and the results obtained.

Commitment is a personal condition. It is an option in each of us, a decision to strive, to give more than what we thought we could, a decision to give more time, effort, attention, work and dedication because we can. Commitment is an attitude.

The level of employee commitment in an organization is the unattainable difference when comparing one organization to another. It can't be copied, bought or hired. It is a commitment set by an organization's people based on the organization's objectives.

#### So, what should organizations seek to assess and measure?

SMART goals + competencies management + potential + commitment.

The technological platforms that allow us to manage people also allow us to individualize the way HR processes this important information. It can provide useful and timely data for senior manager decision-making. Statistical graphs, averages and trends are only useful for a presentation to the CEO—not to manage an individual, her talent and her commitment.

One last consideration is the managers who must assume their responsibilities with these issues. They must own them and face other HR-related issues. Employees must also take individual responsibility for seeking satisfaction for what they do; understanding their assessments, results and opportunities; and taking responsibility for their own growth.

*Nestor Astete is president of the Peru HR Association*

# EXAMINING URUGUAYAN LABOR RELATIONS AMIDST TECHNOLOGICAL ADVANCES

By Jose Prato

The technological advances of an exponential and disruptive nature that are taking place in countries around the world—Uruguay included—come as no surprise. Many say that these advances are arriving in Uruguay 30 years late. It is a fact that changes are coming quickly, mainly due to the globalization that invades all areas of human life.

This imminent and inevitable situation should bring about changes in labor relations. Let's think about the changes in industries, changes in which technology and robotics are beginning to take over jobs and force the creation of new ones that demand greater skill. There is, for example, the case in the agricultural sector where drones drive cattle using the sound of human voices or barking of dogs. Or, for example, online retail where products are ordered on the Internet and delivered to one's house. In the services sector, Airbnb allows visitors to rent cheaper (without intermediaries) and pay online.

Uber—and the “Uberization” of the services sector—has created apps that replace human interaction, bringing the service we want directly to us. In education, virtual classes are already in use and are quickly replacing the traditional classroom. In the energy sector, wind and solar energy are replacing energy generated by oil and oil by-products.

So, what should labor relations specialists do? What model of labor relations will we face in this new fully technological world?

First, and it should go without saying, we must put the subject on the table and analyze it and discuss and create scenarios among all the players. From there, there should be inputs for both the branch and the business negotiations.

The sector to be the least affected could be the business sector, which could find benefits in this new context by reducing labor costs. Surely, one of the most important actions is to obtain qualified talent for this new reality, one pitfall is that the lesser the worker human factor is, the fewer consumers of the products or services offered in the market will be.

The laborer sector could, in fact, be the most affected sector because automation and robotization could make jobs obsolete. In addition, unions face a great challenge; they will surely see their member numbers fall drastically. They will have to rethink their strategies to carry on in this new scenario. Undoubtedly, education and training will be keys in the requalification of workers (perhaps not all) that would, otherwise, be left out of the market by the system.

The state should play a very active role—even more so, it should be a proactive role—calling on all parties to analyze this new labor world and in what way it, as one of the main actors, could develop and implement policies of training, requalification, and new forms and contents of the negotiation, etc.

Undoubtedly, this new world in which we already exist requires two basic elements to reposition itself: innovation and open minds. The truth is that it seems a very difficult, but achievable task, if all the actors contribute to it.

The Association of Uruguayan Professionals in Human Management (ADPUGH) developed a workshop called “It Is Possible to Create Effective Labor Relations Among All.” The workshop was open to everyone involved in labor relations. Participants were representatives of the Ministry of Labor and Social Security, representatives of the Cuesta Duarte Institute PIT-CNT, delegates from the unions of ALUR Paysandú and AGRO ALUR Bella Unión, as well as various human resource management professionals.

Using different group dynamics, participants analyzed influential variables in labor relations in Uruguay. After four hours of work, they identified the most influential topics in labor relations: culture, communication, regulations, power, state policies, reputation, ideology and training. This workshop is intended to be the first step in the building of effective labor relations for everyone.

