

RELEVANT CHANGE ON THE CRITERIA REGARDING THE FULL WEEK BENEFIT (“SEMANA CORRIDA”)

On January 29th, 2016, the Supreme Court issued a ruling (hereinafter the “Ruling”), that changed the criteria regarding the requirements that trigger the entitlement to the statutory benefit known as “full week” (semana corrida) which applies to employees who are remunerated based on a fixed salary and a variable compensation.

1.-Criteria before the Ruling

The full week benefit was originally applicable to employees remunerated exclusively on a daily basis or by piecework. Since the labor reform introduced by Law #20.281 in 2008, such benefit was also extended to employees who were remunerated in part by a fixed remuneration (i.e. monthly salary) and also in part by a variable remuneration (i.e. sales commissions).

After the 2008 reform, the Labor Board and the Labor Court’s criteria were that employees with fixed and variable remunerations would be entitled to the full week benefit regarding the variable portion, only if the variable remunerations:

- Are accrued on a daily basis**, this is, that they are earned (i.e. become part of the employee’s “property”) on a day by day basis, regardless of the fact that their salary is paid monthly; and
- Are considered principal and ordinary**, meaning that the remunerations are capable of existing by themselves, independently and without consideration to other remunerations to which the employee may be entitled.

2.-The Ruling and the change of criteria

The Supreme Court, deciding on a Unification of Jurisprudence Remedy (“Recurso de Unificación de Jurisprudencia”), and in reference to the requirements for the application of the “full week” benefit, has ruled that, “from the words of the law it is not possible to determine that the daily accrual of the variable remuneration is a

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statutory requirement to make the full week benefit applicable". For this reason, the Ruling states that, "it is possible to assert that the right to be paid the full week benefit set out in article 45 of the Labor Code, which is applicable to employees receiving both a monthly salary and variable payments, is not conditioned to the daily accrual of the variable portion, making it necessary for this Court to unify the case law accordingly".

Therefore, whether the variable remunerations are accrued on a daily basis or not, has become irrelevant in terms of the applicability of the full week benefit.

3.-Effects on the termination of employment contracts

The Ruling went even further and also accepted the claim for the nullity of the dismissal based on the nonpayment of social security levied over the full week benefit (which was only determined as due in the Ruling), at the time of dismissal. The Ruling ordered the employer to pay the employee, all remunerations accrued from the time of the dismissal until the date in which such social security payments over the full week benefit are made and informed to the employee.

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