

➤ LAW NO. 21,327 ON THE MODERNIZATION OF THE LABOR BOARD (DIRECCIÓN DEL TRABAJO)

On April 30th, 2021, Law No. 21,327 (hereinafter, the “Act”) was published in the Official Gazette. Its purpose is to modernize the Labor Board (the “LB” or the “Service”) and it will become effective as of October 1st, 2021.

The main objectives of the Act are:

1. Modernize the Service through the incorporation of new technologies and the digitalization of procedures;
2. Promote new methods and criteria for inspections;
3. Regulate the creation and publication of the Service’s official rulings;
4. Strengthen mediation mechanisms; and
5. Improve the regulations on hiring and remunerations of the LB employees.

In order to achieve such objectives, the Act incorporates the following regulations and amendments to the Labor Code:

I. Obligation of registration of the employment contract and the termination of the employment relationship

Article 9 bis is incorporated into the Labor Code requiring employers to register the employment contracts in the electronic website of the LB within 15 days as of their execution. Likewise, the termination of the employment relationship must be registered in the same website within the timeframes established in articles 162 and 163 bis of the Labor Code, or within 10 working days in case of numbers 1, 2 and 3 of article 159 of the same Code.

Regarding employment contracts executed before the Act enters into effect, the employers shall comply with the registration obligation within one year from the publication of the Act.:

II. New provisions of the employment contract

It is now included as a minimum provision of the employment contract the indication of the email address of both parties. Also, it is expressly regulated the possibility that the payment of remunerations is carried out through wire transfer to the employee’s bank account.

III. Mediation and conciliation procedures

The Act defines labor mediation as the “system of conflict resolution in which an impartial third party called mediator, without decision-making power, collaborates with the parties and assists them in finding, by themselves, a solution to the conflict and its effects, through agreements”.

The Act establishes that there will be voluntary mediation whenever the parties by mutual agreement request the appointment of a mediator from the Labor Board.



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It is also possible that the Service, ex officio, summons or requests the parties to a mediation in the exercise of its powers. In qualified cases and with the consent of both parties, the Act authorizes the mediator to be assisted by an expert at the expense of the Service, appointed jointly by the parties or by the Director of the Service.

IV. *Inspections and sanctions*

The Act establishes that the inspection procedures must comply with the principles of responsibility, cost-free, efficiency, effectiveness, coordination, contestability of administrative acts, control, administrative probity, transparency, and publicity that govern the actions of the State Administration bodies. The inspection procedure will be regulated by a resolution issued by the Superior Chief of the Service, which will include a categorization of the legal infractions or violations for the purpose of determining the applicable sanctions within the ranges referred to in Article 506 of the Labor Code.

The generic administrative fines regulated in article 506 of the Labor Code are modified by incorporating a differentiation between the fines applicable to micro companies (1 to 5 tax units) and small companies (1 to 10 tax units).

V. *Labor Board's acts and organization*

Regarding notifications, citations and legal communications made by the LB, the Act establishes that the means to be used shall be mainly electronic mail. For these purposes, each employer, employee, union organization, union director or any other person or entity having contact with the LB, must register an email or other digital mean defined by law in the website of the LB. All notifications carried through email will be deemed to take place on the third working day following the dispatch date of the email.

The LB must have an electronic system for processing and tracking progress of complaints, inspection procedures, requests for rulings and other queries from users.

A regulation of the Ministry of Labor and Social Security will determine the data and documentation that employers shall keep in the LB's electronic website, as well as the modalities and procedures by which the registry of such data and documentation will be implemented and kept updated. In accordance with the Act, once the information is included in this registry, the employers will be able to centralize such documents in one single place, which must be previously informed to the LB.

The Act establishes that to enforce its authority and powers, the LB can electronically access all mandatory labor and social security documentation of employers and companies contained in the electronic website of the LB. Upon request, the LB must provide the courts of justice the information contained in the electronic labor registry.

Finally, the Act establishes the obligation for the Director of the Service to publish on the LB's website, on January of each year, a compendium of the rulings, circulars and service orders issued during the respective period.

VI. *Revocation of the declaration of sole employer*

The Act establishes the possibility of requesting before the corresponding Labor Court the termination or revocation of the prior classification issued by the Court declaring that two or more companies shall be deemed as a sole or single employer whenever the factual circumstances that supported the initial declaration have been subsequently substantially modified. The request may be filed provided that at least two years have passed since the final judicial ruling issuing the declaration. However, the request may be filed before such term, if it is based on the fact, that one of the companies included in the declaration of sole employer has changed ownership and there is no common controller among them.

