
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 several 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 four key pillars developed by the ILO based on its international 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 11th of March started on the 12th and the 17th of March, when the Ministry of Health and Social Protection declared the National Health Emergency, and the Colombian's President declared the state of economic, social and ecological emergency for the first time in 2020, respectively. This last declaration allows the national government to issue the necessary decisions to correct the situation and avoid its extension for the period the state of emergency has been declared¹; during 2020, this term can be extended up to 30 days more.

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:

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¹ First period: from the 17th of March until the 17th of April – Decree 417; second period: from the 6th of May until the 6th of June – Decree 637.

1. Regarding the limitations to freedom of movement.

- a) There have been a series of mandatory preventive isolation measures for everyone in the country, as of the 25th of March (00:00) until the 1st of July² (00:00) 2020 (Decreets 457, 531, 593, 636, 689 and 749). In order to guarantee the life, health and survival rights to all the inhabitants, the decrees have gradually allowed the development of more and different activities to be exempted from the isolation measure, under certain conditions.
- b) The National Health Emergency has been declared as of the 12th of March until the 31th of August (Resolutions 385 and 844), which mainly implies:
 - i) Adults over the age of 70 must be isolated from the 20th of March until the end of the National Health Emergency (Resolutions 464 and 844).
 - ii) The arriving of international travellers (foreigners and nationals) is prohibited during any emergency declared regarding the Covid-19 situation (Decreets 439 and 569).

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.

² Regarding this matter, the President has informally declared that the mandatory preventive isolation applicable after the 1st of July will be regionally ruled and responsibly managed. Presidencia de la República de Colombia, 'Presidente Duque Afirma Que El Aislamiento Preventivo Obligatorio, Que Regirá a Partir Del 1º de Junio, Tendrá Un Énfasis Regional y Con Gradualidad Responsable', 29 May 2020, <https://id.presidencia.gov.co/Paginas/prensa/2020/Presidente-Duque-Aislamiento-Preventivo-Obligatorio-del-1-junio-tendra-enfasis-regional-gradualidad-responsable-200529.aspx>.

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- 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).

 - On the 15th of April, the government allowed the employers, employees and independent workers in the country to contribute with a reduced pension rate of 3% for the months of April and May (normally it is of 16%). Therefore, those contributions will only be considered for minimum pensions (equivalent to 1 minimum salary).

 - In order to help and support the formal sector, the Colombian government issued a subsidy in favour of those employers able to prove a diminishing in their income (at least of 20%) during the outbreak of COVID-19 in the country. In addition, the employers need to prove they have maintained at least 80% of February's headcount vis a vis the previous month of the request of the subsidy. Once those conditions have been verified, the employers could receive a subsidy equivalent to USD \$95 per qualified employee (those which contracts of employment were not suspended, among other conditions).

 - During the last days of May, the Ministry of Labour (informally) announced additional measures to support the formal sector through subsidies in favour of employers with employees earning the minimum wage up to USD \$263, monthly. It has been said that the subsidy should be destined to pay the legal service bonus due on June³.

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

- Firstly, the government established that the Administrators of Occupational Risks (ARL by its acronym in Spanish) must provide protection for workers in the health, surveillance, cleaning, and administrative sectors that are directly exposed.
- In the same sense, Companies need to acquire special protection elements for their employees, as well to carry out special, daily, and frequent check-ups, taking all the preventive measures to contain and control COVID-19.
- Finally, 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 childcare, school, and universities closures up until the 31th of July 2020, most 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

³ Until the 30th of May, the mentioned subsidy had not been granted or formally issued by the government. Presidencia de la República de Colombia, 'Gobierno Nacional Extiende Ayuda Para El Pago de La Prima a Salarios de Un Millón de Pesos', 29 May 2020: <https://id.presidencia.gov.co/Paginas/prensa/2020/Gobierno-Nacional-extiende-ayuda-para-el-pago-de-la-prima-a-salarios-de-un-millon-de-pesos-200529.aspx>.

same house. In that sense, the government has implemented no measure to help the parents to cope with this situation.

In addition to the previous extension of programs made on favour of the elderly, people with disabilities and families living in extreme poverty, including the provision of basic goods for them, the Colombian government generated a support package for extreme poverty conditions sectors and former FARC members. However, the informal and daily wage workers have not been covered by these schemes yet.

