

Federal Government releases a Provisional Executive Order to tackle economic issues during Covid-19 crisis

March 2020

In the past few days, the Federal Government issued Provisional Executive Order nr 927/2020, which sets forth labor measures in order to tackle the "state of calamity and emergency of public health", resulting from Covid-19. According to the publication, the employer may adopt some measures of flexibility with regards to labor relationships, among which:

REMOTE WORK/HOME OFFICE:

The employer may, at his/her own discretion, change employees' labor regime (apprentices and interns included) from presential to any kind of remote work; likewise he/she may determine that presential work be resumed, regardless of existing agreements, both individual or collective. Thus, the following events shall be dismissed: prior certification of changes in the individual labor agreement, control of working hours consequently, payment for overtime work. The employee must be given a 48-hour prior notice, in writing or electronically. The employer may provide equipment on a loan basis and pay for infrastructure service, not implying any salary nature. Should employer be unable to provide technological equipment and infrastructure, the regular working hours shall be counted as time in which employees were available to their employers.

SALARY REDUCTION:

Owing to the "state of calamity and emergency of public health", which comprises force majeure, the Provisional Executive Order authorizes a general salary reduction of a company's employees. However, such reduction shall be implemented on a pro-rata basis, according to each one's salary. It cannot go beyond 25% (twenty-five percent) and regional minimal wages must be taken into account.

INDIVIDUAL LABOR AGREEMENT:

During the "state of calamity and emergency of public health", individual labor agreements prevail over legal and negotiating instruments (such as collective agreements and conventions) but not over constitutional precepts.

ADVANCING INDIVIDUAL VACATION:

In case of advancing individual vacation, the employer shall notify employees, with a minimum 48-hour notice, either in writing or electronically, that there may be a negotiation to advance upcoming vacations, by means of a written individual agreement. Vacations shall last at least 5 days in a row and may be granted even if the employee is not eligible to it yet. Workers regarded as members of the risk group, more prone to Covid-19, shall have priority to go on vacation, both in individual or collective cases. During the "state of calamity and emergency of public health", the employer may suspend both employees' vacation and non-paid leave-of-absences when it comes to health-related areas or essential positions, through a formal announcement, preferably with a 48-hour notice. The employer may still choose to pay the additional 1/3 over vacation, after having granted it up to the date when Christmas bonus is due. The payment may be made up to the 5th working day of the month that follows the beginning of the vacation.

COLLECTIVE VACATION:

Vacations shall be announced with a minimum 48-hour notice. Prior announcements to the Ministry of Economy's local entity and Unions representing professional classes are dismissed.

ADVANCING HOLIDAYS:

Holidays may be used to make up for the comp time. There shall be the possibility of advancing non-religious holidays, with a minimum 48-hour notice in writing or electronically listing the benefitted employees and the holidays enjoyed. As for the religious holidays, advancing them will depend on whether the employee agrees to it, based on the individual writing agreement.

COMP TIME:

The employer shall have the possibility of adopting it by means of an individual or collective agreement. The compensation can occur within 18 months, counting as of the closure of the "state of calamity and emergency of public health".

SAFETY AND OCCUPATIONAL MEDICINE:

During the "state of calamity and emergency of public health", compulsory occupational health examinations, clinical and complementary examinations shall be suspended. However, termination occupational health examination shall remain compulsory, except when the most recent occupational health examination had been performed less than 180 days before. The examinations dismissed by the Provisional Executive Order shall be done within 60 days, as of the date of closure of the "state of calamity and emergency of public health".

The compulsory nature of employees' periodic and occasional trainings shall also be suspended during the "state of calamity and emergency of public health". However, once this period is over, the trainings dismissed by the Provisional Executive Order shall be done within 90 days. Companies with ongoing electoral processes (CIPA)* may suspend them.

FGTS** DEFERMENT:

During the "state of calamity and emergency of public health", FGTS withholding related to March, April and May 2020, respectively due in April, May and June 2020 shall be suspended by employers. During this period, there shall be the possibility of payment in monthly installments (up to 6, due on the seventh working day of the month, as of July 2020), with no incidence of fine and charges. Should there be a termination of an employment agreement during this period, FGTS withholding shall abide by whatever is stated in the agreement. Such information shall be announced up to June 20, 2020.

* Internal Accident Prevention Commission

** Guarantee Fund for the Length of Service

OCCUPATIONAL DISEASES:

Cases of contamination by Covid-19 shall not be considered occupational, unless causal nexus can be proven.

INSPECTIONS:

During 180 days, inspections by Ministry of Economy's auditors shall be suspended, except in cases of absence of employee admission record, fatal workplace accidents, child labor and slave-like labor conditions, as well as situations involving serious and imminent risk solely related to irregularities regarding Covid-19.

ARRANGEMENTS PRIOR TO THE PROVISIONAL EXECUTIVE ORDER:

Labor measures adopted by employers within 30 days prior to March 22, 2020 shall be validated, as long as they are not contrary to the provisions set forth in the Provisional Executive Order.