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# COVID-19 and Labour Law: Colombia

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### Abstract

Due to the global pandemic, Colombia has established a preventive social isolation with some exceptions. In order to protect workers' sources of income, it has adopted various measures to guarantee job stability, employees' labour income and informal workers' rights, while considering the opinion of the Social Partners. Therefore, and despite that the Colombian government's reaction has not completely covered the relevant ILO's International Labour Standards yet, there is clear and daily action to adapt the norms and institutions in the country in order to thrive after the COVID-19 outbreak.

**Keywords:** Covid-19; Labour Law; Employment retention schemes; Unemployment benefits; Health and safety.

The Colombian government's reaction to the outbreak of COVID-19 and to the World Health Organization (WHO) pandemic declaration of the 11<sup>th</sup> of March started on the 17<sup>th</sup> of March when the Colombian's President, Ivan Duque, declared the state of economic, social and ecological emergency through the Decree 457 of 2020. The mentioned Decree allows the government to issue the necessary decisions to correct the situation and avoid its expansion until the 17<sup>th</sup> of April; a term that could be extended up to 60 days during 2020.

A sequel of decisions has been adopted in the country from different approaches, as the existing norms and mechanisms in the country did not anticipate the ripple effect of those measures:

### 1. Regarding the limitations to freedom of movement.

- a) From the 17<sup>th</sup> of March until the 30<sup>th</sup> of May, Colombia closed its land, sea and river borders (Venezuelan border closure began on the 13<sup>th</sup> of March) (Decreets 402 and 412).

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- b) From the 18<sup>th</sup> of March until the 30<sup>th</sup> of May, over-50 people meetings and gatherings are prohibited (Decree 420).
- c) Adults over the age of 70 must keep a under isolation from the 20<sup>th</sup> of March until the 30<sup>th</sup> of May (Resolution 464).
- d) The arriving of international travellers (foreigners and nationals) is prohibited for 30 days from the 23<sup>rd</sup> of March, while the national flights have been suspended from the 13<sup>th</sup> of March until the 27<sup>th</sup> of April (Decree 531). The international flight restriction is expected to be extended.
- e) As of the 25<sup>th</sup> of March (00:00) until the 27<sup>th</sup> of April (00:00) 2020 there is a mandatory preventive isolation for everyone in the country (Decrees 457 and 531). In order to guarantee the life, health and survival rights to all the inhabitants, 35 activities were exempted for the isolation measure, under certain conditions.

## **2. Regarding the measures to cope with the employment effects of the mobility restrictions.**

The isolation measures affected most industries in the country and provoked either the use of existing rules or the issue of new and transitory regulation:

- First of all, the Ministry of Labour called the employees to analyse and take all the available measures to avoid the termination of contracts due to the COVID-19 outbreak, which includes some tools established in the Colombian Labour Code and other labour related laws.

The suggested measures depend on whether the employer can keep providing the service, which includes alternatives such as home office, teleworking and the agreement on flexible working conditions; or not, in which case employers could allow the employees to enjoy vacations (even if those have not been accrued yet) and study other employment retention schemes, as the agreement of paid and non-paid leaves or the suspension of the contracts, based on the proof of a force majeure situation.

Either way, the Ministry warned about a special severity on its investigations and procedures (Rigorous Labour Audits) to guarantee the employees' rights.

- Second of all, the government provided some direct measures over the unemployed community, simplifying the access to the Layoff Protection Mechanism (up to USD \$430 - two monthly minimum wages) and to the severance aid payment (one month of salary payed yearly by the employer to a Fund).

With respect to the exempted activities, the government implemented new and special measures to protect the employees that could be exposed to the virus:

- Companies need to acquire special protection elements for their employees, as well to carry out special and frequent check-ups, taking all the preventive measures to contain and control COVID-19.

- In addition, the Ministry of Labour and the Ministry of Health and Social Protection ordered the promotion of control measures, such as social distancing, washing hands and proper use of working tools.

As the national measures generated school and childcare closures, some of them have implemented home school schemes. However, their efficiency depends on finding an equal balance of home duties and home-office schemes between the parents, which could include an extended family when they live in the same house. In that sense, the government has implemented no measure to help the parents to cope with this situation.

The Colombian government has not generated a special treatment in favour of informal and daily wage workers yet. However, it has amplified existing programs for the elderly, people with disabilities and families living in extreme poverty, including the provision of basic goods for them.

Considering the difficulty of the state and the employers and companies to carry out the administrative procedures and to guarantee the health and safety of those who would provide the service, the administrative procedures followed by the Ministry and other entities have been suspended during the state of emergency declared by the President (Resolutions 876, 784 and 385).

In addition, it is important to notice the participation of some Social Partners in Colombia regarding this matter. On one hand, it has been known that the Association of representing health employees have addressed a letter to the President asking for the improvement of their working conditions (Semana, 2020), and some unions have announced the creation of funds to help their affiliates or special workers in need, such as FECODE (Colombian Federation of Education Workers)(Education International, 2020) and the USO (Colombian Oil workers Union) (Escuela Nacional Sindical, 2020). On the other hand, the Association of Chamber of Commerce of Colombia (Confecamaras) has helped the companies through levelling the market field to provide the scarce supplies in some industries, and providing them in others (Confecamaras, 2020). In addition, the National Business Association of Colombia (ANDI) has suggested some strong measures to guarantee the cashflow of the employers and alleviate the COVID-19 economic crisis (García, 2020).

The Colombian's reaction against the outbreak of COVID-19 has not covered the relevant standards suggested by the ILO, up to the 10th of April. Therefore, it is proposed to implement a deferral or waiver of the social security contributions to reduce labour costs. Second, tax concessions for employees in emergency-related sectors, tax exemption over their labour income, and incentives to retired workers to temporarily return to the workforce. And third, economic support to informal workers and dependent workers on layoff. (ILO, 2020)

Despite the worries shown to support employers, self-employers, and employees, some measures have still needed to be implemented. All in all, the Colombian government is taken clear and daily actions to adapt the norms and institutions in the country in order to thrive after the COVID-19 outbreak.

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