

LABOR LAW NEWSLETTER COVID-19

This newsletter presents the latest decisions issued by the Ministry of Labor in Resolution No. 0803 of 2020 and Circular No. 022 of 2020.

1. PREFERENTIAL POWER IN AUTHORIZATIONS FOR SUSPENSION OF ACTIVITIES AND COLLECTIVE DISMISSAL

By means of Resolution No. 0803 of 2020, the Ministry of Labor ordered the *sua sponte* exercise of the preferential power (*poder preferente*) in procedures for the authorization of suspension of activities for up to 120 days and in procedures for the authorization of collective dismissals.

The preferential power is regulated by Decree 34 of 2013 and consists on the faculty vested on the Special Investigations Unit (*Unidad de Investigaciones Especiales*) of the Ministry of Labor to determine if the Territorial Offices (*Direcciones Territoriales*) should continue ongoing procedures, conclude them, or if jurisdiction is assumed directly by the Special Investigations Unit. In this case, the aforementioned Resolution established that the Special Investigations Unit of the Ministry of Labor would decide all procedures to authorize the suspension of activities and collective dismissals.

On the other hand, collective dismissal is regulated in Article 67 of the Law 50 of 1990. This figure consists of a massive dismissal of employees by the employer, without just cause.

In order to protect the rights of employees, the law imposes certain limits on this faculty of employers, namely: (i) requiring the prior authorization from the Ministry of Labor, after such entity has analyzed the reasons and justifications of the employer to carry out the collective dismissal and (ii) there is a maximum limit to the total number of employees that can be dismissed by the employer during a six (6) month period.

This implies that in order to carry out collective dismissals of their employees, whether total or partial, companies must request the prior authorization of the Ministry of Labor and inform their employees of such request.

Notwithstanding the above, the exception to this rule is configured when the termination of the labor contracts is justified on the basis of (i) a just cause for termination or (ii) the fulfillment or completion of the work that was initially hired. In these cases, a collective dismissal would not be applicable.

Now, numeral 4 of Article 67 of Law 50 of 1990 establishes that, in order for planned dismissals to be considered as a collective dismissal, they must occur in a period not exceeding six (6) months, and the numbers of dismissals must be within the maximum percentage limits during such period, as shown in the chart below:

TOTAL NUMBER OF EMPLOYEES IN THE COMPANY	% OF DISMISSALS IN A SIX-MONTH PERIOD
10 to 50 employees	30%
50 to 100 employees	20%
100 to 200 employees	15%
200 to 500 employees	9%
500 to 1000 employees	7%
Over 1000 employees	5%

It is important to note that due to the referred Resolution, the Special Investigations Unit of the Ministry of Labor will decide on ALL procedures to authorize the suspension of activities and collective dismissals.

2. RIGOROUS LABOR AUDIT

By means of Circular No. 022 of 2020, the Ministry of Labor stressed the importance of protecting work and the recommendations from the International Labor Organization – ILO to guarantee the rights of employees in the face of the economic crisis brought by the COVID-19 pandemic.

In this sense, the Ministry reiterated the main measures recommended to employers, which were included in Circular No. 021 of 2020:

1. Home office
2. Teleworking
3. Flexible working hours
4. Vacations
5. Paid permits
6. Salary without the provision of the service

Therefore, the Ministry of Labor informed that it will adopt a Rigorous Labor Audit (*Fiscalización Laboral Rigurosa*), adopting strict inspection, control and surveillance measures on the decisions taken by employers in connection with their employees during the sanitary emergency caused by COVID-19.



We hope this information is useful towards keeping updated with the latest regulations from the Ministry of Labor during the situation we are all living.

Please, do not hesitate to contact us in case of questions or comments.

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