

**April 2, 2020 UPDATE**

# AN EMPLOYER'S GUIDE IN FACE OF COVID-19 PANDEMIC

**On March 12, 2020, in view that the World Health Organization (WHO) declared Covid-19 as a Pandemic, we published a Guide for employer including different scenarios that may occur in the labor aspect. After its publication, the governmental authorities have adopted various measures related to labor matters aimed to prevent the spread of the virus and to secure employment.**

In this sense, please see below an update of the aforementioned Guide taking into account such measures for purposes of assisting employers in the decision to be taken in these times of global uncertainty, namely:

- 1) On March 17, 2020, by means of a speech addressed to the country, the President informed various measures to take place as of Thursday, March 19, 2020, including the declaration of state of national emergency.
- 2) On March 18, the Ministry of Labor issued Resolution No. 7/2020 urging employers to grant or advance vacations to their employees in occasion of the President's announcement in his speech given on the day before.
- 3) On March 19, 2020, by means of Resolution No. 62-20, the National Congress authorized the President to declare the state of national emergency for a term of twenty-five (25) days.
- 4) On this same date, by means of Decree No. 134-20, the President declared the state of emergency in the national territory, and Decree No. 135-20 established restrictions on freedom of transit, association and assembly for a period of twenty-five (25) days.
- 5) Likewise, other social distancing measures were adopted, including the closing of operations of companies that requires physical presence and are not engaged in basic activities for the population, the implementation of remote work and the flexibility of the schedule and shift work.
- 6) On March 23, 2020, Article 2 of Decree No. 135-20 was modified through Decree No. 136-20, which established the curfew throughout the national territory, so that during the curfew it is allowed, exceptionally, the circulation of certain vehicles and people who must carry company identification authorized by the High Level Commission for the prevention and control of coronavirus<sup>1</sup>.
- 7) In a speech dated March 25, 2020, the President announced, among other measures, the creation of the Solidarity Assistance Fund for Employees ("Fondo de Asistencia Solidaria a los Empleados" – FASE) for the delivery of a monetary contribution to affected employees during the months April and May 2020.
- 8) On April 2, 2020, through Decree No. 143-20, the terms and conditions to obtain the benefits of the FASE program are established, which exclude certain companies from this assistance<sup>2</sup>.

Under these legal provisions employers will be responsible for the adoption of the following measures in accordance with the scenario in which its operations are included, as follows:

## 1. COMPANIES THAT MAY CONTINUE OPERATING:

### PREVENTIVE MEASURES:

- Guarantee adequate safety, health, hygiene and working environment conditions (for example, access to alcohol-based gel, soap, sinks, disposable towels, water, etc.).
- Adopt control and protection measures putting collective protection before individual protection (for example, instruct employees not to attend the workplace in case of fever of 37.3 centigrade or higher and a slight cough).
- Place posters promoting hand washing and respiratory hygiene according to the indications established by the Ministry of Public Health.
- Give updated information on the evolution of the disease and necessary instructions to workers on the measures to be taken in terms of protection.
- Take into consideration the condition of pregnant employees for the preservation of their health and that of their child, as well as of high-risk personnel according to the indications established by the Ministry of Public Health.
- Reduce the personnel working in physical facilities, to allow a distance of at least 2 meters between each worker. The reduction of personnel on the physical facilities entails motivating remote work.

*(Dominican Constitution, Labour Code, Circular MSP-DESP-00657-2020 of the Ministry of Public Health).*

### RESPONSIVE MEASURES:

- **Employee(s) with positive result:**
  - If there is a suspicious case, an isolated space must be set up to keep the employee while the public health authorities arrive, taking care at all times that the identity of the person is protected.
  - In the event of a positive result, that employee's employment contract will be suspended due to a contagious disease that will prevent him from attending the workplace (medical leave);
  - As a result of the obligation of occupational safety and health, the employer must guarantee a workplace in optimal health conditions in order to resume operations with other employees in a safe environment.
- **Employee(s) under observation (quarantine):**
  - Evaluate the possibility of suspending employment contracts.
  - Alternatively, mutually agree that employees take pending vacations.
  - Another option may be to agree with the employee on the conditions for working from home temporarily through technological tools, and assuring to take into account the provisions related to cybersecurity only in those cases where the functions performed by the worker allow it. Under this scenario, it is recommendable to execute an agreement establishing the obligations of the employee in occasion to the rendering of the services under this condition.

