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## Protection of Personal Data and Labor Law

**Argentina** | May 17 2016

*The Argentine Court of Appeals in Labor Matters has confirmed that providing a court with personal information about other employees during the prosecution of a trial does not infringe Argentine Data Protection Law*

Division VIII of the Argentine Court of Appeals in Labor Matters concluded that the plaintiff's request to have the defendant file information related to other employees with the same position in court does not infringe Data Protection Law No. 25,326 as long as in this case, constitutional rights are at stake. This would include the right to non-discrimination or equal pay for equal work (Argentine Court of Appeals in Labor matters, Division VIII, "*Mieres, Jorge Anibal v. Frávega S.A.*", decision dated 9/30/2015).

The facts of the case are as follows: The defendant fired the plaintiff with cause. Defendant upheld that the plaintiff worked as a junior manager. The plaintiff sued the defendant querying that he had been fired with cause and requesting financial compensation. Moreover, he argued that he was a manager and not a junior manager as stated by the defendant and should be recompensed accordingly.

The First Instance Court accepted the claim, condemned the defendant to compensate the plaintiff, and affirmed that the plaintiff's position was that of a manager.

On appeal, the Argentine Court of Appeals confirmed the decision and rejected the defendant's appeal.

In this case the accountant expert named by the court informed that the defendant did not provide information regarding other employees of the company with the same tasks of the plaintiff in order to establish the plaintiff's salary when, according to the dynamic burden of proof principle, it was the defendant's burden to prove that the plaintiff was a junior manager. Under those circumstances, the First Instance Court discretionarily fixed the plaintiff's salary which was later confirmed by the Court of Appeals.

In that regard, the justices upheld that it was not logical to consider that the plaintiff's request to have the defendant file information related to other employees with his same position in court does not infringe the Data Protection Law on the basis that constitutional rights such as his right to non-discrimination or equal pay for equal work, were at stake. Moreover, such a request took place within court proceedings with the corresponding control of the court.

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