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➤ LAW THAT AUTHORIZES ACCESS TO THE BENEFITS OF THE UNEMPLOYMENT INSURANCE OF THE LAW NO. 19,728 IN EXCEPTIONAL CIRCUMSTANCES

On April 6, 2020, the new law on employment protection (hereinafter, the "Law") entered into effect, within the context of a series of emergency measures taken by the Chilean authority as a result of the COVID-19 disease.

The new Law provides the possibility of accessing the coverage of the unemployment insurance in three main scenarios:

1. *Suspension of the employment relationship by an act of authority:*

The Law regulates the event that there is an act or declaration of authority that establishes health or internal security measures for the COVID-19 disease, which involves: a) the suspension of activities in the all or part of the country; and b) that prevents or totally prohibits the provision of the contracted services. In this case, employees who are currently affiliated to Law No. 19,728 on unemployment insurance and who comply with a minimum contribution period, as the cases may be, shall be entitled to receive the benefits of said insurance during the period of suspension of their employment contracts, under the terms and conditions established by the Law.

For these purposes, the Undersecretary of Treasury shall issue a founded resolution in which he shall indicate the area or territory affected by the order of the authority in question and, in like manner, he shall indicate the establishments or services exempted from such order.

If the aforementioned requirements are met, the employment relationship will be temporarily suspended, by the sole operation of the law, except for the obligations indicated in the Law, and without prejudice to what the parties may agree on the continuity of the employment relationship.

The temporary suspension of the employment relationship regulated by the Law involves the following effects for both the employer and the employee:

1. The employee is not obliged to provide services to the employer;
2. The employer shall not be obliged to pay remuneration or other allowances that do not constitute remuneration;
3. The employer shall continue to be obliged to pay social security and pension contributions, on a calculation basis that shall be 50 per cent of the remuneration. However, the employer shall be exempted from the payment of the contribution for insurance against accidents at work and professional illnesses.



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4. During the suspension of the employment relationship, the employment contract may be terminated only on the grounds specified in article 161 of the Labor Code (i.e. business needs or at will of the employer).

The percentage, amount and periodicity of the benefits to which employees may have access shall be those established in Articles 15 and 25 of Law No. 19,728 which regulates the unemployment insurance, and shall be paid from the employee's individual unemployment account, or from the Solidarity Unemployment Fund when the funds in the individual account are insufficient.

It shall be the employer's obligation to request to the Unemployment Fund Administrator (hereinafter, "AFC" for its Spanish acronym), the benefit corresponding to one or more of its employees, complying with the formalities established by the Law, having to issue a simple sworn statement to that effect. The employer shall be personally responsible for the truthfulness of the statements issued.

If, during the period the order of authority is in force, the employee is granted medical leave, whatever the reason may be, the payment of the benefit shall be interrupted if he or she had been given access to it.

The following employees will not be able to access the unemployment insurance benefits in the terms regulated by the Law:

1. Employees who, at the time of the authority's order, have celebrated an agreement with their employer that assures the continuity of the services during the period of validity of the order, with the right to receive all or part of the monthly remuneration;
2. Employees who have agreed to temporary reduction of working schedule in accordance with Title II of the same Law;
3. Employees who, at the time the order is issued, are receiving benefits for work incapacity, regardless of the origin of the medical leave.

II. Agreement on temporary suspension of the employment contract:

The Law establishes the possibility of mutually agreeing on the temporary suspension of the employment relationship, when the activity of the employers is totally or partially affected. These agreements may only be celebrated outside the periods included in the orders or declarations of authority that suspend the labor relationship by the sole operation of law.

In this case, the agreement shall produce the same effects indicated in number I preceding, the employment relationship is understood to be suspended and the employee may have access to the coverage of the unemployment insurance. The former, provided that the formalities and requirements indicated by the Law are complied with, including the writing of the agreement, the completion of a minimum of social security contributions, and the submission of a sworn statement by the employer and the employee.

III. *Temporary reduction of working hours Agreement:*

Employers and employees affiliated to the unemployment insurance may agree to the temporary reduction of working hours, after consultation with the union, provided that the requirements established by the Law are met.

These pacts may only be celebrated if the employer is in any of the following hypothesis: a) decrease in more than 20% of the average sales declared in any period of three consecutive months in comparison to the same period of the previous exercise, as from October 2019; b) bankruptcy procedure of reorganization; c) procedure of economic advice of insolvency; or d) need of reduction or redistribution of the hours to maintain the operational continuity or to protect the life and health of the employees, regarding companies exempted from the act or declaration of the authority.

The employee who has entered into this agreement shall be entitled to receive from the employer a remuneration in proportion to his effective working hours, and shall also receive a supplement out of his individual unemployment account, to be charged to the Solidarity Unemployment Fund once the funds in the individual account have been exhausted.

In order for the employee to have access to the benefits of the Law, the agreement may not mean a temporary reduction of more than 50% of the originally agreed working day.

During the period of validity of the agreement, employees will have the right to continue receiving the remunerations, benefits or assignments which do not constitute remuneration whose payment corresponds to said period, such as bonuses and other exceptional or sporadic items. Likewise, the employer must continue to pay and remit the social security and pension contributions corresponding to the taxable remuneration paid.

The Law prohibits the hiring of new employees to perform functions that are the same as, or similar to, those of employees whose working hours are reduced.

The agreement to reduce the working day may be in force for not less than one month, or more than five consecutive months for employees on indefinite contracts or three months for those on fixed-term contracts.

What happens to the suspensions or terminations prior to the entry into force of the Law?

The Law refers to suspensions or terminations adopted by employers and employees between the declaration of the State of Catastrophe (March 18, 2020) and the entry into force of the Law (April 6, 2020), providing for the following: entrada en vigencia de la Ley (6 de abril de 2020), disponiendo lo siguiente:

1. Employees who had their employment relationship suspended, either by mutual agreement or by an order from an authority, may have access to the benefits regulated by the Law, once the Undersecretary of Treasury issues the corresponding resolution.
2. If the parties had terminated the employment contract for any reason during the time between the declaration of the State of Catastrophe and the enforcement of the Law, they may leave without effect such termination by mutual agreement in order to take advantage of the provisions of the Law.

On the prohibition of the application of the termination cause due to fortuitous case or major force.

The Law prohibits the termination of the employment contract due to a fortuitous case or major force on the basis of the COVID-19 pandemic, during a period of 6 months from the date the Law is in force, or while the State of Catastrophe declared by the Government lasts.