## 2. COMPANIES WITH TOTAL OR PARTIAL CLOSURE OF THEIR OPERATIONS:

- Suspension of the effects of employment contracts, proceeding with the notifications to the employees and to the Ministry of Labor (through SIRLA or in presence, and once the latter approves the request, it will send the information to the Ministry of Finance) so that its employees can benefit for a period of 60 days from FASE, for which this entity will verify that their forms are updated in the Integrated System of Labor Registers (Sistema Integrado de Registros Laborales – SIRLA) and in compliance with its obligations with the Social Security Treasury (TSS).
  - Suspended workers will receive a contribution from the Government that will depend on their registered salary as of the month of February 2020 in the TSS, equivalent to 70% of its salary but which in no case will be less than DOP 5,000 or more than DOP 8,500.00.
  - This contribution is not registered in the TSS nor is it taken into consideration for the purposes of paying the Christmas Salary (Salary 13), since it is not a salary, but a special contribution.
  - It is at the discretion of the employers to complete the remaining part of the salary or pay a proportion.
- **In the case of a partial closure, with those employees who have not been suspended, the employer may:**
  - Agree with the employees to grant or advance vacations.
  - Flexibility of working hours (including shorter working hours, among others), ensuring the distance between workers (at least 1 meter), which must be reported to the Ministry of Labor. In some cases it will be necessary to request a waiver from the TSS.
  - Alternatively, agree with the employee on the conditions for working from home temporarily through technological tools, and assuring to take into account the provisions related to cybersecurity only in those cases where the functions performed by the worker allow it. Under this scenario, it is advisable to execute an agreement establishing the obligations of the employee in occasion to the rendering of the services under this modality.

*(Dominican Constitution, Labour Code, Law 172-13 on Protection of Personal Data, General Health Law 42-01, General Social Security Law No. 87-01, Circular MSP-DESP-00657-2020 of the Ministry of Public Health, Decree number 143-20)*

## 3. MANUFACTURING COMPANIES THAT CONTINUE OPERATING WITHOUT SUSPENDING OPERATIONS AND MICRO, SMALL AND MEDIUM-SIZED COMPANIES (MIPYMES):

- Obtain authorization from the Ministry of Labor to continue operations.
- Be in compliance with their obligations to the Social Security Treasury (TSS) and the National Institute of Professional Technical Training (INFOTEP).
- Once the Ministry of Labor approves the request to continue operations, it will automatically send the information to the Ministry of Finance so that it can register the company and the employees in the Ministry of Finance to receive the benefits of FASE consisting of a monthly aid of 60 days by way of salary advance from the Government and on behalf of its employee and the rest of the monthly salary will be covered by the employer.
- In order to receive the monthly aid through FASE, companies under this category cannot suspend any employee during the respective month. In the event that an employee is suspended, the employer will lose this benefit, but the employees may receive the Government contribution depending on their salary registered up to the limit of RD \$8,500.00.

## 4. CLOSED COMPANIES THAT HAVE NOT SUSPENDED THEIR EMPLOYEES:

- To participate in FASE, they must request an authorization to the Ministry of Labor.
- They must keep all of their employees on payroll and contributing to the TSS.

**Legal notice:** This document only contains general guidelines that must be evaluated on a case-by-case basis prior to undertaking any decision.

1. Vehicles used for transportation and distribution of merchandise, supplies and fuel, both urban and interurban. - Vehicles of companies and institutions providing energy, water, telecommunications and solid waste collection for emergency situations only. - People who work in ports and airports, in transit to or from their places of work during curfew hours, provided they carry an authorized company identification. - People who work in the food industry and distribution, pharmaceuticals and medical supplies, in transit to or from their places of work during curfew hours.

2. **Empresas excluidas del FASE:** Supermercados, colmados, farmacias y cualquier establecimiento comercial dedicado al expendio de alimentos crudos, medicamentos y productos de higiene. Empresas de logística, distribución y transporte de materias prima y productos terminados para industria, agroindustria y alimentos. - Empresas de agricultura, ganadería y pesca. - Industria de alimentos. - Empresas de seguridad privada. - Explotación de canteras y minas. - Almacenes de expendio de distribución de alimentos, productos farmacéuticos y agroindustriales. - Sector financiero, administradoras de fondos de pensiones, administradoras de riesgos laborales y sector seguros. - Multimedia. - Generadores de energía. - Sector salud. - Universidades. - Telecomunicaciones. - Instituciones sin fines de lucro que ya reciben transferencias del Gobierno Central.



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