

REGULATION NO. 02 OF 2022 OF THE CHILEAN LABOR BOARD: SYSTEMATIZATION AND UPDATE OF PROCEDURES FOR AUTHORIZATION AND RENEWAL OF EXCEPTIONAL WORKING SCHEDULES

On March 18th, 2022, the Labor Board (hereinafter the “LB”) issued its Regulation No. 2 (hereinafter the “New Regulation”) which replaced Regulation No. 5 of 2009, regarding the requirements and procedure for applying to an exceptional working schedule. The New Regulation became effective on April 1st, 2022.

The main aspects of the New Regulation introduced to the procedure for requesting exceptional working schedules, are the following:

Applicant’s rights

The New Regulation lists the rights of the employers who request an exceptional working schedule to the LB. The most relevant ones are the following:

- Right to be informed of the procedure, its status and basic content.
- Right to present allegations and file documents at any stage of the procedure before its conclusion.
- Right to challenge the resolutions through administrative and judicial remedies, in the manner provided by law.
- Right to hold accountable the public officials, when legally appropriate.

Bodies in charge of resolving the application

The New Regulation maintains as the competent authority to resolve the applications for exceptional working schedules, the Regional Director of the LB of the jurisdiction where the site is located. In cases considered as “complex” (e.g. requests involving more than 300 employees) applications shall be resolved by the Head of the Inspection Department.

Term to issue a resolution

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

The New Regulation imposes a term of 45 calendar days counted from the submission date of the application, to resolve a request for an exceptional working schedule.

If the authority does not resolve the request within such term, the requested exceptional working schedule shall be understood as provisionally approved.

Main amendments on the resolution of approval, rejection, or renewal

- The New Regulation clarifies that any modification to an approved exceptional working schedule, which does not derive from a legal change, shall require a new request by the company.
- It is specified that the resolutions of authorization or rejection must be duly grounded, containing an analysis of the situation, so the resolution is self-sufficient and clear.
- The New Regulation reduces to a maximum of 3 years the term for which an exceptional working schedule can be granted and renewed.

Mandatory, general on-site audits are provided for certain cases

The New Regulation establishes that, in certain cases, the authority must visit the worksite to carry out a general inspection of the hygiene and safety conditions of the company and its contractors, prior to granting an exceptional working schedule. In addition, for those cases, an annual site inspection will be carried out by the authority.

Selective inspections

The New Regulation indicates that annual inspections will be conducted to verify the employer's compliance with the conditions for granting the exceptional working schedule. The foregoing will be carried out based on a program of selective inspections.

Sanctions for non-compliance with the authorized schedule

The New Regulation states that upon the first violation, the company will be fined and shall present, within 15 business days, an improvement plan for correcting the infringement. As long as such plan is not implemented and inspected by the LB, the company will not be able to use the exceptional working schedule.

In the event of a second violation, the exceptional working schedule authorization will be revoked, in addition to the applicable fines.

Other amendments

- In case of a request for an exceptional working schedule at sites without employees already hired, their consent must be obtained within a period of 12 months. Otherwise, the authorization shall be revoked.
- For worksites located outside urban centers, the New Regulation reduces the maximum number of days of continuous work that can be authorized.
- It is clarified that remote working regimes are not compatible with services rendered under exceptional working schedules.

Authors: Óscar Aitken; Francisca Corti; Francisco Arce