

➤ LAW N°21,240 THAT MODIFIES THE CRIMINAL CODE AND LAW 20.393, TO SANCTION THE INFRINGEMENT OF ISOLATION OR OTHER PREVENTIVE MEASURES ISSUED BY SANITARY AUTHORITIES, IN THE CONTEXT OF A PANDEMIC OR EPIDEMIC

On June 20th., it was published [Law N°21.240](#), bill which was approved last Wednesday 17th by the Congress.

The New Law increases sanctions for the infringement of quarantines and sets forth responsibility for Employees and Legal Entities.

Article 318 of the Criminal Code punishes anyone who “jeopardizes public health by the infringement of hygienic and sanitary norms properly published by the authority, in the context of a catastrophe, pandemic or contagion.”

The law modifies the following:

I. *Increase of the punishments:*

- 1. Imprisonment:** it increases the punishment by changing it from imprisonment in its minimum degree (61 to 540 days) to imprisonment from its minimum to its medium degree, which ranges from 61 days to 3 years.
- 2. Fines:** it increases the maximum amount, which means that the fines can now range between 6 and 200 UTM (approx. between \$300.000 and 10 million).

II. *Aggravating Circumstance:*

It includes an aggravating circumstance for the case that the offence is committed by the promotion of shows, celebrations or festivities which, despite being prohibited by the sanitary authority, are meant to be held within the context of a catastrophe, pandemic or disease spread.

III. *New Criminal Offences:*

- 1. Article 318 bis:** sanctions anyone who, in the context of a pandemic, epidemic or contagion, with full knowledge, generates a risk of propagation of pathologic agents, by the infringement of an order issued by the sanitary authority. **Sanctions:** imprisonment from its medium to its maximum degree, which range goes from 541 days to 5 years, and a fine which range from 25 to 250 UTM (up to approx. \$12,5 million).



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3. **Article 318 ter:** sanctions the employers, who, with full knowledge and having the authority to control the work of their subordinates, order them to attend to a workplace other than their residence, whilst the worker, as instructed by the authority, should be in mandatory sanitary isolation or quarantine. **Sanctions:** fluctuates from imprisonment in its minimum degree to its medium degree, that is, from 61 days to 3 years, and a fine which range goes from 10 to 200 UTM for each worker who was ordered to assist to their workplace within this context.

IV. *Criminal responsibility for legal Entities.*

The New Law includes the offence of article 318 ter in Law N°20,393's catalogue of conducts by which the Companies may be held liable, which consequently can be sanctioned with the following: (i) temporary prohibition of celebrating acts or contracts with the State, (ii) loss of tax benefits, (iii) absolute prohibition to receive any of these benefits for a period of 2 to 3 years or a fine; and in addition, the legal accessory punishments consisting on the publication of the judicial ruling, and confiscation.

The latter, only if the following requirements are all satisfied: a) The offence must have been committed directly and immediately on its own or on the Company's interest. b) It must have been committed by the owners, controllers, anyone who is responsible, main executives, representatives, or anyone who's duties consist on the administration and supervision of the legal entity and by all the persons who are under the direction and supervision of the priorly mentioned; and c) The execution of the offence must have been consequence of the non-compliance by the legal entity of their direction and supervision duties.

Therefore, 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.