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EMERGENCY PARENTAL LEAVE IS PUBLISHED

On Monday July 27th, Law No. 21,247 which establishes special benefits for some parents and children's guardians (the "Law") in the context of the COVID-19 pandemic, was published on the Official Gazette. The main aspects regulated by the Law, are the following:

Preventive parental leave

• It consists in the granting of preventive leave for taking care of children whose parents were making use of the parental postnatal leave. This leave will last 30 days, renewable twice for the same amount of time, provided that the State of Catastrophe is still in force, and will be granted to employees:

• Who are making use of parental postnatal leave, which ends while the State of Catastrophe is in force; and
• Whose postnatal parental leave has ended between March 18th, 2020 and the date in which the Law entered into force.In case both parents have used the parental postnatal leave, any of them -at the mother's choice- will be entitled to make use of the leave.

• Pursuant to Resolution No. 3524 of the Social Security Superintendence, dated July 27th, the request of this leave must be made by the employee through the website of the Social Security Superintendence. After the request has been duly submitted, the leave will automatically be sent to the employer and medical comptroller.
• The subsidy to which employees who make use of this leave will be entitled is identical to the one the employee would receive due to the parental postnatal leave and it will be paid by the relevant health insurance institution to which the employee is affiliated (Isapre/Fonasa).
• Employees who make use of this preventive parental leave will be entitled to an extension in their dismissal privilege protection set forth in article 201 of the Labor Code, for the same amount of time the leave is in force.

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Suspension of the employment contract

• It consists in the possibility to suspend the employment contract of those employees who comply with the following requirements:

• Have the custody of a child born as of year 2013;
• That the educational establishment, nursery school and/or day care to which the child assists (the "Establishment") has suspended its activities due to an act or declaration from competent authority;
• Are enrolled in the unemployment insurance set forth by Law No. 19,728;
• Comply with the requirements to access the benefits derived from unemployment insurance, established in Title I of Law No. 21,227 ("Employment Protection Act"); and
• Are not eligible to make use of the preventive parental leave referred to in section I above.

• This benefit will cause the temporary suspension of the employees' obligation to render services and the employer's obligation to pay the employee's remuneration and other non-remuneration allowances.Notwithstanding the above, while the suspension is in force, the employer will be obliged to pay all social security contributions, both borne by the employer and the employee, with the sole exception of the contribution for work-related accidents and professional diseases' insurance regulated in Law No. 16,744.
• The employee shall request the suspension to the employer in writing (preferably through electronic means), attaching the relevant documentation required by the Law (e.g., birth certificate of the child). In turn, the employer will deliver the information to the Unemployment Insurance Administrator ("AFC").
• The suspension will cease to have effect once the Establishment resumes its activities, or by the employee's unilateral will, in which case a written notice of at least 5 business days shall be delivered to the employer.The employer will be obliged to communicate the latter circumstance in writing to the AFC and preferably through electronic means.
• For purposes of paying owed amounts of child support which have been set by a court ruling and duly notified to the employer, the benefits obtained by the employee from his/her unemployment insurance may be seized and subject to withholding on part of the employer up to a 50%.
• There is an incompatibility of this benefit and the one derived from the employment contract suspensions set forth in Law No. 21,227

("Employment Protection Act"), provided that both derive from the same employment contract.

Prohibition to dismiss based on unjustified absence

While the Establishment has not yet resumed its activities due to the act or declaration of competent authority, the employer may not dismiss an employee whose employment contract has not been temporarily suspended under the Law, for not attending work without justified cause (article 160, number 3, of the Labor Code). The latter, provided that such employees have children under their custody born as of year 2013, that their absence is caused by the need to take care of such children, and that the employees do not have other reasonable alternatives to guarantee the children's wellbeing and integrity.

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