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# Labor board establishes meaning and scope of modifications introduced by harrassment law (Ley Karin)

On August 1st, Law No.21,643, which amends the Labor Code regarding the prevention, investigation and sanctioning of labor, sexual harassment and workplace violence (the "Law"), will enter into force.

In this context, on June 7th, 2024, the Labor Board issued ruling No. 362/19, which establishes the meaning and scope of the amendments introduced by the Law (the " Ruling").

The most relevant aspects of the Ruling are the following:

### 1.Modifications incorporated to article 2 of the Labor Code

The Law incorporates two relevant principles to our legal system: on the one hand, the mandate that labor relations must always be based on a treatment "*free of violence*"; and, on the other hand, the incorporation of the "*gender perspective*".

Both principles constitute a mandate for the employer, which must be considered at the time of exercising its powers as such, both for the application and for the interpretation of all labor regulations.

### 2.Concept of labor harassment, workplace violence and discrimination

With respect to labor harassment, the Law modifies its definition, no longer requiring repeated aggressions or harassment for conduct to be considered as such. This includes "sexist harassment", which is now recognized as a form of labor harassment from a gender perspective.

As indicated in the Ruling, the new definition of workplace violence aims to protect employees from acts of violence by individuals outside the company, such as clients, suppliers, users, or others, leaving an open category with respect to subjects not mentioned in the regulation. This definition does not differentiate between physical and psychological violence, implying both are included under workplace violence. This aligns with the duty of protection in Article 184 of the Labor Code.

Finally, in relation to the definition of acts of discrimination, the law has expanded the list of discriminatory motives stated in Article 2 of the Labor Code by including the phrase "or any other motive", indicating that the list is not exhaustive and can include other categories not explicitly mentioned.

### 3.Obligation to prevent sexual and labor harassment and workplace violence

The Law introduces Article 211-A to the Labor Code, which mandates employers to create a "Protocol for the prevention of sexual harassment, labor harassment, and workplace violence" (the "Protocol"). This Protocol is to be prepared through the administrative agencies of Law No.16,744, following the guidelines provided by the Superintendence of Social Security. The Protocol must comply with a minimum content established in the Law.

The prevention measures outlined in the Protocol must be regularly evaluated, improved, and corrected, requiring the employer's ongoing commitment and the setting of measurable objectives.



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The Protocol must include measures to properly inform and train employees about the risks, prevention measures, protection measures, and their rights and duties. This involves not just the delivery of information, but also a pedagogical role, ensuring proper understanding and implementation through training.

### 4.Obligation to investigate sexual and labor harassment, and violence in the workplace

This obligation arises when an event is reported that may be considered as sexual or labor harassment or workplace violence. Notwithstanding, this obligation involves incorporating the specific investigation process in the Internal Regulations of Order, Hygiene and Safety of the company ("RIOHS") or in the Internal Regulations of Safety and Hygiene at Work ("RIHS").

The investigation process must adhere to principles of confidentiality, impartiality, promptness and gender perspective. These principles are a minimum and must consider, in addition, other basic rules and guarantees of due process for the individuals involved, such as maintaining written records, providing an opportunity for the parties to be heard and substantiate their statements, and adopting protective and non-retaliatory measures.

In relation to the adoption of protective measures, the Ruling emphasizes that protective measures must be documented in writing, along with the employer's decision and its justification. The list of protection measures established in the Law is not exhaustive, allowing the employer to consider other measures consistent with the purpose of Law No.21,643, provided they are within the framework of labor regulations and incorporated into the RIOHS.

Furthermore, the Ruling suggests that early psychological care for the complainant, administered through the respective administrative body of Law No.16,744, should be considered a priority measure for prevention and mitigation, given the potential impact on the mental health of those involved, especially the victim.

Regarding sending the investigation together with its conclusions to the Labor Board, the Ruling states that the review to be carried out by this institution is only intended to verify the consistency between the report and its conclusions, without requiring a substantive statement by the Labor Board. This, since the Labor Board was not part of the procedure; therefore, it cannot verify the facts or analyze the procedure's development.

Likewise, it states that if the Labor Board fails to issue a statement regarding the investigation and its conclusions within 30 days of being sent by the employer, its conclusions are considered valid.

Finally, the Ruling does not exclude the technical intervention of a specialized third party to ensure an impartial and objective procedure. This intervention should assist the employer to comply with all legal requirements and obligations, especially considering the complexity of the matters.

The intervention must meet the required suitability standard for such complaints, and its use and the details of the intervention must be sufficiently regulated in the respective RIOHS or RIHS, as appropriate. The participation of this external entity in no way modifies, excludes or reduces the responsibility of the employer company in complying with the duties imposed by the Law.

### 5.Obligation of sanctioning sexual and labor harassment and workplace violence

In accordance with the merits of the investigation report in cases of sexual and labor harassment, the employer must provide, apply and inform the corresponding measures or sanctions, within the following fifteen judicial working days counted from its receipt, this is, from the moment it is notified by the Labor Board.

As for sanctions, these may consist of verbal warnings, written warnings or fines, which will be applied according to the seriousness of the conduct. Additionally, when an "*improper misconduct of a serious nature, duly proven*" is verified, as provided in Article 160 of the Labor Code, the employer may apply the sanctions established in No. 1 of said article in its letters b) or f) (sexual harassment and harassment at work, respectively).

In relation to the conducts of labor harassment, the employer must evaluate the seriousness of the facts investigated and record it in the report, especially considering that, with the entry into force of the Law, the requirement of repetition was eliminated.

### 6.Validity of the Law

The Law will enter into force on August 1, 2024. The Ruling states that if the RIOHS and RIHS do not come into force on that date, the investigation procedures will be carried out by the Labor Board in accordance with the provisions of the second transitory article, with such institution directly applying the provisions of the Law and the regulations established in article 211-B of the Labor Code.

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