

April, 2020

RESOLUTION BY THE LABOR BOARD ON THE LABOR EFFECTS OF HEALTH MEASURES ISSUED BY THE AUTHORITY

On March 26th, the Labor Board issued the resolution No. 1238/006 on the measures of quarantine, sanitary cord, isolation and curfew declared in various regions of the country, and their impact on labor relations.

In general terms, the resolution states:

- 1. On the suspension of the labor relationship due to unforeseen circumstances or overwhelming force:** The measures of obligatory quarantine, sanitary cordon and curfew are acts of authority that respond to a sanitary emergency situation. Consequently, and insofar as the requirements for shaping the fortuitous event or overwhelming force (i.e., according to article 45 of the Civil Code, that it is external, unforeseeable and irresistible), these measures could exempt the parties from the reciprocal obligations imposed on them by the employment contract: that is, the obligation of the employer to provide the agreed work and payment; and, on the other hand, the obligation of the employee to assist in providing the agreed services. Nevertheless, the administrative institution pointed out that the configuration of these elements in the specific case must necessarily be analyzed on a case-by-case basis by the Courts of justice.

In any case, the Labor Board stated that the above conclusion does not necessarily mean that the termination cause under article 159, paragraph 6, of the Labor Code (i.e. unforeseen circumstances or overwhelming force) are validly applicable, since in this case the overwhelming force is of a transitory, and not permanent nature.

- 2. Persons who are excluded from the liberating effects of the unforeseen circumstances or overwhelming force:** The employer will not be released from its obligations insofar as the issuance of a safe-conduct or permit issued by the authority, which allows the employee to carry out the agreed tasks when it is a question of indispensable and essential services for the population. Similarly, this release will not proceed if the employee agrees with its employer to provide its services remotely, as long as that is possible.
- 3. Specific effects produced by the curfew:** The Labor Board also expressed its opinion on the different hypotheses that could occur on the occasion of the declaration of curfew, regulating the effects of work shifts that begin after the start of the curfew, or that end before the lifting of the order, or that cannot be carried out because the workers could not enter the workplace.
- 4. Employees with individually or collectively agreed mobilization allowance:** On this point, the Labor Board has indicated that the respective employment contract must be complied with.



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Notwithstanding the above, in the opinion of the administrative body, the transportation allowance should be paid to any employee who has turned up at the workplace, even if he/she has not been able to carry out his/her duties in full or has not been able to work his/her full shift.

