

LAW OF SAFE RETURN TO PRESENTIAL WORK IS PUBLISHED

On June 1st, 2021, the Law No. 21,342 (hereinafter, the “Law”) was published in the Official Gazette, establishing protocols for occupational health safety and a mandatory health insurance for safe, gradual return to presential work. The above, in the context of the health alert caused by the Covid-19 disease in Chile.

The main implications of the Law are the following:

1. Obligation of implementing remote work: During the health emergency issued by the authority due to Covid-19, the employer will be obliged to implement a remote work or telework scheme as regulated in the Chilean Labor Code, without reduction of employee’s remunerations, to the extent that: (i) the nature of the duties allows it; (ii) the employee consents to the new working scheme ; and (iii) the employee demonstrates that he or she has a condition that implies a high risk of suffering severe symptoms in case of getting Covid-19 (person over 60 years of age, or with hypertension, cardiovascular disease, diabetes, chronic lung disease, kidney disease, transplant, cancer or a weakened immune system) or has to take care of a minor, elderly or disabled person. This employer obligation must be fulfilled within 10 days after the company is notified of the employee’s condition. If the nature of the employee’s duties is not compatible with the remote work scheme, the employer must assign the employee (with his or her agreement and without reduction of remuneration) to tasks that do not require attention of customers or permanent contact with third parties who do not work at the site, provided this assignment is not detrimental to the employee.
2. Protocol of occupational health safety: The companies that intend to resume or continue work activities in person, they must prepare and implement an occupational health safety protocol in accordance with the standard protocol drafted by the respective work accidents and occupational disease mutual aid fund to which the employer is affiliated pursuant to the law. The mutual aid fund may collaborate with the employer and advise and instruct the employees in the correct implementation of the protocol. The occupational health

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safety protocol must contain at least the minimum measures set forth by the Law. In no case the companies will be able to charge the cost of the goods, equipment and safety measures to the employees.

Companies carrying out presential work activities at the time this law comes into force, must elaborate and implement the referred protocol within 10 business days following the publication of the Law.

The existence and application of the protocol will be supervised by the Labor Board and the health authority, who may impose fines and order the suspension of risky tasks or the closing of the worksite. Similarly, the infection of an employee with Covid-19 due to the fault of the employer or a third party will give rise to the damages compensation actions that are provided in the Law No. 16,744 on work accidents and occupational diseases.

3. Medical leaves due to Covid-19: During the effective term of the law, the rules regarding non-payment of medical leave subsidy during the first 3 days of leaves issued for 10 days or less, shall not apply to medical leaves issued due to Covid-19. The classification of the origin of the disease as occupational or common illness must be carried out in accordance with the instructions issued by the Superintendency of Social Security. Employees with preventive medical leaves will have the same rights granted by actual sickness medical leaves.

4. Mandatory individual health insurance: Employers having employees carrying out work totally or partially in person must purchase an individual health insurance associated with Covid-19. This obligation will last until the end of the health emergency status decreed by the Chilean authority due to Covid-19. The insurance must be purchased within 30 days following the deposit of the insurance policy in the Financial Market Commission – for existing employees by the time of the deposit -, or within 10 days after the return to or the commencement of the employee's presential work activities if he or she begins or returns to provide services in person after the policy's deposit. The effective term of this insurance will be of one year from its respective contracting date. If the health emergency status due to Covid-19 remains in force at the end of the insurance term, the employer must purchase a new insurance or renew the existing one. The insurance premium will be paid in one installment and will be paid by the employer. In no case, the annual value of the insurance policy may exceed 0.42 unidades de fomento (approximately USD 17) per employee, plus value-added tax.

The insurance will cover the expenses of health benefits received

during hospitalization and rehabilitation derived from a confirmed diagnosis of Covid-19 within the effective term of the policy, depending on the health system to which the employee is affiliated. Likewise, the insurance will cover the payment of 180 unidades de fomento (US \$7,400 approximately) in the event of death of the employee affiliated to either Isapre or Fonasa systems and whose base cause of death is Covid-19.

The insurance may not have deferral periods or deductibles and will operate with preference to any individual or collective health insurance contracts benefiting the employee.

Employers who fail to maintain this insurance will be responsible for paying the amounts that the insurer would have been otherwise responsible of paying. The above, in addition to the fines and other applicable sanctions.

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