

NEW SERNAC INTERPRETATIVE CIRCULAR ON THE ECONOMIC APPLICATION OF ARTICLE 25 A OF LAW NO. 19.496 IN THE EVENT OF STOPPAGE, SUSPENSION OR UNJUSTIFIED FAILURE TO PROVIDE BASIC SERVICES

On September 11th, 2020, the National Consumer Service (**SERNAC**) published the "**Interpretative Circular on the economic application of Article 25 A of Law No. 19,496**" which made an interpretation of the legally assessed compensation set forth in Article 25 A of Law No. 19,496 on Consumer Protection Act (CPA) in its economic dimension, that is, in the formula for calculating and quantifying such compensation.

The referred Article 25 A of the CPA obliges suppliers to directly and automatically compensate affected consumers in case of suspension, paralysis or unjustified non-provision of basic services for each day without supply. This compensation applies in those cases where special laws do not provide for a legally assessed minimum compensation.

Thus, SERNAC has focused its analysis on the necessary guidelines to carry out a correct quantification of the amounts that should be compensated to consumers, developing (i) an interpretative support and (ii) an economic methodological guide for its determination.

On the quantum of compensation under Article 25 A of the CPA

SERNAC analyzes four elements that constitute the indemnity calculation: i) the monetary value of a day without supply; ii) definition of "day"; iii) the monetary value of hours without supply; and iv) the right to appeal for other damages.

1.1. The monetary value of a day without supply

According to the formula of Article 25 A of the CPA, for each day without supply, the supplier must directly and automatically discount **10 times** the average daily value of what was calculated according to the last billing, that is, the previous month.

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1.2. Definition of "day"

According to the second paragraph of Article 25 A, it is sufficient that the event lasts 4 continuous hours in a period of 24 hours for it to be considered as a day for compensation purposes.

Thus, any suspension, stoppage or non-performance whose duration ranges from 4 continuous hours to 24 hours must be paid with the same amount, that is, 10 times the average daily value of what was billed in the previous bill.

However, only those items representing the consumption of the daily service (including taxes) should be included in the billing of the previous statement. This means that balances due, fines, interest and, in general, all those non-daily and infrequent items that add to the amount billed in the previous statement can be excluded.

1.3. The monetary value of hours without supply

For those cases not included in the regulated "day", that is to say, for any suspension, paralysis or non-performance whose duration is less than 4 continuous hours, the "equivalent to 10 times the value of the day" is applied, but in proportion to the number of hours in question.

1.4. The right to appeal for other damages

The third paragraph of Article 25 A of the CPA, states that this compensation does not apply when there is a special law that sets the minimum amount, leaving aside the possibility of requesting compensation for the difference between the damage actually produced and the minimum amount legally assessed.

1.5. The right to appeal for other damages

SERNAC indicates that suppliers can always use higher standards than those legally required in order to improve compensation amounts.

For this purpose, other more sophisticated calculation alternatives may be used, provided that they are determined on the basis of objective, non-arbitrary, proportional, universal, non-discriminatory criteria, and always superior to those established by law.

Methodological guide for the calculation of compensation

Finally, SERNAC develops in its Circular the application formula of Article 25 A of the CPA, describing the implementation formula; the formula that can be used in the Excel program; and, the graphic representation of the compensation for each consumer.

This Circular is available in SERNAC's website and can be accessed through the following link.

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