

**JURISPRUDENCE 2A./J. 100/2010. "NOTICE OF RESCISSION OF LABOR RELATIONSHIP. THE NOTARIZED DEED WHICH EVIDENCES ITS DELIVERY TO THE EMPLOYEE IS SUFFICIENT PROOF TO COMPLY WITH THE REQUIREMENT ESTABLISHED BY ARTICLE 47 OF THE FEDERAL LABOR LAW".**

Dear clients and friends:

On June 23, 2010, the Second Chamber of the Supreme Court of Justice, approved jurisprudence thesis by contradiction number 2a./J 100/2010, with the purpose of unifying the diverse criteria endorsed by the Collegiate Courts Ninth in Labor matters of the First Circuit, Second in Administrative and Labor matters of the Seventh Circuit (currently Second in Administrative matters of the same circuit), Second of the Seventeenth Circuit (currently First in Criminal and Administrative matters of the same circuit) and Second of the Fifth Circuit (currently First in Civil and Labor matters of the same circuit) which resolved regarding the validity in trial of the notaries instruments that certified the delivery of the recession notice to the employee.

Below is an exact transcription of the above mentioned Jurisprudence. Please be advised that such jurisprudence has not yet been published by the Supreme Court of Justice.

"NOTICE OF RESCISSION OF LABOR RELATIONSHIP. THE NOTARIZED INSTRUMENT WHICH EVIDENCES ITS DELIVERY TO THE EMPLOYEE IS SUFFICIENT PROOF TO COMPLY WITH THE REQUIREMENT ESTABLISHED BY ARTICLE 47 OF THE FEDERAL LABOR LAW". Given that in the terms of the article 795 of the Federal Labor Law, public documents are those that, as per provisions of law, must be drafted by an officer with public attestation, as well as those issued in such capacity, and those documents that the Notary is obligated to receive, interpret, draft and apply legal form in the terms of article 43 of the Notary Law for the Federal District, and confer authenticity, legal certainty to acts and facts issued before him, through consignment of his authority on public instruments of his authorship, then it is implicit that the notarized instrument which evidences the delivery of the notice of rescission of labor relationship to the employee, constitutes a public document with sufficient evidentiary value, without the need of ratification before the Board. As a result, it is acceptable to deliver such notice by and before a notary public, given that article 47 of the Federal Labor Law only requires that the rescission notice be delivered in writing to the employee but does not establish specific means to do so."

Therefore, we consider that the validity given by the highest Court of the Country to the notarial instrument as means of proof on labor trials lightens the evidentiary burden of the employer at the moment of rescinding the labor agreement of an employee, given that generally, it is required to offer proof to establish the cause of such rescission, plus the proof of the delivery of the rescission notice in writing to the employee, and the most common way to do so was presenting two or three witnesses at the moment of delivery of the rescission notice to the employee.

It is common, given the daily operations of the companies, that many labor rescissions are troublesome and complicated, notwithstanding the fact that when facing a labor trial the maximum legal obligations rest upon the employer; that is, it is the employer's obligation to prove the cause and form of the termination of the labor relationship. That is why we consider legally valid, but not gratuitous, to rescind a labor relationship before a notary public who will attest the act of delivery of the notice. It is important to clarify that the notary public will not attest regarding the causes that originated the termination, but only regarding the formality of the delivery of the rescission notice in writing to the employee and the reception or rejection of the employee, as per provisions of article 47 of the Federal Labor Law.

In conclusion, this new principle broadens the variety of evidence available to the employee to prove the formal delivery of the rescission notice, and therefore it will be subject to the discretion of the company, to formalize the rescission notice before a notary public in some cases, depending of the amounts, costs or importance of the termination.

Currently, 75% of the successes of a labor trial where the company claims a rescission depends of the witnesses presented before such trial, and therefore, we consider that with this prerogative of presenting a notarial instrument, the probabilities of success will increase in favor of the employer.

Given the above, our Firm is always up to date with the new procedural criteria, and we will be pleased to assist you in the implementation and further understanding of the above.

We hope the above information was useful. Do not hesitate to contact us for any comments or questions.

Respectfully,  
Toulet, Gottfried, Davila y Martinez, S.C.

Rubén Isaac Corral Manjarrez