

Legal Alert Covid-19: Short Law amending the Employment Protection Law



June 1, 2020 / By [Luis Parada](#) y [Alfonso Bustamante](#)

We inform that on June 1, 2020 Law No. 21,232 (hereinafter the “Short Law”), which amends Law No. 21,277 on Employment Protection (hereinafter the “LPE”) was published in the Official Gazette. Please find below the most relevant changes of this new law:

1. The current regime for the payment of social security contributions by employees with suspend contracts (full-fledged or by mutual agreement of the parties), currently calculated at 50% of the value of the las remuneration, is amended by the following one:

- a) For old age contributions, Pension Fund Administrator (“AFP”) commission and Disability and survivors’ insurance: The contributions to be paid by the employer will be calculated at 100% of the amount of the unemployment benefits granted by the LPE.
- b) Health and other Social Security contributions: The last monthly salary received must be considered, without prejudice to the current taxable limits.
- c) It is established that the payment of contributions under this new form of calculation is retroactive for all those persons with suspended contracts under the LPE, prior to the entry into force of the Short Law.

2. Termination of employment contract during the period of suspension:

- a) Dismissal for company needs and employer eviction is prohibited while the legal or conventional suspension of employment contracts remains in force.
- b) Notwithstanding the foregoing, the causes for termination by mutual agreement of the parties, voluntary resignation of the worker, death of the worker, expiration of the agreed term and conclusion of the work or service that gave rise to the contract (for contracts for work or labor) are applicable to the suspended workers.
- c) For workers who are not affected by the law, it is possible to apply the causes of the company's needs and employer eviction.
- d) The compensations for the termination of the contract must be calculated in accordance with the last accrued monthly remuneration.
- e) In the event of termination of the employment contract due to the application of the company's needs, the employer may not deduct from the severance indemnity, the part of the employer's contribution to the unemployment insurance destined to the worker's saving funds.

3. Effects in cases of suspension of the employment relationship, by act or declaration of authority or mutual agreement of the parties; entry into force of agreements on reduction of working hours and remuneration; and alimony:

- a) Workers from companies excluded from paralysis, whose work is not necessary for the provision of services excluded from the referred measure, may avail themselves to the law through the suspension pact by mutual agreement.
- b) In cases of suspension of the employment relationship by an agreement between the employer and employee, a presumption of "partial assignment of activity" is incorporated, a necessary condition for the signing of these agreements, consisting of the fact that in the month prior to the signing of the suspension agreement, income from sales or services, without taking into account VAT, has decreased by at least 20%, compared to the same month in the immediately preceding year.
- c) It is clarified that the agreement to suspend the employment contract by mutual agreement is effective from the day following its signing, and the parties may only postpone its effects until the first day of the month following that in which it is signed.
- d) A very significant reform is that the entry into force of the pacts to reduce working hours and remunerations has been corrected. This is because the LPE initially established that the effectiveness of these agreements would begin on the first day of the month following their signature, while the Short Law provides their effectiveness will begin on the following day of their signature, which expressly allows access to the complementary remuneration for fractions of a month. This is without prejudice to the possibility of both parties extending its commencement to the first day of the month following its signing.
- e) Maintenance pensions. Employers must inform the Administrator Severance Funds ("AFC") of those workers in respect of whom maintenance pensions must be withheld and paid, since the benefits of the LPE may be seized by up to 50%.

4. It is expressly stated that women employed in private households may avail themselves of the benefits of the law when there is a cessation of activities, either by mutual agreement or by an act or declaration of authority. In this case, the employer is obliged to pay social security and pension contributions, including a contribution of 4.11% of remuneration, to the compensation fund for any event due to the termination of the employment contract.

5. The workers who make use of the benefits of the law, will be able to make effective the unemployment insurance or unemployment clauses associated to credits of any nature, with banks, financial institutions, trading houses, etc. In addition, the amounts for which insurance companies must respond in these cases are limited.

6. The suspension of employment contracts of workers with maternal immunity is prohibited.

7. With regard to the prohibition on companies that hire or are fully financed by the public sector budget law, it was established that the LPE will not be applicable to those workers who are destined to fulfill contracts with the State; however, it may be applied to workers who are not destined to such service. Likewise, companies that carry out works or investment projects according to the state of progress of works, such as construction companies, were exempted from this prohibition.

8. The prohibition of distribution of dividends to shareholders of public limited companies is provided in the following cases: (i) if the company has made use of the LPE, and (ii) in the event that the joint-stock company is part of a business group, in which any of the companies in the group has made use of the LPE. This prohibition applies for the entire business year in which the suspended contracts remain in force.

9. It is also established that companies that are controlled by companies that have capital or related companies in the so-called "Tax Havens" are not eligible for the LPE.

10. In addition, in the case of directors of publicly traded corporations, the payment of fees or allowances in excess of the percentage corresponding to unemployment insurance is prohibited, if all the workers or a majority of them have suspended their employment contracts under the LPE.

The Short Law has complemented the LPE in a good way on many points, but it has left important doubts about its concrete

application, such as the possibility of supplementing income by the employer for workers with suspended contracts. We hope that the Labor Department will soon provide clarification on this and other points.

Finally, some of the most controversial aspects of this new law, are the prohibition of distribution of dividends to shareholders of a limited company and the impossibility of benefiting from the LPE to workers of companies controlled by corporations with capital or related companies in tax havens, which generated reservations of constitutionality by deputies and senators during its processing. Therefore, we will probably see questions in the Constitutional Court about the legality of these rules.

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