

Labor Measures Prior to a Suspension of Activities in Mexico.

The way in which Mexico has reacted to the COVID-19 pandemic has followed a very different pattern to other nations. The private sector has taken the first steps towards social distancing, while some State Governments and the Federal Government have followed suit.

The Federal Executive has the authority to issue decrees and accords ordering the nationwide suspension of work and labor in the private sector.

Until a mandatory suspension of work and labor occurs, one of the top priorities, for both employers and employees should be the safeguarding of health. The financial viability of the business, especially during the outbreak, should also be top of mind for employers and employees.

Below are some thoughts on different measures that may be adopted by Mexican companies to potentiate the alignment between employers and employees, including our insight into the implications of such measures under Mexican labor laws.

1) Home office

If compatible with the company's operations and the type of services rendered by its employees, the company may request employees to perform their duties from home.

This is only a social distancing measure, as employees would be entitled to receive full salary and benefits. Such measure, however, may serve as an effective tool to slow the spread of the virus.

2) Vacations

Several companies are entering into agreements with employees for them to use any vacation accruals and stop going to work.

While this solution does not technically fulfill the purpose of a vacation period, its purpose is for employees not to attend the workplace while using their vacation entitlement. From a motivational perspective, the aim is that once the regular operations are reestablished at the company, all the employees are fully dedicated to their activities and there are no vacation accruals pending to be used. The implementation of this measure can also a slowdown the spread of the virus.

It is important to note that this alternative does not imply a reduction or suspension of salary, since employees are entitled to receive full compensation during the vacation period. Additionally, employees do not have the obligation to work during the vacation period.

The employees' consent is required for this alternative.

From a company's social responsibility perspective, the employer must make employees aware that their vacation leisure should be enjoyed responsibly and consistently with recommendations to avoid COVID-19 contagion.

3) Modification of employment conditions

It is possible for employers to enter into agreements with employees in order to temporarily modify employment conditions. Such modifications may relate to reducing the work schedule (days/hours in which employees render services) with a proportional reduction to the employee's salary.

The validity of such agreements may be open to challenge by the employees since employment rights -including terms of employment- in Mexico are inalienable.

In our view, the implementation of this alternative -despite its legal risk- can benefit from the common interest of employees and employers in protecting the business and the source of income.

Because this temporary solution requires the employee's consent, its successful implementation will require a proper communication to employees of the relevance of the measure to attain mid-term and long-term benefits.

4) Technical stoppage

Companies where employees are represented by a union or by a coalition of employees may enter into a technical stoppage agreement. This type of agreement allows the company to suspend operations and only pay employees a percentage of their salaries during the period of the corresponding stoppage.

This alternative requires the approval of the employees' representative or of a coalition that is created for such purposes where all employees must be duly represented.

5) Disabilities

Employees that suffer from COVID-19 or any other illnesses in general, and who obtain a medical disability certificate issued by the Mexican Social Security Institute ("IMSS") must remain at home.

The disability certificate issued by the IMSS suspends the employment relationship and as a consequence, the company is exempted from the obligation to pay the employees' salary. In this case The IMSS assumes the obligation of paying the employee's salary under the special rules contained in the Social Security Law. In turn, employees shall not render their services until they recover from said illness or impairment.

6) Collective suspension of the employment relationships

Aside from the decrees and accords that may be issued by Federal Executive to order the nationwide suspension of work and labor, the Mexican Federal Labor Law ("FLL") sets forth the possibility of a temporary suspension of employment relationships in case of "fortuitous events or force majeure not attributable to the employer that produces as a necessary and immediate consequence, the direct suspension of employment." The suspension can be applied to a portion of the employees or to all of the company's workforce.

The FLL requires that such a suspension be approved by the Conciliation and Arbitration Labor Boards. A process for obtaining such approval must be pursued.

For the time being, however, this alternative is not available due to the temporary closure of the Labor Boards for Conciliation and Arbitration that has been ordered due to the COVI-19 outbreak. Nevertheless, it is important to have this measure top of mind if needed once these authorities reopen their doors.

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