

March 26, 2020

## EY LAW Flash

# Agreement issued by the Federal Ministry of Health announcing measures for the operation of workplaces product of the health crisis derived from COVID-19



On March 24, 2020, in the evening edition of the Official Journal of the Federation, the “*Agreement that provides preventive measures that shall be implemented for the mitigation and control of health risks that the disease caused by SARS-CoV2 (COVID-19) virus implies*” was published, through which the Ministry of Health provides the necessary preventive measures that the public, private and social sectors shall implement.

Among the measures provided by the Agreement for the private sector, the following stand out:

- a. Avoid attendance to workplaces for adults of 65 years of age or older, as well as vulnerable groups, understood as those persons with a higher risk of developing any serious illness and/or dying in case of testing positive for COVID-19 (arterial or lung hypertension, kidney failure, lupus, cancer, diabetes mellitus, obesity, liver or metabolic failure, heart disease), people with any disease or pharmacological treatment that generates suppression of the immune system, pregnant women, lactating women or people with disabilities. This group of people will enjoy their full salary and work benefits during the time of absence.
- b. Temporarily suspend activities that involve physical concentration, transit or movement of people, from the effective date of the Agreement until April 19, 2020.
- c. The organizations of the private sector shall implement plans that guarantee the continuity of operations related with the mitigation and control of health risks that the disease by COVID-19 implies and guarantee the human rights of workers.

- d. In the private sector, companies, businesses, commercial establishments and all those necessary to face the contingency will continue working, including hospitals, clinics, pharmacies, laboratories, medical services, financial services, telecommunications and information media, hotel and restaurant services, gas stations, markets, supermarkets, miscellaneous, transport and gas distribution services, as long as they do not correspond to closed spaces with crowds.
- e. The employment relationships will be maintained and applied according to the corresponding individual employment agreements, collective bargaining agreements, industry-wide collective bargaining agreements (*contrato ley*) or general working conditions.

The Federal Labor Law requires a specific health contingency declaration to implement the collective suspension of the employment relationships through the payment of a compensation equivalent to one general minimum wage (“Collective Suspension by Health Contingency”).

Therefore, there is uncertainty if, as of this Agreement, it is feasible for companies to implement the Collective Suspension by Health Contingency.

In addition to the above, it is important to consider how the recommendations contained in the Agreement interact with the guidelines issued by local governments that, in some cases,

have decreed the closure of operations of certain types of establishments (mostly, those where there is regularly a high gathering of people).

The foregoing should lead companies to evaluate the nature of their operations, the levels of gathering of personnel, the geographic area where they operate, as well as the workplaces that are within those establishments whose habitual operation has been restricted.

Regarding the differential treatment for personnel considered as vulnerable, we consider that the exceptional measure will generate significant challenges in its implementation by companies, since such measure has no precedent in similar cases and could generate controversy regarding the eligibility of an employee and detonate discrimination conflicts.

Based on an assessment of the health crisis evolution, the scope of the Agreement and the applicable legal and judicial provisions and criteria, we consider there are available alternatives that allow the business continuity, the preservation of employment sources and rationalization of measures of labor flexibility in accordance with the production and financial position of companies.

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