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December 2023

BILL THAT MODIFIES LABOR CODE ON PREVENTION, INVESTIGATIONS AND SANCTIONING OF SEXUAL AND LABOR HARASSMENT AND VIOLENCE IN THE WORKPLACE IS APPROVED

On December 13th, 2023, the Chilean Congress approved a bill that modifies the Labor Code regarding prevention, investigations and sanctioning of sexual harassment, workplace harassment and violence in the workplace (hereinafter, the "Law").

Companies subject to the new regulations

The Law is applicable to all companies, regardless of their size. The Law also includes regulations applicable to the State Administration and its multiple agencies.

New concepts created and modified by the law

The Law establishes two new principles on which labor relations are based: treatment free of violence and gender perspective.

Regarding gender perspective it is specified that, for the purposes of the Law, this implies "the adoption of measures to promote equality and eradicate discrimination based on such grounds".

Together with sexual and labor harassment, the Law typifies a third conduct called Workplace Violence, which is defined as that "exercised by third parties outside the labor relationship, being understood as those conducts that affect the employees, on the occasion of the provision of services, by clients, suppliers or users, among others".

Additionally, the Law modifies the definition of labor harassment, removing the requirement of repetition of the aggressions or harassment in order to be able to configure the conduct. Consequently, a single aggression or harassment would be enough to be considered as labor harassment.

New mandatory mention for internal regulations of order, hygiene

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

and safety

The Law modifies the minimum mandatory mention of the Internal Regulations of Order, Hygiene and Safety ("RIOHS") regarding the investigation procedure for sexual harassment, now requiring a sexual harassment, labor harassment and workplace violence prevention protocol, and the inclusion of the procedure which rules the investigation and sanction of these conducts.

For those companies who are not required to have a RIOHS, they shall inform the employees at the time of execution of the employment contract about the sexual harassment, labor harassment and workplace violence prevention protocol, and its investigation and sanction procedure. This protocol and procedure must be incorporated into the Internal Regulations of Hygiene and Safety required by the Labor Accident and Professional Diseases Insurance Law.

Changes to regulations on investigations and sanctioning of sexual harassment

In this regard, the Law makes applicable to the investigation and sanctioning of workplace harassment and workplace violence the rules currently in force for sexual harassment; nevertheless, it incorporates a series of modifications to said regulation.

Amongst the main modifications are:

• The procedures for the investigation of sexual harassment, labor harassment and workplace violence shall be subject to the principles of confidentiality, impartiality, celerity, and gender perspective. The guidelines for these procedures shall be established in a Regulation that will be issued by the Ministry of Labor and Social Welfare.
• Reduction of the term in which the Company must determine who will conduct the investigation for sexual harassment, labor harassment and workplace violence from five to three days.
• Allows claims regarding sexual harassment, labor harassment and workplace violence to be filed verbally, in which case it establishes the duty of the person receiving the complaint to write a report and ask the complainant to sign it.
• When the investigation on sexual harassment, labor harassment and workplace violence is carried out by the employer, it should preferably be carried out by an employee with training in harassment, gender or fundamental rights.

• The Labor Board now has a term of 30 days to inform its opinion regarding the conclusion of the investigation of sexual harassment, labor harassment and workplace violence carried out by the Company.
• The truthfulness of the report issued by the employer or the Labor Board is presumed. Thus, the employee who was dismissed for these conducts will have the burden of proof and challenge the decision by submitting the necessary evidence to disprove the facts and background contained therein.

Finally, the employer must inform the employees semiannually the channels that the company has for filing complaints regarding these matters.

Sexual harassment, labor harassment and workplace violence prevention protocol

Companies must implement a protocol for the prevention of sexual harassment, workplace harassment and workplace violence. This protocol must contain, at least, the following regulations: (i) identification of psychosocial risks associated with sexual harassment, workplace harassment and workplace violence; (ii) measures to prevent and control such risks; (iii) measures to inform and train employees on the aforementioned risks; (iv) measures to prevent and protect against such risks; and (v) measures to protect the privacy and honor of those involved in the investigation and sanction procedures.

Validity

The provisions of the Law shall become effective on the first day of the sixth month after its publication in the Official Gazette.

Authors: Óscar Aitken; Francisca Corti