
COVID-19 and Labour Law: Argentina

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Abstract

Argentina has had a profound regulatory activity to counteract the coronavirus pandemic so far. Based on the experience of other countries, a strict lockdown was put into place at an early stage, which has been opening up slowly but gradually. Telework was recommended and a benefits program for affected businesses was implemented to ensure the payment of social security and salaries. A temporary prohibition of dismissals and suspensions was taken to protect employment and workers' income. Regarding essential workers, COVID-19 has been deemed as an occupational disease for additional protection. Social protection was reinforced and an emergency family income for vulnerable groups was implemented, between other measures.

Keywords: Covid-19; Labour Law; Telework; Employment Protection; Health and Safety; Income Support; Social Protection.

1. General Framework.

At the end of 2019, before the coronavirus outbreak, Argentina was going through a difficult economic and social crisis, which led the Government to declare a broad public emergency until the end of 2020, reorganizing a wide range of issues while fostering social solidarity to achieve productive recovery¹.

After the global coronavirus pandemic was declared on 11 March 2020 by the World Health Organization (WHO), the Argentine Government resolved to extend the term of the public health emergency, establishing a mandatory 14 days lockdown² as a first measure, restricted only to people with suspected or confirmed cases of COVID-19, close contacts, or those arriving from affected areas.

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¹ Ley de Solidaridad Social y Reactivación Productiva en el Marco de la Emergencia Pública N° 27.541, 23 December 2019.

² Decreto de Necesidad y Urgencia N° 260/2020, 12 March 2020.

On 20 March 2020, this was further extended to a general mandatory lockdown³ for the entire population along with a movement ban, authorising only minimal displacements to acquire cleaning supplies, medicines, and food.

The Government also cancelled any type of events and established the closure of venues to avoid gatherings, imposed the closure of borders, banning non-residents from entering into the country and other travel restrictions, suspended classes, etc.

Certain essential services and activities were exempted from the lockdown, such as health services, security forces, public authorities and workers (only to guarantee essential tasks), wholesale and retail supermarkets and stores, food industry, media industry, maintenance of basic services, public transportation, etc. The list of essential activities has been extending gradually, in most cases with restrictions (none or reduced customer attendance, hourly and staff restrictions, social distancing) favouring e-commerce and the delivery of goods when possible.

The lockdown term was first established until 31 March, and later on extended until 12 April⁴, 26 April⁵, and lastly 10 May⁶.

The crisis caused by COVID-19 is estimated to have a strong impact on the Argentine labour market, with a decrease in the number of employed that could reach over 340,000 people⁷. According to a survey of more than 600 companies, 72% of them experienced a drop-in sales greater than 60%, and 87% within this group have serious difficulties in paying salaries⁸. Sectors such as Tourism (airlines, hotels, travel agencies), Commerce (restaurants, bars), Arts, Entertainment, and Recreation (theatres, cinemas, museums) might be some of the most severely affected.

2. Specific Measures.

2.1 General Labour and Employment Regulations.

During the lockdown, non-essential workers shall refrain from attending their workplaces, with full payment of their salaries, and this period shall not be considered as leave, rest, or holidays. Those able to work from their place of isolation shall establish with their employers how they will perform tasks. The implementation of telework and similar measures were recommended by the Government as ways to avoid workers' concentration in the workplace.

Regarding essential workers, they may be required to work overtime and their working days and hours may be rearranged when needed as the continuity of their activities is critical

³ Decreto de Necesidad y Urgencia N° 297/2020, 20 March 2020.

⁴ Decreto de Necesidad y Urgencia N° 325/2020, 31 March 2020.

⁵ Decreto de Necesidad y Urgencia N° 355/2020, 11 April 2020.

⁶ Decreto de Necesidad y Urgencia N° 408/2020, 26 April 2020.

⁷ Oficina de País de la OIT para Argentina, *El COVID-19 y el mundo del trabajo en Argentina: impacto y respuestas de política*, 2020, https://www.ilo.org/buenosaires/publicaciones/documentos-de-trabajo/WCMS_740742/lang-es/index.htm, accessed 26 April 2020.

⁸ Centro de Estudios UIA, *Informe especial: Impacto del Covid en empresas*, 2020, <https://uia.org.ar/general/3582/situacion-de-la-industria-y-covid-19/>, accessed 26 April 2020.

in the context of the emergency. Nonetheless, their employers shall guarantee health and safety conditions following applicable sanitary recommendations at all times.

In this connection, the Government established a special leave for workers with care responsibilities of schooled children⁹ and workers over 60 years (unless essential), pregnant, or with health risk factors.

2.2. Health and Safety of Workers.

Because of the sudden need and practical difficulties, employers were exempted from complying with specific health and safety working conditions regarding teleworking.

The Government prepared and published a series of documents with general recommendations for the performance of work in essential activities, commuting from and to work, and the provision of personal protection elements. Employers need to adopt these measures and put them into practice to protect their workers from any risk regarding COVID-19.