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 of Labour, the UGPP⁴, and the DIAN⁵, among others have been suspended during the National Health Emergency (Resolutions 876, 784, 385, 301, and 31).

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 representing Health Employees have addressed a letter to the President asking for the improvement of their working conditions⁶, and some unions have announced the creation of funds to help their affiliates or special workers in need, such as the Colombian Federation of Education Workers (FECODE)⁷ and the Colombian Oil workers Union (USO)⁸. On the other hand, the Association of Chamber of Commerce of Colombia (Confecamaras by its abbreviation in Spanish) has helped the companies through levelling the market field to provide the scarce supplies in some industries and providing those supplies in others⁹. Finally, 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 crisis¹⁰, which has been named as the need for a “crusade” in favour every company in the country, having the recent publication of the “worst unemployment rate of all history”, on Bruce Mac Master (president of the ANDI) words¹¹.

⁴ Colombian entity in charge of the surveillance of social contribution payments, among other functions (Law 1151 of 2007 and Decrees 639 and 677 of 2020). The UGPP and the following acronym in capital letters follow the name of those entities in Spanish.

⁵ Colombian Tax Authority.

⁶ Semana, ‘La Dura Carta de Médicos al Gobierno Por Condiciones Laborales’, 20 March 2020, <https://www.semana.com/nacion/articulo/coronavirus-la-carta-de-medicos-al-gobierno-por-condiciones-laborales/658670>.

⁷ Education International, ‘Colombia: Sindicato de La Educación Crea Un Fondo Humanitario Para Ayudar a Trabajadores de La Salud y Sectores Vulnerables’, 31 March 2020, <https://www.ei-ie.org/spa/detail/16709/colombia-sindicato-de-la-educaci%C3%B3n-crea-un-fondo-humanitario-para-ayudar-a-trabajadores-de-la-salud-y-sectores-vulnerables>.

⁸ Escuela Nacional Sindical, ‘La USO Creó Fondo Solidario Para Ayudar En La Crisis Del Coronavirus’, 2 April 2020, <http://ail.ens.org.co/noticias/la-uso-creo-fondo-solidario-para-ayudar-en-la-crisis-del-coronavirus/>.

⁹ Confecamaras, ‘Cámaras de Comercio de Iberoamérica Unen Esfuerzos Por Los Empresarios de La Región Frente a Emergencia Por Covid-19’, 3 April 2020, <http://www.confecamaras.org.co/noticias/741-camaras-de-iberoamerica-unen-esfuerzos-por-los-empresarios-de-la-region-frente-a-emergencia-por-covid-19>.

¹⁰ Alfredo García, “‘Colombia necesita un plan de rescate de su economía’: Andi”, *El País*, 4 April 2020, <https://www.elpais.com.co/colombia/necesita-un-plan-de-rescate-de-su-economia-andi.html>.

¹¹ ANDI, ‘Cifras de Desempleo Reafirman La Necesidad de Una Cruzada Por Las Empresas: Bruce Mac Master - “La Cifra Publicada Hoy Es La Peor En Toda La Historia Desde Que Se Tienen Estadísticas Sobre

The Colombian's reaction against the outbreak of COVID-19 has not completely covered the Four key pillars in tackling the COVID-19 crisis on the basis of the international labour standards suggested by the ILO¹², up to the 30th of May. However, it is reasonably expected that the future measures will be taken aiming the ILO Four key pillars, having them as one of the reasons included in the Decree 749, issued on the 28th of May, to extend the last mandatory preventive isolation¹³.

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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Empleo”, 29 May 2020, <http://www.andi.com.co/Home/Noticia/15720-cifras-de-desempleo-reafirmar-lanecesi>.

¹² Pillar 1: Stimulating the economy and employment; Pillar 2: Supporting enterprises, jobs and incomes; Pillar 3: Protecting workers in the workplace; Pillar 4: Relying on social dialogue for solutions. ILO, ‘A Policy Framework for Responding to the COVID-19 Crisis’, 18 May 2020, https://www.ilo.org/global/topics/coronavirus/impacts-and-responses/WCMS_739047/lang-en/index.htm?shared_from=shr-tls.

¹³ ‘Decree 749 of 2020 “Por el cual se imparten instrucciones en virtud de la emergencia sanitaria generada por la pandemia del Coronavirus COVID-19, y el mantenimiento del orden público” (2020), <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20749%20DEL%2028%20DE%20MAYO%20DE%202020.pdf>.