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# COVID-19 and Labour Law: Dominican Republic

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### Abstract

The response of the Dominican Republic to the pandemic of COVID-19 from the Central Government has occurred with greater intensity while the labor union centers have been notably absent. The employers' confederations have provided resources to help mitigate the crisis, but the main help has come with the implementation of the Employee Solidarity Assistance Fund (FASE) program, which applies to most of the formal workers, although it leaves a large part of them outside the system. Informal workers amount to 58 % of the workforce and have been covered by the stay at home program which covers 1.5MM of people directly, although also many of these informal workers have not had any help. Many nonessential businesses have been closed, although supermarkets and pharmacies, amongst others, have continued to sell at capacities above pre-crisis levels. The Ministry of Labor has issued a single regulation, 007-2020 dated March 18, 2020, where it included certain non-mandatory guidelines for employers.

**Keywords:** Covid-19; Labour Law; FASE Program; Contract Suspension; Home working.

### 1. General Framework.

The emergency for COVID-19 began in the Dominican Republic on March 17, 2020 with the speech of President Danilo Medina, in which he announced border closures both in airports and ports, only allowing flights to transport non-resident foreigners who wanted to return to their countries of origin. As other measures, restrictions were implemented in various areas of the national production, suspending non-essential activities for 15 days, with the exception of necessary activities for the population, such as: supermarkets, grocery stores, fuel stations, pharmacies and commercial establishments dedicated to the sale of raw or cooked foods, amongst others. These restrictions have continued as well as a curfew from 5PM to 6AM every day of the week. The president requested the authorization of the state of emergency, as established by the Dominican Constitution in its article 265, which was granted by the Congress of the Republic on March 19, 2020, for a period of 15 days, which was extended in 2 successive extensions for periods that will run until May 17, 2020.

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The restrictions ordered by the government in relations to the population are social distancing, the closures of non-essential businesses, such as cafes, restaurants, gyms, beauty salons (a large sector in the country), mass closures of events, among other measures, while requesting that people over 60 years of age or with previous health conditions such as diabetes, HIV-AIDS, hypertension and/or respiratory or cardiac difficulties, remain at home. Companies that could, have been urged to establish teleworking, although it is necessary to point out that the local legislation only mentions “work from home”, referring to workers that manufacture work product at home, for pick up by the employer, and therefore, unrelated to the use of telematic systems, which is a sine qua non condition of the employment contract that is carried out by teleworking.

These measures have had a significant impact on all the industrial and service sectors in the country, most of which are currently closed. Companies are looking forward to reopening, which has been stipulated gradually initiating May 11, 2020. The few companies that have remained open have implemented the flexibilization of their working hours, due to the complications with transportation for their employees, since the government has suspended public transportation in all its forms, including for long-distance travel. Thus, transit between provinces is reduced, including during long weekends, such as Labor Day weekend, the first weekend of May, during which even travel in private vehicles was prohibited to avoid crowding. Even with all these measures, the government has not been able to control some agglomerations of people, such as occurred in the Puerto Plata province, where a pilgrim with a cross came to bury it in the sea in order to eradicate the virus from our country and a crowd of approximately 5K gathered.

## **2. Regulatory Interventions to Support Affected Businesses and Workers.**

Through resolution 007/2020 issued by the Ministry of Labor on March 18, 2020, the state institution urged employers to give paid vacations to all workers who had earned the benefit, or, to those that had not, it urged that vacation was provided regardless, with a week of advanced vacations and a second week paid by the company. These orders were not mandatory and companies began to suspend workers through the procedure established in the Labor Code in its articles 48 and following. In this regard, the Ministry of Labor recently issued a resolution where it accepts each and every one of the suspensions requested from March 1 to April 20, 2020.

The Dominican government implemented a plan to help workers who were suspended from their jobs in companies that were declared non-essential and had to close their doors. The program called the “Employee Solidarity Assistance Fund or FASE”<sup>1</sup>, as known by its initials in Spanish, was created through decree 143-2020 dated April 2, 2020, with funds drawn from the Dominican Institute for the Prevention and Protection of Occupational Risks (IDOPPRIL) in the approximate amount of DOP\$12MM of Dominican pesos (USD\$222MM). These funds would be delivered by the government with different caps on

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<sup>1</sup> <https://www.mt.gob.do/images/docs/RESOLUCION--07-2020.pdf> last visited 5.4.2020.

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workers, never an amount less than DOP\$5,000.00 (USD\$92.00) and never an amount greater than DOP\$8,500.00 (USD\$157.00). Additionally, the state would never provide beyond 70% of the salary of the worker listed to the last month of February, that is to say, what the employer had registered on behalf of the worker in the Dominican Social Security System, being mandatory to be up to date with the system through February 2020. Companies were also urged to complete the remaining 30% of the worker's salary, but this was not an obligation. This plan will only be working for the period from April 1 to May 30, 2020, with little possibility of extension. Due to the short time the authorities had to implement the program, there have been many uncertainties, such as an unclear procedure, creating chaos and rejection in certain companies that were not adequate, since the approval process basically goes through three institutions, with the Social Security Treasury having the final approval, due to the contribution requirement.

The National Social Security Council extended coverage for a period of 60 days for health services of workers who were suspended from their employment contracts and discharged from the social security system. The coverage to newborns was also extended to 90 days<sup>2</sup>.

Other issues concern the flexibilization of work hours, based on the fact that companies cannot render their services during regular business hours due to the curfew. So hours have been adjusted so that the work hours a day are made more flexible but never reducing the worker's salary below the established legal minimum, but proportionally to the work performed. Another important measure that should be mentioned is that the presidential and chamber of deputies' elections that were scheduled for May 2020 have been postponed to July 5, 2020.

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<sup>2</sup> <https://www.cnss.gob.do/phocadownload/Documentos/resoluciones/2020/Resolucion%20no.%20492-01.pdf> last visited 5.4.2020