

BILL THAT MODIFIES THE LABOR CODE BY REDUCING THE WORKDAY LIMIT TO 40 HOURS IS APPROVED IN CHILE

On April 10th, 2023, the Congress approved a bill that reduces the workday weekly limit from 45 to 40 hours (Bill N°11.179-13). This bill, however, includes multiple and important amendments to the working hour and rest regimes, amongst which we can highlight the following:

Reduction of the ordinary working hours limit

The duration of the ordinary working hours will be reduced from 45 to 40 hours. This modification shall enter into force gradually in a term of 5 years, counted from the publication of this law in the Official Gazette. Thus, after the first year of enforcement of the law, the ordinary working hours limit will be reduced to 44 hours, by the third year it will go down to 42 and, finally, to 40 hours after the fifth year.

The reduction of the working hours must be executed by mutual agreement with the employees and, if no agreement is reached, the employer must reduce the working hours proportionally between the different workdays of the week.

Flexibility in the distribution of workdays

The 40-hours limit can be distributed on a weekly basis or on a basis of weekly averages in periods up to 4 weeks. In this case, the weekly limit is extended to 45 hours, which cannot be applied for more than 2 continuous weeks in a 4-week cycle.

The law also allows for the working schedule to be distributed in 4, 5 or 6 days, opening the possibility of a 4x3 workday scheme without needing authorization of the Labor Board. This shall come into force at the fifth year after the law's publication in the Official Gazette, unless the Company has reduced in advance its ordinary working schedule to 40 hours, in which case they can implement this change from the moment they meet the 40-hour limit.

This news alert is provided by Carey y Cía. Ltda. for educational and informational purposes only and is not intended and should not be construed as legal advice.

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

Exclusion of the workday limit

In reference to one of the matters that we deem most relevant, article 22 of the Labor Code is modified, reducing the grounds by which an employee can be excluded from the workday limits. In consequence, the exclusion of the working day limit shall only be allowed for employees who render services as managers, administrators, representatives with powers of administration and all personnel who render services without an immediate superior control due to their functions. Every other situation that currently allows the exclusion of the working day limit in accordance with article 22, has been suppressed.

In case of controversy, any of the parties can file a claim before the Labor Board to determine the applicability of the exclusion for a specific case, being possible to challenge the Board's resolution before the Labor Courts. These modifications shall come into force 1 year after the publication of the law.

Time band for parents and caretakers of children up to 12 years

Mothers, fathers, and caretakers of children up to 12 years of age will have the right to a time band of 2 hours total, by which they can anticipate or delay in up to 1 hour the time at which they begin and end their workday.

The company can only deny the use of this right in specific cases determined by the law.

This modification shall come in effect one year after the publication of the law in the Official Gazette.

Exceptional workdays

The law establishes that, in a term of 6 months, the Work and Social Security Ministry must dictate a regulation that will determine the limits and parameters of distribution of the exceptional workday and rest schemes.

Only exceptional systems with average weekly hours of up to 42 hours may be authorized, establishing a special compensation for the hours of the cycle that exceed a 40-hour average. Thus, the law maintains the possibility for workday structures that contemplate the same number of workdays and rest days, with 12 daily hours (i.e. 7x7x12, 14x14x12, etc.).

Exceptional systems authorized before the law comes into force shall continue in effect until its expiration, but any interested party can request to the Labor Board its adequation in accordance with the limit of the workday that is in force at that moment.

Compensation of overtime for rest days

By written agreement between the parties, the exchange of overtime for additional rest days will be allowed, with a maximum of 5 additional rest days each year. For each overtime hour of work, one and a half hours of rest day must be compensated.

This modification shall come into force in the term of one year since the publication of the law in the Official Gazette.

Attendance record

Electronic attendance records have been formally introduced amongst the options for the control of the working schedule. In this sense, a resolution from the Labor Board will establish the conditions and requirements that all electronic attendance and working hours registry systems must meet, which shall be the same for each type of activity.

The Labor Board -upon a petition from interested parties- shall determine if a specific system meets the conditions established in the aforementioned resolution.

This modification shall come into effect one year after the publication of the law in the Official Gazette.

Modifications in special workdays of specific areas

Modifications and adjustments have been introduced for special workday rules of the following areas:

1. Agriculture workers;
2. Flight and cabin crew members;
3. Employees of casinos, hotels, pubs, nightclubs, restaurants, clubs, bars and similar businesses;
4. Drivers and auxiliaries to intercity public transportation;
5. Intercity land cargo employees;
6. Rural public transportation employees;
7. On board railroad employees;
8. Domestic employees;

9. Port personnel and seafarers;
10. Personnel on board of fishing vessels; and
11. Independent digital platform employees.

Publication of the law

It is expected that the present bill will be published on May 1st, 2023, in commemoration of the International Workers Day.

Authors: Óscar Aitken; Francisca Corti; Francisco Arce