*Jose Prato is a representative on the ADPUG-Uruguay Board of Directors.*

# CURRENT LABOR OUTLOOK IN PERU

By Alfredo Palacios Human

In Peru, although there are 23 million people of working age (14 and older), 15.9 million actually work: 4.3 million works formally, and 11.6 million works informally. There are 7.1 million Peruvians who do not work and do not look for work.

Unemployment has been, and still is, a hidden problem in Peru. Among those who have a job, there is a tendency to hold on to their positions, and the way to do that is through a union. Peru is a country with a high labor severity according to the Organization for Economic Cooperation and Development. This means that Peru's labor laws have greater protections for workers and little flexibility for organizations and foreign investment (the real employment generator).

This labor severity scares away foreign investment. Entrepreneurs have a hard time understanding that terminating an employee is not as simple as it is in other countries in South America and that unions assume vital roles, where employers must practically ask for permission to take an employment action. We are not talking about the misuse of the power of autonomy that the company has but about the complexity of deciding about people.

## Peru's Labor Severity

TOPIC	PERU	THE AVERAGE
Dismissal	Replenishment or legal compensation + damages + CTS	Unemployment or compensation insurance
Fixed-term employment	Temporary cause + 5 years + agreement of parties	Is enough if parties agree or there is a maximum term
Union adjudication	Required	Voluntary
Labor costs	40-60%	20-40%
Vacations	30 days from the first year	15 days
Collective suspension or suspension	Cause + political approval	Cause and/or subsequent control

While it is true that the current administration led by President Pedro Pablo Kuczynski is seeking labor reform to help change this history—and has the right ministry team to do so—it does not have the political backing of the majority in Peru's Congress. This lack of political backing prevents the country from moving forward with labor reform. The administration is trying, however, to work toward reform because the country desperately needs labor reorganization.

Looking ahead, the following labor reforms are expected to be enacted in Peru by 2021:

- Reduction of informality by 30 percent.
- Encouragement of private investment.
- More formal employment.

However, formal employment and private investment are currently worsening.

## Where Peru Stands in the Labor and Union Setting

From 2002 to 2016, unionization increased more than 200 percent, from 61,732 unionized workers to 172,360 workers. This trend continues. Moreover, labor inspections continue to increase, taking the omnipotent powers granted as a premise and using them as judge and jury. There were 14,425 inspection orders in 2014. In 2016, there were 26,568, many of them instigated by unions.

It is also important to note that the legal mechanisms that unions require such as sit-ins, stoppages and strikes directly affect a company's production and income. The main grounds for strikes are:

- Collective bargaining (5%)
- Breach of rules (34%)
- Dismissal (7%)
- Other reasons (benefits, etc.) (6%)

While the collective bargaining percentage seems high, this approach is very strong in bargaining as it is the only case in which a strike would be declared appropriate and legal. Therefore, if workers stop working due to this type of strike, the company is directly affected in terms of production and income, strike days are not discounted from the workers' salaries, and no disciplinary action is taken. In Peru, the most emblematic examples of this case are in the mining and retail sectors.

Furthermore, there is another mechanism that has had much prominence and breaches all basic bargaining principles: the no-fault adjudication. This is the kind of adjudication that can be imposed by the sole will of one of the parties (trade union organization or company) to resolve a list of claims whose origin is not subject to the arrangement of certain circumstances. It is, in fact, the direct opposite of optional facultative adjudication that is regulated by the DS 014-2011-TR, a Peruvian labor regulation that states that adjudication can only proceed in two cases: first collective bargaining or immoral intention during collective bargaining.

No-fault adjudication does not exist in Peru's legal system. It is intended to be recognized as no-fault facultative adjudication. The recognition of this type of adjudication is contrary to Article 61-A of the Single Order Text of the LRCT, which clearly states the grounds that allow for this type of adjudication. In other words, according to the legal norm indicated, discretionary adjudication must necessarily be based on one of the causes indicated by the law.

No-fault adjudication has an unhealthy effect on bargaining in the following ways:

- It does not reconcile the constitutional mandates for the promotion of collective bargaining and the promotion of forms of peaceful settlement of labor disputes (Number 2 of Article 28 of the Peruvian Constitution)
- It is not compatible with the position of the International Labor Organization.
- The fear of a strike should not compel employers to accept a formula that discourages direct bargaining.
- It has an additional cost: a fee for each arbitrator and the president of the court, and local expenses to carry out the adjudication process.
- It is more dangerous to choose a proposal out of step with the reality of the company and that suggests that the position of the company will challenge the results, which would delay the conflict.
- This type of adjudication rose by 222 percent between 2007 and 2015, which indicates that 32 out of 103 adjudications resulted in disastrous consequences for employers.

