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COVID-19

Declaration of Health Emergency

Effects on labor relationships.

The lack of an adequate legal framework, coupled with the actions of a Central Government that seem more like blind sticks that right and left are wielded in a reactive rather than preventive manner against the obvious consequences that are gradually being presented as “logical” effects of what has already happened in other parts of the world; In addition to the uncertainty

that each official statement causes due to its lack of clarity, they have left all the members of the labor sector in our country in crisis, forcing employers, employees, unions and the industrial chambers to be creative and act individually in the face of government decisions that, more than giving certainty, have generated total uncertainty.

Declaration of Health Emergency



As we pointed out in a previous communication, section VII of Article 427 of the Federal Labor Law, establishes the obligation to suspend labor relationships, and therefore its activities, when the competent health authority issues the Declaration of Health Contingency; which, according to section IV of article 429 of the same law, compels the employer to stop paying wages that had been covering and instead to pay all its employees a compensation equal to one day of the general minimum wage in force, for each day that the suspension lasts, without it being able to exceed one month.

On March 30, the General Health Council published in the Federal Official Gazette an agreement declaring the **SARS- CoV2** virus (COVID-19) epidemic disease as a **HEALTH EMERGENCY BY FORCE MAJEURE**, stating that the Secretary of Health would determine all actions necessary to address this emergency;

On March 31st the Federal Government published in the Federal Official Gazette, as a complement to the abovementioned, an agreement establishing “extraordinary actions to address to the health emergency generated by the SARS-CoV2 virus”, in which in section I of the article First that:

“THE IMMEDIATE SUSPENSION OF NON-ESSENTIAL ACTIVITIES FROM MARCH 30 TO APRIL 30, 2020, IS HEREBY ORDERED,...”

Likewise, section II of the same legal regulation lists those that are considered “**essential activities**” and that participate in the suspension process.

ESSENTIAL ACTIVITIES

- “ a) Those that are directly necessary to deal with the health emergency, such as the labor activities of the medical, paramedical, administrative and support branches throughout the National Health System. Also those involved in its supply, services and provision, among which the pharmaceutical sector stands out, both in its production and distribution (pharmacies); the manufacture of supplies, medical equipment and technologies for health care; those involved in the adequate disposal of biological-infectious hazardous waste, as well as the cleaning and sanitization of medical units at different levels of care;*
- b) Those involved in public safety and citizen protection; in the defence of national integrity and sovereignty; the procurement and administration of justice; as well as the legislative activity at the federal and state levels;*
- c) Those of the fundamental sectors of the economy: financial, tax collection, distribution and sale of energy, gas stations and gas, generation and distribution of drinking water, food and non-alcoholic beverage industry, food markets, supermarkets, self-service stores, grocery stores and sale of prepared foods; passenger and cargo transportation services; agricultural, fishing and livestock production, agro-industry, chemical industry, cleaning products; hardware stores, courier services, guards in private security work; day care centers, nurseries, asylums and homes for the elderly, shelters and care centres for women victims of violence, their children; telecommunications and the media; private emergency services, funeral and burial services, storage and cold chain services for essential supplies; logistics (airports, ports and railways), as well as activities whose suspension may have irreversible effects for its continuation;*
- d) Those directly related to the operation of government social programs, and*
- e) Those necessary for the conservation, maintenance and repair of critical infrastructure that ensures the production and distribution of essential services, namely: drinking water, electricity, gas, oil, gasoline, turbotine, basic sanitation, public transport, hospital and medical infrastructure, among others that could be listed in this category;”*



¿WHERE ARE WE?

Legally, the Declaration of a Health Emergency due to Force Majeure falls within the scope of the temporary suspension of labor relationships established by section I of article 427 of the Federal Labor Law:

“FORCE MAJEURE OR FORTUITOUS CASE NOT ATTRIBUTABLE TO THE EMPLOYER, OR HIS PHYSICAL OR MENTAL INCAPACITY OR DEATH, WHICH PRODUCES AS A NECESSARY, IMMEDIATE AND DIRECT CONSEQUENCE, THE SUSPENSION OF WORK;..”

