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LEGAL ALERT

Law No. 21,232 that amends Law No. 21,227, which authorizes access to the benefits of the unemployment insurance under Law No. 19,728 in exceptional circumstances, in the matters it indicates

On April 6, 2020, Law No. 21,227 entered into effect, authorizing access to the benefits of the unemployment insurance in the context of the sanitary crisis caused by Covid-19 (hereinafter, the "Law on Employment Protection" or "LEP").

In order to improve the practical application and implementation of the aforementioned act, on June 1, 2020, Law No. 21,232 was published, amending the Law on Employment Protection in the following matters:

Percentage of social security and pension contributions to be paid during the suspension of the employment contract

While the suspension is effective, the employer must pay the social security and pension contributions, both of its own and of the employees' burden, with the exception of the contribution for insurance on labor accidents and occupational diseases.

The foregoing must be determined in accordance with the following calculation basis:

- The basic contribution of Pension Fund (AFP), AFP commission and SIS, will be determined on 100% of the benefits that the employee is entitled to receive from the unemployment insurance.
- Other social security and health contributions shall be calculated on the last monthly remuneration received by the employee, prior to the suspension.

Termination of the employment contract

- Dependents subject to the Law on Employment Protection may not be dismissed, notwithstanding that the employment contract may be terminated due to (i)

the employee’s voluntary resignation, (ii) mutual agreement of the parties, (iii) employee’s death, (iv) expiration of the fixed term; and (v) completion of the work or task that lead to the contract.
- If the employer terminates the employment relationship after receiving the benefits of the LEP, severances arising from the dismissal must be calculated on the last monthly remuneration received by the employee, prior to the suspension.
- Termination of employment contracts based on the grounds set forth on article 161 of the Labor Code ("Business Necessities" and "Will of the Employer"), could only take place with respect to employees who are not subject to the Law on Employment Protection.

Presumption in agreements on temporary suspension of the employment contract

The Law on Employment Protection enables the execution of mutual agreements on temporary suspension of the employment relationship, when the employers’ activities or operations are totally or partially affected.

The new regulation presumes that the employer's activity is partially affected when, during the month prior to the agreement’s execution, incomes from sales or services net of VAT have decreased in 20% or more with respect to the same month of the previous year.

Maternal dismissal privilege

Employment contracts of female employees protected by dismissal privilege may not be suspended, whether by an act of authority or by mutual agreement.

Prohibitions on corporations

- Corporations of Law 18,046 (Sociedades Anónimas), which invoke the Law on Employment Protection, or that are part of a holding in which any of its entities has invoked the LPE, may not distribute dividends to their shareholders during the business year in which the company or entity has suspended employment contracts.
- Directors of open stock companies that have executed agreements on temporary suspension of the employment contract with all or most part of its employees, may not receive fees for said position that are higher than the percentages corresponding to the unemployment insurance, during the suspension period.

Tax havens

Companies controlled by entities that maintain capital or related companies in territories or jurisdictions considered “tax havens”, will not be able to benefit from the Law on Employment Protection.

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