

LABOR NEWSLETTER COVID- 19

This newsletter presents the main alternatives available for employers with regards to the development of the COVID-19 pandemic in Colombia, as suggested by the Ministry of Labor in Notice No. 0021 of 2020 and by the National Service of Apprentice (SENA) in Notice No. 1 of 2020.

The main subjects to develop are:

- 1: HOME OFFICE
- 2: TELEWORKING
- 3: FLEXIBLE WORKING HOURS
- 4: VACATION
- 5: PAID LEAVE
- 6: SALARY WITHOUT SERVICE
- 7: LABOR CONTRACT REVIEW
- 8: CONTRACT SUSPENSION DUE TO FORCE MAJEURE

1. HOME OFFICE

The employer and employee can sign agreements in order to render services from home, as an occasional and extraordinary measure. It is important to note that this measure is different from the teleworking modality, which regulated by Numeral 4 of Article 6 of the Law 1221 of 2008.

Home office has become an essential modality to be implemented by employers given the recommendations established by the national and local governments in respect to the sanitary emergency.

It is important to note that home office is different from the teleworking modality,

which is regulated by Numeral 4 of the Article 6 of the Law 1221 of 2008.

2. TELEWORKING

Article 2 of the Law 1221 of 2008 defines teleworking as the undertaking of remunerated activities or rendering of services to third parties, with the support of telecommunication tools for the interaction between the employee and the employer, without having the need of the physical presence of the employee in a specific working space.

It is important to note that the salary earned by an employee under this modality, cannot be less than the one paid for the same type of services and performance at the working place.



3. FLEXIBLE WORKING HOURS

Article 61 of the Substantive Labor Code establishes that the maximum working hours per day are 8 and 48 per week. This limit can be distributed by the employer in different combinations throughout the working week, with a

daily minimum of 4 hours and a maximum of 10 working hours per day.

According to this, the employer has the faculty to reduce or extend the working hours depending on the service's needs. Also, the employer can choose to establish a system of working shifts not longer than 6 hours per day and 36 hours per week, which can be executed at any time or day of the week without surcharges.

In line with the current situation, the employer can modify the working hours depending on the service's needs and according to the recommendations from national and local authorities.

The employer can modify the working hours depending on the service's needs. He can establish a system of working shifts not longer than 6 hours per day and 36 hours per week which can be executed at any time or day of the week without surcharges.

4. VACATION

Article 186 of the Substantive Labor Code establishes that employees, who rendered continuous services for one year, are entitled to fifteen (15) consecutive working days of paid vacation, each year.

The employer can grant vacations in advance to the employees, even if they have not worked a full year with the employer.

Also, the employer can grant collective vacations to all his employees given the following conditions:

- Vacations must be paid with the salary yielded by the employee at the time of the granting.

- The employee cannot ask for a new vacation period before rendering continuous services for one year.

In case that the employer needs to counterbalance the decrease in productivity of the company, this alternative becomes a useful mechanism in the current situation of the COVID-19 pandemics.



5. PAID LEAVE

Article 57 of the Substantive Labor Code establishes the employer's obligation to grant remunerated leave to employees who are suffering verified domestic calamities.

This situation can occur during the sanitary emergency. It is important to note that the employer must grant this permit and that the leave period must be remunerated.

6. SALARY WITHOUT SERVICE

Article 140 of the Substantive Labor Code allows the employer to cease employees' activities and services while recognizing and maintaining payment of their corresponding salaries.

In cases where the activities or services rendered by employees becomes unnecessary due to the sanitary emergency, the employer can opt for this alternative as a voluntary and generous act.



7. LABOR CONTRACT REVIEW

Article 50 of the Substantive Labor Code establishes the possibility of a contract review. This figure is applicable in situations of unforeseeable and serious economic alterations and requires an explicit agreement between the parties.

Upon the unforeseeable and serious economic alterations caused by the COVID-19 pandemic, this can be an alternative to be implemented by employers so that employment contracts can be amended in accordance with Article 50 of the Substantive Labor Code.

It is important to note that if the parties cannot reach an agreement, they must resort to the labor judge, who will only be competent to decide on the occurrence or not of an unforeseeable and serious economic alteration. In that sense, the judge will not be allowed to review the contract itself.

8. CONTRACT SUSPENSION DUE TO FORCE MAJEURE

Numeral 1 of Article 51 of the Substantive Labor Code gives the possibility to the employer to suspend a labor contract when conditions of force majeure prevent the contract from further development.

In our reasoning, the current situation satisfies the requirements on Article 64 of the Civil Code about force majeure: an unbearable and unforeseeable event. According to this, the employer can suspend the labor contracts giving immediate notice to the labor inspector of the Labor Ministry which has to verify the circumstance.

In this event, the employee's obligation to render the service and the employer's obligation to pay the salaries are interrupted. Nevertheless, the employer must continue paying the contributions to the Social Security system according to Article 53 of the Substantive Labor Code.

According to Article 52 of the Substantive Labor Code, once the force majeure event has been overcome, the employer must give formal notice to the employee on the date that services will be resumed.

We hope this information is useful to determine which is the best option for the employers upon the situation we are all living.

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

For any additional inquiries on this subject, you can contact our Labor Law Area:

➤ Joe Bonilla Gálvez
joe.bonilla@mtalegal.co

- Alejandra Vidaurre Tugues
alejandra.vidaurre@mtalegal.co
- Andrés Osorio Suarez
andres.osorio@mtalegal.co