Trade unions use the following channels to encourage this type of adjudication:

- Social networks
- NGOs
- Lock-outs, stoppages
- Legal processes
- Congressional representatives sending letters to companies and demanding explanations

New suing strategies of workers:

- Union representation in trials
- Use of inspections as part of the legal strategy
- Suing for damages

**In the legal aspect:**

- Increase in the number of legal processes
- Media reporting of final sentences
- Uncertainty in the results (different criteria when solving)

So, what can we do in the internal and external setting?

Here are some thoughts:

- Labor relations are everyone's responsibility (not just human resources)
- Provide leaders with training on union
- Company policies should seek equity, and unions should not become a mechanism to achieve more benefits
- Work on internal management and conflict resolution (have monthly meetings with workers by groups and short the gaps in claims)
- Worry about essential and basic issues: uniforms, food, optimal working conditions
- Express concern for the family environment
- Benchmark labor practices
- Promote clear and transparent communication

Trade unions are in many cases very well-organized. They meet jointly, they do their own benchmarking, and they are united. Companies must do the same and leave jealousy or rumors behind while sharing good and bad experiences and mistakes. This may allow a situation to turn into a win-win experience for all. Furthermore, improved communication could allow us to align bargaining strategies. For this reason, a labor relations committee was convened at the Peruvian Association of Human Resources (APERHU), which allows us to work on all these issues and look for synergies.

*Alfredo Palacios Human is the manager of labor relations at Arc Continental-Lindley in Peru and chair of the labor relations committee of APERHU*

# CHILE'S RECENT COLLECTIVE BARGAINING REFORM

By Hector Humeres Nogueer

On Sept. 8, 2016, Law No. 20.940 was issued in Chile, and it took effect April 1, 2017. This law introduced important collective bargaining reforms and other reforms in unionization and individual labor relations.

The purpose was to “balance the field” in terms of collective labor relations, based on the low participation rate of collective bargaining in Chile (15%), which is basically linked to a low level of union membership (10%).

The main aspects of collective bargaining modified by the law were:

## Trade Union Ownership

Union activity was significantly reinforced through the following measures:

- a. The law established exclusivity of the regulated negotiation procedure for unions, marginalizing the so-called negotiating groups. It should be noted that Chile's Constitutional Court recognized the latter possibility but was not able to introduce rules in this regard; there was an obvious gap. The reasoning of the constitutional body is related to the constitutional text, which recognizes the right of the workers in general to negotiate and not unions. The Labor Directorate of Chile (the country's inspection body) declared itself unable to decide on this matter, leaving it up to the labor justice to ultimately settle this problem.
- b. It exclusively gives unions the possibility of agreeing with the employer on the extension of the benefits agreed to in collective contracts with respect to those workers who are not part of the union organization. This power was previously in the employer's hands. This change means that if an employer wishes to apply to nonunionized workers any benefit agreed to in a corresponding collective contract, the employer will require the consent of the signatory union. In the absence of such a deal, the employer may have to manage various worker structures within the same company, and this will add complexity.
- c. It expanded the right for unions to access employer information during a collective bargaining negotiation, establishing the obligation as a periodic nature for medium and large companies, and increasing their submission requirements during collective bargaining. Under the law, trade unions can ask medium and large companies to submit within the 90 days prior to the expiration of the current collective agreement the following information:
  - Payroll of compensation paid to workers affiliated to the requesting organization, disaggregated by assets and with details of the date of entry to the company and position or function performed.
  - Updated value of all the benefits that are part of the current collective bargaining agreement.
  - Overall labor costs of the company for the last two years. If there is a collective contract in force, and it has been concluded for a period of more than two years, the overall labor costs of the contract period.
- d. Information that affects the future investment policy of the company that is not, in the opinion of the employer, confidential in nature.

