

# 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 and its consequences, which appear to worsen as time goes by. 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 incoming 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 recovery.<sup>1</sup>

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 lockdown<sup>2</sup> 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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<sup>1</sup> Ley de Solidaridad Social y Reactivación Productiva en el Marco de la Emergencia Pública N° 27.541, 23 December 2019.

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

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On 20 March 2020, this was further extended to a general mandatory lockdown<sup>3</sup> 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.

At first, 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 was later on extended<sup>4</sup> and they have been working with certain restrictions (none or reduced customer attendance, hourly and staff restrictions, social distancing rules) favouring e-commerce and the delivery of goods when possible.

Ultimately a large number of non-essential services and activities were also gradually exempted from the mandatory lockdown and the movement ban with the implementation of operational protocols in accordance with the recommendations of the health authorities. Specific procedures were set to grant further exemptions by the national and local governments.<sup>5</sup>

The lockdown was first established until 31 March, and later on extended until 12 April<sup>6</sup>, 26 April<sup>7</sup>, 10 May<sup>8</sup>, 24 May<sup>9</sup> and 7 June<sup>10</sup>.

Regarding the development of the epidemiological situation as a consequence of the impact made by the adopted measures, the following extension of the lockdown until 28 June was maintained for the Buenos Aires metropolitan area<sup>11</sup> (City of Buenos Aires and densely populated districts of the Province of Buenos Aires) and other areas of the country with community transmission of the virus, whilst for the rest of the territory it was replaced with a measure of mandatory social distancing.

Certain activities still remain expressly banned, including classes, public or private gatherings and events, shopping malls, cinemas, theatres, restaurants, bars, gyms, public international and interurban transportation services, tourism, and opening of parks and squares.

The mandatory social distancing was set for provinces and districts fulfilling with certain epidemiologic and sanitary requirements, covering 83% of the country's territory. This includes movement limitations, compliance with general conduct rules, protocols for

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

<sup>4</sup> Sale of building materials, private works of energy infrastructure, notarial services, fumigation and maintenance, activities linked to foreign trade and nuclear fuel, between others.

<sup>5</sup> For instance, additional exemption for activities within the Buenos Aires metropolitan area may be granted only if the employer guarantees the workers' transportation without the use of public means.

<sup>6</sup> Decreto de Necesidad y Urgencia N° 325/2020, 31 March 2020.

<sup>7</sup> Decreto de Necesidad y Urgencia N° 355/2020, 11 April 2020.

<sup>8</sup> Decreto de Necesidad y Urgencia N° 408/2020, 26 April 2020.

<sup>9</sup> Decreto de Necesidad y Urgencia N° 459/2020, 11 May 2020.

<sup>10</sup> Decreto de Necesidad y Urgencia N° 493/2020, 25 May 2020.

<sup>11</sup> The largest urban area of Argentina with a population of approx. 40% of the country's total.

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economic activities with capacity reduced by 50% and for sport, cultural and social activities with reduced participation of up to 10 people.

Both measures were lastly extended until 17 July, with minimal changes with respect to the areas under social distancing. On the other hand, as areas under lockdown showed an acceleration of the infection rates, the Government decided to harden this measure, allowing only 30 essential services and activities to operate during this term, and few others only if the employer guarantees the workers' private transportation. This forced a halt in the activity of a large number of businesses and independent workers that were previously exempted from the lockdown<sup>12</sup>.

The crisis caused by COVID-19 is expected to have a strong impact on the Argentine labour market. Projected data from the ILO at the beginning of the pandemic estimated a decrease in the number of employed that could reach over 340,000 people.<sup>13</sup> Now, their new estimates show that job losses would vary between 750,500 and 852,500 in 2020, that is to say, more than double of the first projections, considering a forecasted plunge of 8,25% to 10% in the country's GDP by the OECD<sup>14</sup>.

According to a survey of more than 600 companies made in April, 72% of them experienced a drop in sales greater than 60%, and 87% within this group expressed having serious difficulties in paying salaries<sup>15</sup>. An updated version of the survey made in early June showed an improvement in these figures stating that now 33% of the companies were facing a drop in sales greater than 60% (although still 62% had a drop greater than 30%). Thanks to some of the adopted measures, the difficulties for the payment of salaries were significantly reduced, but at the expense of the delay of other payments, compromising the financial health of these businesses<sup>16</sup>. 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

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<sup>12</sup> Only in the City of Buenos Aires, around 70,000 businesses will have to close their doors once again.

<sup>13</sup> Oficina de País de la OIT para Argentina, *El COVID-19 y el mundo del trabajo en Argentina: impacto y respuestas de política*, 2 April 2020, [https://www.ilo.org/buenosaires/publicaciones/documentos-de-trabajo/WCMS\\_740742/lang-es/index.htm](https://www.ilo.org/buenosaires/publicaciones/documentos-de-trabajo/WCMS_740742/lang-es/index.htm), accessed 26 April 2020.

