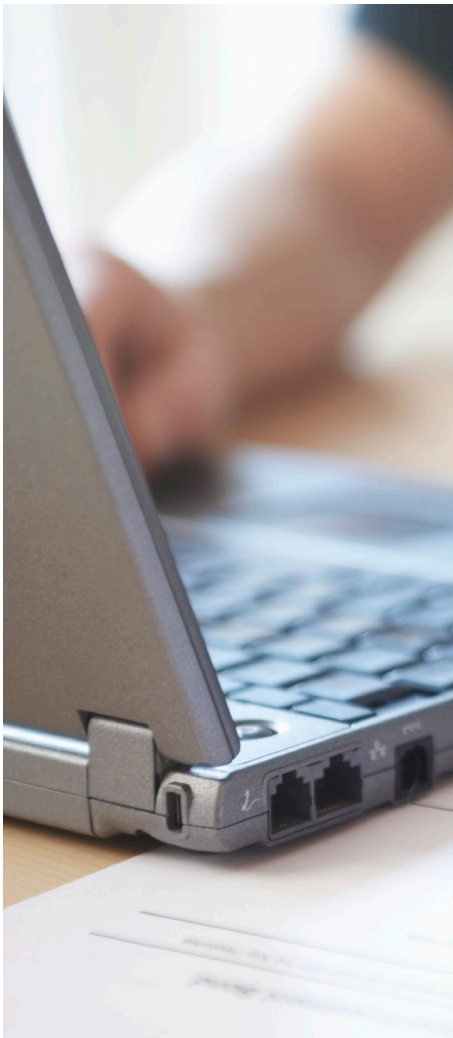


March 18, 2020

EY LAW Flash

Impact of COVID-19 in the labor and corporate environment



Background

On March 11, 2020, the World Health Organization classified the outbreak of coronavirus disease (COVID-19) as a pandemic. Such situation may have the following labor and organizational implications.

Declaration of Health Contingency by the Competent Authorities

The Federal Labor Law (hereinafter, "FLL") provide¹ that the declaration of health contingency by the competent health authority² that implies suspension of work is a cause of temporary suspension of the collective employment relationships in a company or establishment; such declaration shall have the approval of the Executive Branch and be published in the Official Journal of the Federation.

As of today, Mexican health authorities have not spoken on the suspension of work. However, in case health authorities declare the suspension of work, the employer shall be required to pay its employees a compensation equivalent to one day of current general minimum wage³ for each day the suspension lasts, without exceeding one month⁴. Once the environmental contingency is over, employees shall resume their work and the employer shall allow it.

¹ Article 427, Section VII, FLL.

² Ministry of Health.

³ The current general minimum wage is of \$123.22 pesos per daily workday.

⁴ Article 429, Section IV, FLL.

In case the suspension of work lasts more than one month, the obligation of rendering the service and paying the salary will be suspended, without liability for the employee and employer.

Technical Stoppages

As provided in the previous section, as of today, the competent authorities have not declared a health contingency. However, in order to avoid dissemination of COVID-19 and as a security measure, employers may, in agreement with employees (if applicable, represented by the union that holds the collective bargaining agreement applicable in the work place), carry out technical stoppages, in which works are temporarily suspended, paying a part of the salary agreed by the parties. In this modality, the benefits and social security of the days of suspension are paid according to the proportion of salary to be paid. The technical stoppage agreements shall be signed by the employer and union or a representative elected by the employees; the agreement shall be approved by the Conciliation and Arbitration Board.

Remote Work

Another option that employers have is to allow remote work, in cases where this modality is possible. The FLL defines home-based work, in its Article 311, as that which is usually carried out in the employee's home or in a place freely chosen by him, including that which is carried out using information and communication technologies.

It is important to provide, in the internal labor regulations, the applicable provisions regarding remote work, as well as in the individual employment agreements of the employees that will be subject to this type of work.

An employee tested positive on COVID-19. What should I do?

According to Article 42 Section I of the FLL, the contagious disease of the employee is one of the causes of temporary suspension of providing service and paying salary, without liability for the employee and employer. In this case, the Mexican Institute of Social Security (hereinafter "IMSS", for its acronym in Spanish) subrogates the obligation to pay salary, covering the corresponding disabilities. Such suspension shall be valid from the moment the employer is aware of the contagious disease until the term established by IMSS ends. Additionally, the employer shall comply with the measures established by the health authority on its work place; in case a total or partial suspension of work in the work place is determined, the employer shall pay the compensation of one daily minimum wage for up to one month, to each employee subject to suspension.

Obligations of Employers

- ▶ In case health authorities declare the suspension of work, pay employees a compensation equivalent to one day of current general minimum wage for each day the suspension lasts, without exceeding one month.
- ▶ Provide their employees with prophylactic medications determined by the health authority in places where there are tropical or endemic diseases, or when there is danger of an epidemic.
- ▶ In case of health emergency, comply with the provisions established by the competent authority, as well as to provide their employees with the elements indicated by such authority to prevent diseases in case of declaration of health contingency.

On the other hand, employees are required to submit to medical examinations to prove they do not have any inability or work disease, contagious or incurable; however, the applicable provisions regarding medical examinations shall be provided in the internal labor regulations or individual employment agreements, so they are enforceable.

What should the employer consider when implementing a Home Office Model?

Besides the changes to the internal labor regulations and individual employment agreements mentioned above, it is important to develop a Home Office Model which provides not only the terms or conditions of remote work but also the benefits and advantages that this scheme offers to employees.

Some of the factors that organizations should consider when implementing a Home Office Model are:

- ▶ Integrate home-based work within the organizational culture by creating a communication strategy so employees can understand the benefits and advantages of this new scheme (e.g. savings in mobility) as well as the guidelines of this new model (e.g. working hours, focus on results, main challenges, among others).
- ▶ Consider perks to employees working remotely. Those perks are not necessarily material but contribute to people's engagement within the organization.
- ▶ Evaluate the available technological tools that will allow people to live and enjoy the remote-working experience.
- ▶ Set the KPIs that will measure employees' productivity and performance under this scheme.
- ▶ Set the policies for exceptional cases in which employees should attend face to face meetings or travel (abroad or domestic).
- ▶ Create the communication strategy (communication plan, key messages, daily/weekly bulletin, etc.) with the details on what is home-based work about, its benefits, main challenges, what is expected from people, etc.

Protocol to be followed for COVID-19

In a situation of a contagious disease, such as COVID-19, it is important to have handy the institution protocol with the details on:

- ▶ What is COVID-19?
- ▶ What precautions should be taken to protect myself and others from illness?
- ▶ What are we doing to protect our people? (specify travel restrictions, constant monitoring, etc.)
- ▶ What should be done if you have coronavirus symptoms?
- ▶ What should be done by anyone in order to identify, report and contain the disease?
- ▶ How does the company decide to close an office?
- ▶ What is the organizational quarantine guidance?

People Tracking Tool

Many countries, so far, in Europe and Asia have been identified as "risky", therefore it is of utmost importance to keep track of recent travels through a digital tool that allows your organization to monitor the location of those travelers, identify the level of risk according to updated information on COVID-19 spread, so you can easily take preventive actions aimed to maintain everyone's health and safety.

Our People Tracking Tool keeps records for the past 15 days and provides a dashboard with the summary of all travels: business or personal travels (low risk and high-risk destinations), period in that destination and monitoring of people's health condition for 14 days. Through this tool, your employees can have access to medical assistance, if required, and support during international travel.

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