As an additional protection for essential workers, COVID-19 will be presumably considered as an occupational disease for them during the lockdown, and will immediately receive the corresponding benefits of the Argentine Labour Risks System, upon presentation of a confirmed medical diagnosis. However, workers will ultimately need to prove the direct cause between the disease and the work activity. For this matter, the burden of the proof may be changed in favour of the worker by the corresponding authority.

The presumption of occupational disease will last 60 more days before the end of the lockdown for health workers and their work activity will be considered a direct cause of the disease unless proven otherwise.

2.3. Support to Affected Businesses and Workers.

To avoid the possible loss of jobs and protect the workers' income security, the Government prohibited dismissals without cause, due to force majeure or lack or reduction of work, together with unilateral suspensions from work due to this last two reasons –without salary pay– for the term of 60 days (April and May)¹⁰. Measures taken in breach of these provisions will be deemed ineffective and the affected employment relationships will remain in force.

This adds up to a previous provision taken in the context of the occupational emergency declared at the end of 2019, which established the duplication of severance pay for workers hired up to its entry into force (13 December 2019), in case of unfair dismissal, for the term of 180 days (until 10 June 2020)¹¹.

⁹ Only for one of the parents, and as long as the classes remain suspended.

¹⁰ Decreto de Necesidad y Urgencia N° 329/2020, 31 March 2020.

¹¹ Decreto de Necesidad y Urgencia N° 34/2019, 13 December 2019.

Regarding businesses, an Emergency Assistance Program was created¹², by which employers may benefit from the postponement and significant reduction in social security contributions and the payment of up to 50% of the workers' net salary by the Government¹³. Health, Tourism, and Cultural sectors and other activities severely affected by the pandemic will be given preferential treatment. More than 420,000 companies –near 80% of the country's total– have registered to apply for these benefits¹⁴.

Small taxpayers and independent workers may apply for zero-interest loans if they have no other source of income. Besides, a specific fund was created as security to credits for Micro, Small and Medium Enterprises (PYMES), allowing access to working capital.

2.4. Social Protection.

An Emergency Family Income was established¹⁵ as a one-time monetary support to compensate for the loss or severe decrease in income to the unemployed, informal economy workers, low-income independent workers, and domestic workers.

There has also been a reinforcement of social support programs through an extraordinary payment for beneficiaries of family allowances and those collecting minimum retirement, as well as an increase and extension of unemployment benefits.

3. Social Dialogue.

The Government maintains constant contact with employers' and workers' organizations, which have demonstrated their commitment and willingness to collaborate and cooperate¹⁶ in the fight against COVID-19. Parties created a tripartite round table and agreed on the importance of avoiding the negative experience of other countries for hastily lifting isolation measures, and the need to outline a gradual and orderly lift.

4. Future Challenges and Necessary Measures.

Argentina had a profound regulatory activity so far and was lucky enough to prepare for the pandemic before experiencing a major impact due to its geographical distance with the infection hotspots. This allowed the country to take action based on the measures and effects

¹² Decreto de Necesidad y Urgencia N° 332/2020, 1 April 2020.

¹³ This last benefit has minimum and maximum limits and is applicable to agreed suspensions, thus guaranteeing workers at least 50% of their regular income in such cases.

¹⁴ Ministerio de Trabajo, Empleo y Seguridad Social, *El Gobierno Nacional anunció nuevas medidas para la producción y el trabajo*, 20 April 2020, <https://www.argentina.gob.ar/noticias/el-gobierno-nacional-anuncio-nuevas-medidas-para-la-produccion-y-el-trabajo>, accessed 26 April 2020.

¹⁵ Decreto N° 310/2020, 24 March 2020.

¹⁶ For instance, several workers' organizations offered their hospitals, clinics, health personnel and facilities to be used as alternative hospitalization units.

of less fortunate countries, like Italy and Spain. As a result of this, a very strict lockdown measure was put into place at an early stage, which has been opening up gradually through exemptions at a national and currently at a local level.

Despite its brittle economic and social context, Argentina managed to take important measures to provide protection for workers and support for businesses and vulnerable groups. Nevertheless, continued efforts are needed as this unprecedented crisis unfolds.

In practice, independent workers and professional service providers have been having trouble accessing to credits despite the help provided by the Government, as well as Micro, Small, and Medium Enterprises. The latter are also demanding further and distinct regulatory action, contemplating the bigger impact in costs they have to endure¹⁷.

Occupational risks associated with telework such as the extension of working time and over-connection shall be addressed.

Non-registered workers and new atypical forms of work must be specially considered, as they are not eligible for unemployment benefits and have no immediate legal protection under Labour Laws. Domestic and migrant workers shall also be regarded due to the high informality existent in their work relationships.

Gender perspective measures must be reinforced, as women are typically assuming increased caregiving duties due to the suspension of classes and day-care services stoppages, sometimes conflicting with their jobs.

Last but not least, social protection programs shall be extended, as a great number of people are depending on social support while their regular source of income is unavailable or insufficient.

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¹⁷ The Confederation representing Micro, Small and Medium Enterprises is demanding a subsidy of 100% of the salary payment for companies of up to 40 workers.