

March, 2020

> FREQUENTLY ASKED QUESTION ABOUT LABOR LAW IN TIMES OF COVID-19

I. *Payment of remunerations by Employers to employees not rendering services*

1. **Employees subject to medical leave:** Normally, the employer is not required to pay remuneration. The employee should receive a subsidy from the relevant health institution.
2. **Unilateral decision of the company to suspend services:** Normally, the employer should pay the remuneration but a case by case analysis is highly advisable.
3. **Shut down of schools and infant schools:** Normally, the employer should not be obliged to pay remuneration but the employee's absence could be otherwise justified.
4. **Shut down of employer provided daycare:** In principle the employer shall provide/arrange for another day care institution to provide the service or else pay a bonus in substitution. If the employer fails to solve the problem, it will normally be required to pay remuneration during the absence.
5. **Closure of workplace and companies by decision of the labor authority:** The employer would not be legally obliged to pay the remuneration. However, the final determination of a force majeure event must be done on a case by case basis by the courts. Case by case analysis is key.
6. **Suspension of the employment contract without pay, or with partial pay:** This alternative may be implemented only with the agreement of the employee and shall be documented. Also the relevant social security institutions should be informed.
7. **Suspension of the employment contract with pay:** This alternative may be implemented in the present circumstances unilaterally by the employer.
8. A bill on protection of labor income is now being discussed at the Congress. The key features would be that an employee who, by order of the health authority has to stay home without the possibility of working remotely, will have his/her employment contract automatically suspended without payment of remunerations. The employer will be required to pay only the social security and the employee will be able to receive income from the unemployment insurance.



If you have any questions regarding the matters discussed in this news alert, please contact the following attorneys or call your regular Carey contact.

Oscar Aitken

Partner

+56 2 2928 2223

oaitken@carey.cl

Francisca Corti

Partner

+56 2 2928 2212

fcorti@carey.cl

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Carey y Cía. Ltda.
Isidora Goyenechea 2800, 43rd Floor.
Las Condes, Santiago, Chile.
www.carey.cl

II. *Tools available for employers*

- 1. Remote working:** May be implemented unilaterally by employers under the circumstances. It should be documented. Remunerations should be maintained. Employees will be covered by the work accidents and professional diseases statutory insurance, but insurance administrator should be informed of the change.
On March 26 a new Law on Teleworking was passed. It will enter into force as of April 01. Employers currently operating under teleworking arrangements will have 3 months to accommodate and comply with the new law.
- 2. Collective vacations:** An employer may order the total or partial closure of the company or its facilities, one time a year, for a minimum of 15 working days, so that the employees may take vacations in those days. Vacation time is paid by the employer.
- 3. Vacations time anticipation:** It may be implemented with the agreement of the employee.
- 4. Suspension of services, with pay, partial pay or no pay:** See I above.
- 5. Remunerations advance payments:** Employer may advance payment of future remunerations for employees unable to work remotely. The advanced amounts will be deducted in installments from future remunerations when things go back to normal.

III. *Origin of the disease and applicable health coverage system*

The mutual aid fund (Mutual) managing the workers compensation statutory insurance or the employee's common health system (Fonasa/Isapre) will bear the burden of payment of medical and economic benefits which arise from the illness.

The Superintendence of Social Security has declared that if the infection originated at the work place, the Mutual Aid Fund must take the burden of paying the medical assistance costs and the income subsidy triggered by the illness. On the contrary, if the infection did not originate in the workplace, or if it cannot be determined where it did originate, the common health system will cover the costs of the illness. Under Phase 4 of the pandemic, this distinction is getting blurred.

IV. *Employment contract termination under the ground of force majeure*

Even if the closure of the workplace or companies by decision of the authorities may be eventually considered as force majeure to excuse performance of the service and payment of remunerations, the standard for a force majeure event to qualify as a ground for employment termination (with no payment of severance) is considerably higher.

The bill on protection of income mentioned in (I) (h) is contemplating some express restrictions of the use of this grounds for termination during the pandemic.

V. *Is it possible for the employee to refuse to render services?*

The failure of the employer to adopt the measures indicated or ordered by the health authorities to prevent the spread of the Covid-19 in the workplace could be considered among the situations of serious and imminent risk to the life and health of employees which allows the employee to exercise its right to lawfully refuse working under Article 184 Bis of the Labor Code.