For large companies, unions can request annually information on the remunerations assigned to workers of diverse positions or functions of the company. The information must be given unnumbered, within 30 days from the date on which it was requested. Unions for medium-sized companies may make this request only as information prior to bargaining.

This information must be delivered by the company if it has five or more workers in each position or function, ensuring the privacy of the individual information of each worker and not violating the provisions of Article 154 of the law.

## Coverage of Collective Bargaining

The law also broadened the scope of who could be covered by a collective bargaining agreement to inter-company unions, workers' unions by project or temporary job, seasonal jobs, and federations and confederations.

This means employers may have to change their collective bargaining agreements that were previously based on the company and not necessarily on an area of activity. In the case of the labor union, the new law may strongly impact the creation of this type of contract.

### Determination of Minimum Services

Determination of minimum services is one of the most controversial aspects of this law. The law defined the determination of minimum services in a more regulated manner—that for the determination to be applied during a strike, it must be established before the declaration of a strike and it must even be established before the creation of a union in a company.

Similarly, the law limits its application to specific aspects related to the protection of company assets, the provision of public utility services and the prevention of environmental harm. Determination of minimum services must be agreed on between the company and the union and, if no agreement is reached, it must be taken to court.

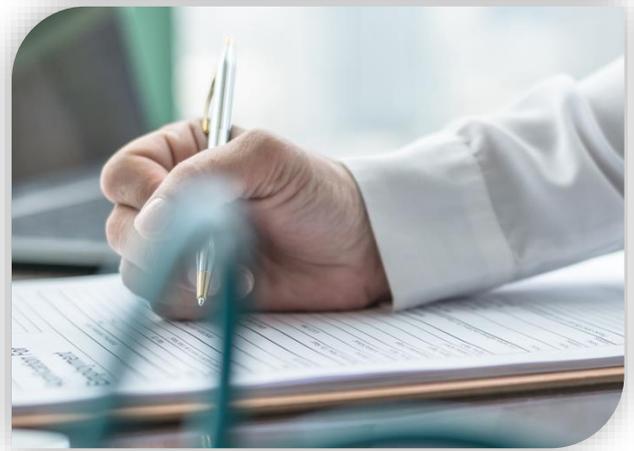
### Replacement of Workers on Strike

The law eliminated the ability to replace striking workers, either externally or internally. It should be noted that the previous Chilean Labor Code allowed the unrestricted replacement of workers on strike in exchange for a cash rate the employer paid to the union for each replaced worker (approximately USD\$150).

This is a big change for employers, but it is mitigated in part by the option of being able to exercise the polyfunctionality of roles in relation to non-strikers, but this is another issue that must be settled through the courts.

### Agreements on Special Working Conditions

This is an important section and is a definite improvement to the Chilean labor code. Unfortunately, it is limited to companies that have a unionization rate of more than 30 percent and relates only to distributing the weekly workday over four days (not five or six days) and to establishing special days related to family responsibilities, which combine face-to-face work time inside and outside the company.



### Creation of the Higher Labor Council

The law creates a Higher Labor Council, a significant advancement in the structuring of the social dialogue that Chile lacked until now.

The law will allow the council to submit proposals for public policies on labor relations, propose initiatives aimed at encouraging productivity and increasing the labor participation of women, young people with disabilities and vulnerable workers. Its success will depend on its structuring and implementation.

### Creation of the Union Training Fund

The purpose of the new Union Training Fund will be to finance projects, programs and actions of union training; promote social dialogue; and develop collaborative labor relations. It will be financed by the state through the proceeds of fines levied on companies found to have engaged in anti-union and/or unfair practices.

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# HR CALENDAR

## September 28–29, 2018

37<sup>th</sup> Annual National HR Conference (NATCON 2018) The Westin Hotel  
Pune, Maharashtra, India  
<http://natcon2018.com>

## October 3-4, 2018

Træfpunkt HR 2018- Dansk HR  
Copenhagen, Denmark  
[www.traefpunkt-hr.dk](http://www.traefpunkt-hr.dk)

## October 11-12, 2018

SHRM India Annual Conference & Expo 2018  
New Delhi, India  
<http://www.shrmiac.org/>

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**WORLDLINK** welcomes news stories, announcements of events and ideas for articles. These should be accompanied by a telephone number and e-mail address.

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