<sup>14</sup> Naciones Unidas en Argentina, *COVID-19 en Argentina: impacto socioeconómico y ambiental*, June 2020, <http://www.onu.org.ar/presentacion-del-informe-de-naciones-unidas-argentina-covid-19-en-argentina-impacto-socioeconomico-y-ambiental/>, accessed 1 July 2020.

<sup>15</sup> 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.

<sup>16</sup> 60% of the companies had delays in at least one of the payments of taxes, public services, financial commitments or suppliers.

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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. In the meantime, several bills were introduced in Congress to regulate teleworking, with a broad convergence between them, as there is currently no comprehensive legislation in force for this matter. A common bill has already been agreed in the Chamber of Deputies, and sent to the Senate for its approval. The bill includes a series of principles to protect workers and is deemed to entry into force 90 days after the end of the mandatory lockdown, if passed with no amendments.

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 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 children<sup>17</sup> and workers over 60 years (unless essential), pregnant, or with health risk factors. This special leave has been maintained for the entire country, regardless of whether the mandatory lockdown was lifted or not in the place of work.

## **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<sup>18</sup>.

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.

A number of activities were required to apply operational protocols approved by the health authorities in order to be exempted from the lockdown, which were made with the participation of workers' and employers' organizations.

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<sup>19</sup>. 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.

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<sup>17</sup> Only for one of the parents, and as long as the classes remain suspended.

<sup>18</sup> Such as providing workers with an ergonomic chair, a fire extinguisher, and a first-aid kit, to prevent occupational risks.

<sup>19</sup> Decreto de Necesidad y Urgencia N° 367/2020, 14 April 2020.

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The presumption of occupational disease will last 60 more days after 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, on 31 March, 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<sup>20</sup>, then extended for 60 additional days<sup>21</sup>, thus remaining in force until 28 July. 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<sup>22</sup>. These measures were also extended for 180 additional days<sup>23</sup> due to the COVID-19 crisis, being into force until 6 December 2020. The duplication does not apply for employees working in the public sector.

Regarding businesses, an Emergency Assistance Program was created<sup>24</sup>, by which employers may benefit from the postponement and significant reduction in social security contributions and the payment of a sum of up to 50% of the workers' net salary by the Government<sup>25</sup> for the months of April and May.

Health, Tourism, and Cultural sectors, as well as other activities severely affected by the pandemic are given preferential treatment. The assistance is targeted towards benefitting lower-income registered workers and Micro, Small and Medium Enterprises (PYMES) to a greater extent. Overall, around 85% of the beneficiaries had at least half of their net salary guaranteed.

More than 420,000 companies –near 80% of the country's total– have registered to apply for these benefits<sup>26</sup>. The Program had 248,000 beneficiary companies in April, and 250,000 in May; comprising 2,4 and 2,1 million workers accordingly<sup>27</sup>.

A series of financial restrictions were imposed for employers benefiting from the Government's assistance –profit distribution, share repurchase, acquisition of local currency

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<sup>20</sup> Decreto de Necesidad y Urgencia N° 329/2020, 31 March 2020.

<sup>21</sup> Decreto de Necesidad y Urgencia N° 487/2020, 19 May 2020.

<sup>22</sup> Decreto de Necesidad y Urgencia N° 34/2019, 13 December 2019.

<sup>23</sup> Decreto de Necesidad y Urgencia N° 528/2020, 10 June 2020.

<sup>24</sup> Decreto de Necesidad y Urgencia N° 332/2020, 1 April 2020.

<sup>25</sup> The assistance cannot be less than the equivalent of a minimum wage or more than two minimum wages, and is applicable to agreed suspensions, thus guaranteeing workers at least 50% of their regular income in such cases.

<sup>26</sup> Ministerio de Trabajo, Empleo y Seguridad Social de la Nación, *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.

<sup>27</sup> 310,000 companies and 2,8 million of workers received salary pay assistance for at least one of those months.

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securities for their sale in foreign currency or transfer abroad— over a 12 month and in some cases a 24 month period (companies with more than 800 workers). This caused several companies to opt out from the Program or even return the granted amounts, such as the Techint Group<sup>28</sup>.

The assistance Program has been extended to the salary pay of June<sup>29</sup> in the same conditions for employers and workers of severely affected activities anywhere in the country and other affected activities in part of the country still in lockdown. For affected activities under the measure of mandatory distancing, however, the monetary assistance is limited to the equivalent of a minimum wage in any case.

Higher-income workers representing between 1% and then 3% of the total of potential beneficiaries were progressively excluded from the eligibility of the benefit in order to reallocate resources focusing on the assistance of lower-income workers.

