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Labor Law FAQs related to the Covid-19 emergency in Mexico

On March 30, 2020, the General Health Council¹ declared the coronavirus pandemic as a health emergency. On March 31, 2020 the Ministry of Health² ("MH") issued a decree with extraordinary measures that must be observed during the health emergency³, with immediate effects. This situation raised a series of concerns regarding the applicability of the suspension of operations for some sectors, the control measures to be implemented in work places, the protection of labor rights, and even non-discrimination rights.

In light of the aforementioned, on April 6, 2020, the MH issued technical guidelines⁴ to provide legal certainty with respect of some of the concepts referred to in the aforementioned decrees, such as "activities corresponding to the fundamental sectors" and the "critical infrastructure".

Please find herein some FAQ in this regard:

Which employers can perform work activities during the quarantine period?

According to the rulings of the aforementioned decrees and the technical guidelines, only the following private sector companies can continue its operations:

- 1)) Those that participate in the supply, services and sourcing for essential activities of the National Health System.
- 2) Those that correspond to fundamental sectors of the economy, such as: financial, energy, drinking water, food and beverage industries, agroindustry, chemical industry, cleaning products, hardware stores, courier services, private security, daycare and childcare, nursing and retirement homes for the elderly, shelters and attention centers for women victims of violence and their children, telecommunications and information media, private emergency services, funerary and burial services, storage and cold chain services for essential inputs, logistics (airports, docks and railways) , and activities that, if suspended, might have irreversible effects for its continuation.

In this regard, among other provisions, the technical guidelines clarify the following:

-The term "activities that if suspended, might have irreversible effects for its continuation", refers to steel, cement and glass manufacturers, and information technology services that guarantee the continuity of the informatic systems of the public, private and social sector.

¹ Consejo de Salubridad General.

² Secretaría de Salud.

³ "Acuerdo por el que se establecen acciones extraordinarias para atender la emergencia sanitaria generada por el virus SARS-CoV2".

⁴ "Lineamientos técnicos relacionados con las actividades descritas en los incisos c) y e) de la fracción II del Artículo Primero del Acuerdo por el que se establecen acciones extraordinarias para atender la emergencia sanitaria generada por el virus SARS-CoV2, publicado el 31 de marzo del 2020".

- 3) Those that participate in the conservation, maintenance and repair of the critical infrastructure that ensures the production and distribution of indispensable services: drinking water, electric energy, gas, oil, gasoline, "turbosina", basic sanitation, public transportation, hospital and medical infrastructure, among others.

As a general rule, our interpretation of the aforementioned provisions is that: work centers which correspond to the listed fundamental sectors may continue its essential operations and shall comply with the health measures issued by the MH. Work centers that do not correspond to the listed fundamental sectors, shall suspend their activities.

If my work center will continue operating, which safety and hygiene measures shall the employee implement to protect the workers?

Generally speaking, employers must have an Occupational Safety and Health Program that shall rule, among other situations, the action for attending to emergencies and health contingencies issued by the competent authorities. These actions shall comply not only with the applicable laws and regulations, but also with the Mexican Official Standards ruling occupational health and safety, which may vary according to the corresponding industry.

In addition to the aforementioned, the Ministry of Labor and Social Welfare⁵ has issued the Action Guide for Work centers in light of the Covid-19⁶, which provides practical recommendations related to the planning, training, prevention, protection and monitoring of work centers. It is likely that this Guide will be continued to be updated, particularly in the epidemic stage of the health emergency, due to possible determinations by the General Health Council.

Is it possible for an employer to suspend workers due to the health emergency?

According to Article 427, section VII of the Federal Labor Law⁷ (FLL), the declaration of sanitary contingency is a cause for suspending the labor relationship, which does not require prior approval of labor authorities. In this case, the employer is obliged to pay the workers an indemnity equivalent to a day of the effective general minimum wage⁸ for each day of the suspension, provided such suspension shall not exceed one month (article 429, section IV of the FLL).

Regardless of the aforementioned, the labor authorities are aiming to classify the health emergency as a cause for suspension due to force majeure. In this case, the employer must give notice to the authority for its approval or rejection of the suspension of works, which currently is materially impossible (articles 427, section I, and 429, section I of the FLL). The interpretation of the authorities, even if it is questionable from a legal perspective, it anticipates the position the latter will assume concerning this matter.

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⁵ Secretaría del Trabajo y Previsión Social.

⁶ Guía de Acción para los Centros de Trabajo ante el Covid-19.

⁷ Ley Federal del Trabajo.

⁸ The National Commission for the Minimum Wages (Comisión Nacional de los Salarios Mínimos) determines the amount of the minimum wage.