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NEW COMPLIANCE MEASURES FOR LEGAL ENTITIES RELATED TO THE CRIMINAL OFFENSE OF FRAUDULENT OBTAINING OF BENEFITS BY COVID-19

On April 6, 2020, Law No. 21,227 came into force, allowing access to unemployment insurance benefits under Law No. 19,728, in exceptional circumstances.

This law, in its Article 14, Title III "Final Provisions", provides for a new criminal offense consisting in fraudulently obtaining supplements, benefits and/or profits due to the pandemic caused by Covid-19.

Specifically, individuals who, in accordance with the aforementioned law, obtain, by means of simulation or deception, supplements, benefits and/or profits greater than those to which they are entitled, shall be punished with imprisonment from 541 days to up to 5 years. The same sanction applies to those who provide the means for the commission of such offenses, without prejudice to the obligation to return the sums unduly received, with the corresponding adjustments.

In addition, it is provided that employers who are legal entities will be criminally liable for the above-mentioned offense when the following requirements are met:

- I. It is perpetrated directly and immediately in the interest or for the benefit of the legal entity.

Consequently, the criminal offense of fraudulently obtaining supplements, benefits and/or profits is carried out for the benefit or interest (pecuniary or of another order) directly and immediately of the legal entity.

The above is opposite to the fact that employers of legal entities shall not be liable in cases where the individuals indicated in (ii) below have committed such offences exclusively for their own benefit or for the benefit of a third party.

- II. Is perpetrated by its owners, controllers, managers, main executives, representatives or those who carry out administration and supervision activities of the legal entity and by individuals who are under direction or supervision of any of the aforementioned subjects.

Thus, the active subjects that can cause criminal liability to the legal entity do not only belong to the high administration or management, but also to the operative positions and those that are in the hierarchical base of the company.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

Guillermo Acuña
Partner
+56 2 2928 2215
gacuna@carey.cl

Ricardo Reveco
Partner
+56 2 2928 2213
rreveco@carey.cl

Héctor Juan Hernández
Associate
+56 2 2928 2231
hhernandez@carey.cl

Pablo Albertz
Associate
+56 2 2928 2203
palbertz@carey.cl

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

- III. Results from the entity's non-compliance with their supervision and control obligations.

The aforementioned means that the legal entity has not adopted and implemented (or has deficiently adopted and implemented) care measures or a compliance program to prevent and/or mitigate risks arising from the new criminal offense of fraudulent obtaining of supplements, benefits and/or profits. Therefore, during the term of this law, legal entities must adjust their risk management processes, identifying, evaluating, controlling and monitoring these new risks, in order to incorporate them into their risk matrixes and corporate protocols, procedures and policies.

Employers that are legal entities will be sanctioned with a fine (for the benefit of the State) corresponding to twice the amount of the benefit unduly received and a prohibition on entering into acts and contracts with the State for two years.

Finally, it is provided that, during the time that this law is in force, the criminal offense foreseen above will be of those that could led to the criminal liability of legal entities and for the determination and imposition of their penalties, as well as other relevant rules, it will be understood that it is a "regular criminal offense" (simple delito).

For more information, see the link to [Law No. 21.227](#).