Other measures include the promotion of soft loans, tax deferral and payment facilities, suspension of the interruption of public services for non-payment, and a creation of a specific fund as security to credits for Micro, Small and Medium Enterprises (PYMES), allowing access to working capital.

Despite all of the assistance, between March and April 2020 there was a 3% drop of registered work in companies with more than 10 workers in the private sector, the biggest drop in these months since 2002<sup>30</sup>.

Regarding small taxpayers and independent registered workers, they may apply for zero-interest loans if they have no other source of income. Up until now, 370,000 received the loan (which is paid in three monthly instalments) and 130,000 additional loans have already been approved and are in allocation process.

#### **2.4. Social Protection.**

An Emergency Family Income was established<sup>31</sup> 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. The payment was made in April and a second payment was approved to be made in June, both benefitting 9 million people.

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

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<sup>28</sup> *Ámbito*, *Techint devolvió la ayuda del ATP por evitar nuevas restricciones*, 30 May 2020, <https://www.ambito.com/economia/atp/techint-devolvio-la-ayuda-del-evitar-nuevas-restricciones-n5106296>, accessed 2 July 2020.

<sup>29</sup> The Program is also expected to be extended for the salary pay of July.

<sup>30</sup> Encuesta de Indicadores Laborales (EIL), Ministerio de Trabajo, Empleo y Seguridad Social de la Nación, June 2020.

<sup>31</sup> Decreto N° 310/2020, 24 March 2020.

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well as an increase and extension of unemployment benefits, between other types of social assistance<sup>32</sup>.

### 3. Social Dialogue.

The Government maintains constant contact with employers' and workers' organizations, which have demonstrated their commitment and willingness to collaborate and cooperate<sup>33</sup> 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.

The two most representative workers' and employers' organizations held a meeting before the Government and outlined a Framework Agreement, stating basic terms to work as a guideline for the negotiation of suspension agreements between companies and workers or their organizations. The agreed term was up to 60 days starting from 1 April with the payment of a sum of no less than 75% of the workers' net salary, without the performance of work. Simplified proceedings were implemented for the approval of agreements made under these or better terms<sup>34</sup>.

These guidelines were extended without changes for 60 additional days<sup>35</sup>, starting from 1 June, and companies have already started to negotiate new suspensions. According to data from the Ministry of Labour, 14% of the surveyed companies implemented suspensions in April, more than doubling historic highs.<sup>36</sup>

### 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 of less fortunate countries, like Italy and Spain. As a result of this, a very strict lockdown 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.

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<sup>32</sup> The International Social Security Association (ISSA) highlighted the policies adopted by the Argentine Government and its commitment to contribute to the well-being of the entire population, particularly the most vulnerable groups, <https://ww1.issa.int/es/news/respuestas-de-la-seguridad-social-la-covid-19-el-caso-de-argentina>, accessed 2 July 2020.

<sup>33</sup> For instance, several workers' organizations offered their hospitals, clinics, health personnel and facilities to be used as alternative hospitalization units.

<sup>34</sup> Resolución MTEySS N° 397/2020, 30 April 2020.

<sup>35</sup> Resolución MTEySS N° 475/2020, 8 June 2020.

<sup>36</sup> Encuesta de Indicadores Laborales (EIL), (30).

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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 endure<sup>37</sup>.

Occupational risks associated with telework such as the extension of working time and over-connection shall be addressed. In this regard, the bill that is currently being discussed – although valuable – does not provide an immediate response to such issues, as it is expected to entry into force 90 days after the end of the mandatory lockdown.

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<sup>38</sup>. Domestic and migrant workers shall also be regarded due to the high informality existent in their work relationships<sup>39</sup>.

Gender perspective measures must be reinforced, as women are typically assuming increased caregiving duties due to the suspension of classes and daycare services stoppages, sometimes conflicting with their jobs<sup>40</sup>.

Social protection programs shall also be extended, as a great number of people are depending on social support while their regular source of income is unavailable or insufficient.

There is a growing concern in Argentina about what will the Government do after the crisis caused by the pandemic is overcome, in terms of economic recovery. In the words of the UN Secretary General, at that moment, a dilemma will arise: to go back to everything as it was before or to deal with the issues that make us all unnecessarily vulnerable to crises. To achieve the latter, our actions should focus on building economies and societies that are more equitable, inclusive and sustainable and more resistant to pandemics, climate change and the many other global challenges we face every day<sup>41</sup>.

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<sup>37</sup> 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.

<sup>38</sup> Approx. 40% of the total of workers in Argentina perform in the informal economy.

<sup>39</sup> In addition to this, the formal requirements and operational difficulties of certain social support programs tend to prevent the registration of migrants and refugees residing in Argentina.

<sup>40</sup> Oficina de País de la OIT para Argentina, (13).

<sup>41</sup> Naciones Unidas en Argentina, (14).