The consequence on the temporary suspension due to force majeure is found in section I of Article 429, which compels the employer to give “...notice of the suspension to the Court, so that the latter, prior the procedure set forth in the Special Collective Procedure established in Article 897 and subsequent articles of this Law, approves or disapproves it;... We must remember that according to Article 42, the

direct effect of the temporary suspension is to interrupt for a period of time the obligation of the employee to provide the service, and of the employer to pay the salary; however, the approval of the procedure that, in the face of this circumstance, the employer will be required to initiate, so that it is the labor authority that determines the amount of the compensation, taking into consideration, among other circumstances, the probable time of suspension of the work and the possibility that they find a new employment, without it being able to exceed the amount of one month’s salary (see Article 430).

With the abovementioned, it is clear that the Federal Government, by declaring an Emergency and not a Contingency, tried to protect the employees, avoiding the employers from paying only the equivalent of one month’s minimum wage, as foreseen by the Health Contingency in section IV of article 427, by ordering them to suspend labor relationships during the month of April, to ensure that employees are paid their full wages, so that they do not have to go through the special collective procedure, which in the light of human rights will most probably result in the payment of one month’s wages as compensation once the whole process has been completed.

¿What to do?

Given the uncertainty of government leadership, it is undoubtedly that the creativity of the employers and employees prevails, and therefore the agreements that both parties reach during the period of suspension (which could extend beyond April) will be the way to ensure and preserve labor relationships.

Previously, the employers’ sector had already opted for various alternatives to maintain its productive workforce, always with the idea of ensuring that employees have an income even in a lower proportion than the accrued before the crisis, opting for alternatives such as:

- Payment of benefits such as vacation and vacation premium.
- Advance payment of benefits such as profit sharing and Christmas bonus.
- Home office.
- Reduced work shift or redistribution of working hours or days (not applicable during the suspension).
- Absenteeism in any modality through the payment of a compensation.
- Unpaid leave.

We must remember that prior to the last decree some protection measures had already been taken on employees considered as the “vulnerable sector” (***pregnant or breastfeeding, people over 60 years old, people with disabilities, with chronic noncommunicable diseases such as high blood pressure, pulmonary hypertension,***

kidney failure, lupus, cancer, diabetes mellitus, obesity, liver or metabolic failure, heart disease, as well as those who are undergoing pharmacological treatment that suppresses their immune system) which are still in effect, so these people must continue to receive their full salary at home.

FREQUENT QUESTIONS:

¿What if I cannot pay salaries?

In view of the maxim that “no one can be forced to the impossible”, it will be the employer’s obligation, once the activities of the labour courts have resumed, to initiate the special collective procedure in order to justify the impossibility of payment so that the authority can consider it at the time the compensation is settled.

¿If the contingency (emergency) lasts longer, can I terminate the labor relationship with my employees?

Yes, privately (in-house), by means of the severance payment (Constitutional indemnity equal to three months’ integrated salary, twenty days of integrated salary per each year of service, seniority premium (article 162) and accrued benefits. Officially, as long as the special collective procedure is followed and the approval of the authority is obtained and the compensation settled by the authority is covered.

¿During the crisis, can I pay part of the wages?

As we have indicated, the understanding between the parties will be vital to overcome the crisis, therefore, any agreement that does not violate the integrity of the employee’s rights can be valid as long as it is entered into and between by both parties.

¿If I am presented with a waiver (resignation letter), should I accept it?

We believe that in the face of uncertainty it is appropriate to accept the waiver and process the payment of accrued benefits immediately. (We suggest the resignation letter to be written in employee’s handwriting.)

¿If I am a company considered essential, can I force my employees to work?

No, the fact that the company has the possibility to operate does not allow it to force employees, since ultimately health protection is regards people and not regards companies.

¿What should I do if a union comes to my facilities?

Only the union that holds the bargaining agreement of the company has the legal capacity to request information regarding its employees, otherwise it is people outside the company who will most likely try to blackmail it.

For questions, doubts or clarifications we are at your service at:



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If you are one of our clients you already have a 24/7 direct line of contact with each of our collaborators