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New law on inclusion of disabled persons to the work world

As of April 1st, 2018, Law No. 21,015 and its respective regulations (the "Law") encouraging the inclusion of persons with disabilities to the work world has entered into effect.

According to the report of the Department of Studies of the Disability National Service of Chile ("ENDISC II - 2015"), individuals with disability correspond to 16.7% of the Chilean population over 2 years old, this is, more than 2 million 800 thousand people.

The Law seeks to avoid discrimination based on disability opening new job opportunities for disabled persons. Indeed presently disabled persons have great difficulties in finding a job. Indeed, the ENDISC II -2015 report shows that only 39.3% of individuals with disabilities are actually employed.

The Law requires those companies and public entities employing 100 or more employees to hire or maintain hired at least 1% of their workforce with either individuals with disabilities or individuals who are beneficiaries of a disability pension of under any pension scheme. In this way, it is estimated that, in principle, the new law could enable up to 27,500 job positions.

The Law also provides for alternative mechanisms for employers to comply with the above mentioned requirements in cases where actual hiring of disabled persons may not be implemented in whole or in part.

- a) For public sector employers, such entities shall submit a duly supported report, explaining the reasons why it would not be possible to fulfill all or part of the disabled persons hiring obligation. For these purposes, the Law states that the only duly supported reasons that may allow an exception from complying strictly with such hiring obligations are: (i) those reasons that relate to the nature of the functions or activities performed by the relevant entity, service or institution; (ii) non availability of job positions within their staffing structure, and (iii) the lack of applicants who are able to meet the relevant position requirements.
- b) In the private sector, it is possible to comply with the main obligation set by the Law through alternative schemes based on well-founded reasons. The Law considers as well-founded reasons: (i) those related to the nature of the functions or activities carried out by the employer, and (ii) the lack of interested persons in the job offers that have been formulated by the employer.

The alternative mechanisms to comply with the main obligation in these cases are: (i) to enter into contracts for the provision of services with companies that have hired people with disabilities; and (ii) make monetary donations to projects or programs of non-profit associations, corporations or foundations referred to in article 2 of Law No. 19,885. (These are basically entities assisting from different angles people with social needs.)

The Law will be gradually implemented, starting on April 1st 2018 with companies employing 200 or more employees; by the April 1st of 2019 with companies employing between 100 and

199 employees. Exceptionally, during the first two years, companies may choose to comply with the contracting obligation through an alternative scheme without need of having or demonstrating a well-founded reason.

The obligation to hire disable persons is the main feature of the Law but is not the only one worth mentioning.

In addition, the Law:

- a) It grants individuals with mental disability the right to remuneration, not lower than the minimum wage in Chile by derogating the former regulation according to which these individuals were entitled to be paid below the statutory minimum wage.
- b) Sets in 26 years the maximum age for individuals with mental disability to be able to enter into or be hired under an apprenticeship contract. As from April 2018, individuals with mental disability who are over 26 old must be hired as regular employees.
- c) Reinforces the prohibition of discrimination against people with disabilities in such a way that companies or public services are not allowed to choose a particular disability over another during the hiring processes. Likewise, individuals with disabilities will have in the public sector a preferential employment selection process based on equal conditions of merit.

Since the Law will be implemented gradually, it is difficult foresee its immediate effects and what is going to happen in the next years, this is, how public entities and, in particular, companies will adapt its internal policies to this new statutory requirements; whether contracting obligation of disable persons will be complied as intended or by the alternative mechanisms; what will be the arguments that will be alleged by the companies to justify the alternative fulfillment of the hiring obligation, and how the authority's supervision of its compliance will work.

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