

On the past days, the World Health Organization (WHO) declared the outbreak of coronavirus (COVID-19) as a pandemic; therefore, at any time in our country, competent authorities should declare a health contingency as a part of the essential measures to avoid this disease to be uncontrollably propagated, as it happened in other regions of the world.

Consequently, employers must consider different aspects in the Federal Labor Law (*Ley Federal del Trabajo* or *LFT*), as explained herein below.

Suspension of activities due to contingency

If a health contingency is declared in our country, labor relationships will be suspended, as provided by article 42 bis for individual relations and article 427 for collective labor relations.

Accordingly, employers must observe the provisions contained in article 429 of the LFT. Such article sets forth that employers will be obliged to pay an indemnification to their employees, equal to one day of minimum wage in force (\$122.23 one hundred and twenty-two pesos 23/100), per each day of suspension, up to one month.

It is important to recall that, as long as there is no communication by the Ministry of Health, labor activities may continue on a normal basis, provided that the suggested preventive measures are being observed or there is a different agreement between the employer and the employees.

Pursuant to the LFT, employers are compelled to protect the safety and hygiene at the work sites, while employees are obliged to inform their employer of any infectious disease they may have.

It shall be borne in mind that, in the event that the health contingency does not declare a general labor suspension, pregnant or breastfeeding women and employees under age 18 must rest under payment and benefits to be granted by the employer. Although it is not mandatory under the LFT, in the particular case of Covid-19, a conservative position could be assumed by allowing workers over age 60 and those who suffer preexisting conditions and chronic illness, to have the same rest and benefits.

Once the contingency is ended, either at a date provided in the decree or through the issuance of a new official communication to conclude it, the labor relationship will be resumed normally.

Preventive measures

In the event that the Government decides not to declare a health contingency despite the evident impossibility to continue regular labor, the employer may agree with workers a total or partial suspension of activities through an agreement providing for the reasons, terms and conditions for the suspension, considering the following optional measures:

- a) Home office.- it is one of the measures suggested by the Ministry of Health, allowing to continue with regular labors without a risk of infection. In is worth mentioning that this should not be confused with “work at home” (“*trabajo a domicilio*”) under the LFT, for the nature and conditions of it are aimed at different labors, which are not applicable to this temporary measure. No formality is required to implement this measure, as it is an agreement between the parties; however, it would be advisable to document it in order to provide for the conditions that will prevails during this measure and, if possible, its duration.
- b) Reduction of the workday.- this measure may be temporarily adopted, provided that the law restricts a reduction in the salary (even on a proportional basis).
- c) Absenteeism license with or without payment.- the parties are free to agree on it if there is an agreement and it is properly documented. The employer is not able to oblige an employee to take an unpaid resting time; therefore, the license without payment is subject to the will of the employee.
- d) Suspension of labor.- there should be, mandatorily, an agreement with the employees or union in order for it to occur.

We hope you find this newsletter helpful to have an overall view of legal responsibilities as employer derived from this situation. In is important to understand that this situation may be prevented to a considerable extend by taking the relevant precautions.

Should you have further doubts on specific case that may affect your companies, please do not hesitate to contact our specialists in order to review the effects derived from this possible contingency and discuss hoy your business should be prepared for such purposes.

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