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Practical Guide for the management of labor matters in attention to COVID-19

Specific subjects depending on the companies and employees.

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José María Castillo & Asociados
ABOGADOS

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We are specialists in Labor Law, Economic Criminal Law and General Criminal Law, Procedural, Civil and Criminal Law, Immigration Law, and in the Contentious-Administrative Jurisdiction.

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Introduction

The declaration of the State of National Emergency, decreed through Cabinet Resolution No.11 of March 13, 2020, has brought multiple temporary and special measures in the scope of the country's labor regulations, which have been adopted in a vertiginous, fragmented manner and which is linked or related to the legal measures implemented in the health, social and economic fields.

The purpose of this document is to provide legal guidance and highlight the main aspects that have been generating greater degree of labor action and/or concern for workers and employers, in this current context of the Coronavirus pandemic (COVID-19). The Practical Guide for the management of the labor issues that concerns the COVID-19, covers different topics to provide guidance on the actions to follow, without prejudice to the review of the regulatory instruments developed to date.

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Safety and health measures in the workplace

The priority of the moment is the preservation of human life and for this, priority is given to issues related to the care of those infected while preventing the virus spread. For these purposes, the labor issue starts with the need to strengthen the safety and the health measures of workers and third parties (users and/or clients), and how to act in certain circumstances.

The first thing is that every company must have a **SPECIAL HEALTH AND HYGIENE COMMITTEE FOR THE PREVENTION AND CARE OF COVID-19**, as provided in Executive Decree Number 78 of March 16, 2020, and in accordance with the provisions of Resolutions DM-137-2000.

The basic function of the COMMITTEE would be to enforce all the protocols for the prevention of contagion and care for those who are infected, following the Memo of February 27 of this year issued by MINSA and MITRADEL, in accordance with the health authorities.

Measures to mitigate the spread of COVID-19 in the workplace

In accordance with health provisions, the actions that employers must apply in the labor frameworks, preferably in their workplaces, are presented.

Measures for Workers at possible risk or vulnerability

1. Send vacation, whether accumulated or advanced, for a minimum period of 15 days, to workers who are 60 years of age, those who suffer from chronic illnesses and pregnant women.
2. Workers proven positive for COVID-19 must be notified to the health authorities.

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3. Workers who must keep quarantine as a preventive measure by instructions of the health authorities, must remain in their homes for a period of 14 days, subject to visits by health authorities' personnel.

The group of workers mentioned as positive or preventive by order of the health authorities must:

- a. Request the corresponding certification of their status through the Regional Health Directorates.
 - b. Once the certification has been obtained, it must be presented by the worker to the corresponding office of the Social Security Fund for processing their disability by the Insurance Company.
4. The possibility of granting workers the work permits to which they are entitled is also contemplated.

In accordance with the regulations in force, the aforementioned labor measures must have the recommendations of the SPECIAL HEALTH AND HYGIENE COMMITTEE FOR THE PREVENTION AND CARE OF COVID-19.

It is recommended that the employer's decisions to grant permits or vacations be in writing and sent to the Ministry of Labor and Labor Development via digital means.

Alternative measures to replace face-to-face work

Teleworking

As of the adaptation of Law Number 126 of February 18, 2020, Telework is regulated in Panama as an innovative work modality, which includes the provision of subordinate services, without physical presence in the work center or public entity, through computer, telecommunications and similar means, through which the control and supervision of labor is exercised.

Even though this rule does not have regulation, that is perfectly viable and relevant, more than anything in the context of the current pandemic situation.

Work to availability

The alternative of work to availability is promoted, contemplated in Article 34 of the Labor Code in the sense that the workers remains at the exclusive disposal of the employer, within the working day, without the need for physical presence in the company's facilities, and therefore entitled to remuneration.

It is advisable to make a written record with availability to work.

Labor flexibility

Labor mobility

It is feasible for the employer to apply temporary labor mobility regulated in the Article 197-A of the Labor Code. This mobility may be arranged with prior agreement with the Union, if any, with the Company Committee that was working with the respective worker(s).

It is advisable to make a written record with the labor mobility.

Safeguard measure for the existence of the business

To ensure the continuation of the source of work, it has been arranged that companies, in common agreement with their workers, take measures such as the followings:

The reduction of the working day

According to Executive Decree No.71 of March 13, 2020, modified by Executive Decree No. 85 of April 2, 2020, MITRADEL has regulated the applicability of the modification of working hours with the consequent decrease in the salary to be received, as provided for in Article 159 of the Labor Code.

The reduction in working hours, based on the State of National Emergency due to COVID-19, will have the following budgets:

- The signing of a model Agreement for the Temporary Modification of the Working Hours provided by MITRADEL.
- The Agreement must be registered by electronic means in the labor office accompanied by the operation notice and a simple copy of the last pre-prepared return filed with the Social Security Fund.
- For the legal certainty of the parties, the Agreement must be approved by MITRADEL for this legality.

Suspension of the effects of employment contracts

The suspension of the effects of labor contracts is another alternative to COVID-19, whose labor measure has been applied regularly.

For companies that were ordered to close their operations, the original period of the suspension will be automatically renewed to the extent that MITRADEL so provides by decree.

In all other businesses that requested suspensions, it will be necessary in each case to renew these suspensions, if applicable.

It is important to note, that the suspension request processed digitally is necessary to:

1. Not be obliged to pay the salary of the suspended workers.
2. For workers reported in the application to be included as beneficiaries of government solidarity aid.

Special situations for cases of termination of employment relationships

- The employer may terminate the labor relations of workers with less than two (2) years of service through the pre-notice mechanism.
- Terminate employment contracts for a defined period of time, at the expiration of the date agreed in the employment contract.
- Mutual Consents can be agreed for the termination of labor relations, in which case it will always be mandatory to leave a written record of the payment of the acquired rights that benefits and agreed by both parties.
- The grounds for dismissal for disciplinary reasons are not currently suspended. However, the power to dismiss with just cause must be handled with prudence, in response to extreme situations within the framework of specific situations.

Validity of Collective Bargaining Agreements

As regards of Collective Bargaining Agreements, this matter has not been regulated in the context of the COVID-19 pandemic, so its validity is not suspended.

Despite the foregoing and within the framework of the health crisis, the Company may, if it is unable to comply with certain conventional commitments, make use of Article 416 of the Labor Code, second paragraph, submitting in writing to the Union organization, the impossibility to comply with them, to do it in another way or to postpone them.

Tripartite Social Dialogue

If the Company belongs to a business association, it would be advisable to follow up on the deliberations and decisions of the current Tripartite Table, created on April 27, 2020 and which has been operating under the coordination of MITRADEL since May 4, composed of eight representatives of trade union organizations and eight representatives of business organizations.

This Table has been assigned the task of producing proposals in two months, to be executed in the following six months, after its operation has concluded, aimed at the recovery and/or improvement of labor relations affected by health crisis.

If not a part of any guild, each worker/employer should be attentive to the news of national circulation.

As measures for general protection against COVID-19, all commercial activities that gradually will be allowed to reopen their operations, must comply with all the protocols that the National Government has made known through the social media.