

Labor Department

CLIENT ALERT | AMENDMENT OF LAW N° 21.227, GIVING ACCESS TO UNEMPLOYMENT INSURANCE BENEFITS GRANTED IN LAW N° 19.728, IN EXCEPTIONAL CIRCUMSTANCES 08.05.2020

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Below we present the most notable points of the Draft Law approved by the National Congress and sent to the President of the Republic on May 7th, 2020, which amends the current regulations established in Law No. 21.227, commonly called Employment Protection:

1. The benefit of Law No. 19.728 is extended to private household workers. The employer is obliged to pay the social security and social security contributions, in the terms indicated in the amendment.
2. The Administrator of the Unemployment Fund must, prior to making the payment of the benefit established by law, consult the Superintendency of Social Security if the workers in respect of whom the benefit was requested are or are not receiving a disability allowance. The Administrator must inform SUSESO of the latter in accordance with NCG of the Superintendency of Pensions, which must deliver this information to the administrative bodies of the insurance of the Law on Occupational Accidents and Diseases.
3. During the validity of the suspension produced by the act or declaration of authority, the employer will be obliged to pay social security and social security contributions, both for his position and those of the workers, with the exception of the social security contributions of the Law No. 16.744, which will be calculated as it is regulated.

4. The prohibition of the term of employment contract was incorporated under any cause, with respect to those workers who are covered by the suspension of the employment relationship, except in exceptional cases where it is permitted, for example: mutual agreement of the parties, resignation of the worker, among others.
5. The possibility was established that the Companies that must continue to operate even under an act of authority, enter into suspension agreements only with respect to workers who provide services that are not essential for said company.
6. In relation to the temporary suspension agreements of the employment contract, a series of conditions are established, among which we highlight:
 - a. It is presumed that the activity of the employer is partially affected, when in the month prior to the signing of the agreement, their income from sales or services net of VAT have experienced a drop equal to or greater than 20% compared to the same month of the previous year;
 - b. The possibility for any worker who is affected, by himself or through the union organization to which he is affiliated, to resort to the “*Dirección del Trabajo*” denouncing that the agreement suffers from defects in its celebration, or that the necessary conditions in the activity of the company that justify the application of the agreement. The regulations state that the “*Dirección del Trabajo*” may request reports from different entities in order to specify this situation, and
 - c. The agreement will take effect from the day following its subscription, the parties may agree that the effects occur at a later date, which may not exceed the first day of the month following the date of the respective agreement.
7. Alimony payments that are paid through a court order will be paid in the corresponding proportion, through the funds paid by the unemployment insurance, and the employer must report said situation to the corresponding institutions.
8. With respect to the workers who are protected by the maternal jurisdiction of article 201 of the Labor Code, the prohibition to apply the suspension of the labor relationship was incorporated.
9. In the event that the employer terminates the employment contract after having availed himself of the benefits of the Employment Protection Law, the calculation basis for the compensation of articles 163, 163bis, 168, 169, 170 and 171 of the

Labor Code, will be the gross remuneration that the worker had agreed, without considering the benefit he received from the unemployment insurance.

10. The prohibition to make use of the benefits granted by the Employment Protection Law was established for those companies that, having contracted or entered into agreements that are financed entirely under the budget law or subsidies of the public sector, and that receive the services or institutions the corresponding payments, excepting those companies that contract with the State for the execution of works or investment projects and that are paid according to the state of progress of works.
11. In relation to the Companies, the following was established:
 - a) For companies that are public limited companies or that are part of a business group, that have availed themselves of the Employment Protection Law, the prohibition to distribute profits or dividends among their shareholders was established, with respect to the business year in which the company or one of the entities of the business group made use of the law;
 - b) The companies that operate and have subsidiaries in jurisdictions considered tax havens, will not be able to benefit from the Employment Protection Law, and,
 - c) The directors of open stock companies must adjust their allowances, in the manner indicated by law, while suspending the employment relationship with their workers.
12. Finally, regarding the validity, it is established that the provisions of the law will come into effect at the time of its publication, except for some modifications that the same law incorporates, which mainly refers to the quotations, which will govern from the entry into force of Law No. 21.227. The foregoing, without prejudice to those contributions that had been paid prior to the publication of this amending Law, pursuant to the original regulations of Law No. 21,227. Likewise, the provisions referring to the effects of the agreement will be understood to be in force from the date of publication of Law No. 21.227.

The purpose of this report is to present the amendments made by the Draft Law to the current regulations on Employment Protection for the knowledge of our clients.

This document does not represent a legal opinion or recommendation and is for informational purposes only. Any questions or queries about its content, please direct it to the contact persons indicated in this document.

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