

April 2, 2020

## MEXICO: CONSIDERATIONS AND LEGAL EFFECTS OF THE COVID-19 HEALTH EMERGENCY

On March 30, 2020, was published and became effective the last decree of the General Health Council, which declares the Covid 19 pandemic as a **health emergency** and extends the National Safe Distance Campaign until April 30, 2020.

On March 31, 2020 was published and became effective a decree which provides **extraordinary measures** that the public, social and private sector must observe in light of such health contingency.

An executive summary on the legal considerations and effects that may arise as a result of the aforementioned decrees is provided below:

### 1. Extraordinary Actions

- a) Non-essential activities must be **immediately suspended**.
- b) Only the following activities, which are considered essential, **may continue**:
  - Those that are directly **necessary to attend the health emergency**: health and pharmaceutical sector; pharmacies, manufacturing of inputs, medical equipment, disposal of biological - infectious hazardous waste; cleaning and sanitization of medical units.
  - Public **safety** and civil protection, administration and imparting of **justice**; federal and state **legislative** activity.
  - **Fundamental sectors of the economy**: financing, tax collections, distribution and commercialization of energy, gas stations and gas, generation and distribution of drinkable water, food and non-alcoholic beverage industry, food markets, supermarkets, convenience stores, grocery stores and commercialization of prepared food, people and freight transportation, agricultural, fish and farming production, agroindustry, chemical industry, cleaning products, hardware stores, courier services, shifts in private security, daycare and childcare centers, and nursing and retirement homes for the elderly, attention centers and shelters for women suffering violence and their children; telecommunications and information media, private emergency services, funerary and burial services, storage and cold chain services for essential inputs, logistics (airports, docks and railroads), and **activities that, if suspended, might have irreversible effects for its continuation**:
  - Operation of the **social governmental programs**.



- Conservation, maintenance and repair of the **critical infrastructure** that ensures the production and distribution of indispensable services: drinking water, electric energy, gas, oil, gasoline, jet fuel (“turbosina”), basic sanitation, public transportation, hospital and medical infrastructure, among others.
- c) Voluntary house lockdown for the population at large and mandatory for increased risk groups.

## 2. Contractual Relationships:

- a) The coronavirus crisis could be considered a cause of **exclusion of liability** regarding the breach of contractual obligations due to an unforeseeable event or force majeure.
- b) If the fulfillment of the contractual obligations becomes disproportionate, the **modification of the contract** could be demanded in order to re-establish the balance of the obligations between the parties **or opt for its termination**.
- c) To determine the foregoing, the nature and provisions of the contract, the applicable legislation, the conduct of the parties, government declarations or decrees, among other relevant legal acts and facts, would have to be analyzed.

## 3. Consumer Relationships:

- a) Suppliers shall not **unjustifiably increase the prices** of their goods and services due to the increase in demand during the health emergency, under penalty of being fined up to approximately \$3 million Pesos (US\$124K Approx.).
- b) **Airlines** and **hotel chains** have shown solidarity with the situation and have issued policies to make more flexible the terms and conditions of **changes** and **cancellations** of reservations due to the coronavirus.
- c) **Massive events** have been temporarily **suspended** until further notice. Before the **cancellation** of public shows, the consumer will have the right to request the **refund** of their ticket directly to the provider.
- d) **Telecommunications** services could be affected due to their high demand. For this reason, the Federal Telecommunications Institute (“IFT”) has issued a series of recommendations for both providers and users in order to avoid network saturation and guarantee the continuity of services.<sup>1</sup>

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<sup>1</sup> [http://www.ift.org.mx/sites/default/files/comunicacion-y-medios/comunicados-ift/comunicado26ift\\_1.pdf](http://www.ift.org.mx/sites/default/files/comunicacion-y-medios/comunicados-ift/comunicado26ift_1.pdf)



#### 4. Financial Relationships:

- a) Most of the financial institutions have granted facilities to clients who have some **bank credit**, in order to defer their payments. The supports offered vary according to the implementation mechanics in each of the credit institutions, as well as the particular conditions of each debtor.

#### 5. Labor Relationships:

- a) The Ministry of Labor and Social Welfare ("STPS") has issued series of recommendations for the implementation of **emergency care plans** that must be implemented at work centers to deal with the spread of the virus, which has been recently updated in accordance with the extraordinary actions issued by the General Health Council<sup>2</sup>.
- b) Employers must have an **occupational security and health program** that includes actions to address the recommendations from the Ministry of Health ("SS") and the STPS.
- c) The STPS guide sets forth a series of practical recommendations for the planning, training, prevention, protection and monitoring of work centers in light of the covid-19 pandemic, which includes:
- Identify if the work center can continue working during the National Safe Distance Campaign, in accordance with the fundamental sectors, listed in the decree issued on March 31, 2020.
  - Identify the essential activities to maintain the activity of the workplace and temporarily suspend those activities that do not meet the aforementioned condition. Non-essential activity is that which does not affect the substantive activity of an organization, nor the rights of the workers.
  - Identify the **personnel at greatest risk** and suspend their attendance at the workplace. This personnel due to their condition must strictly apply the co-responsible home lockdown.
  - Suspend activities that involve the **concentration, transit or commuting** of people.
  - Temporarily suspend until further notice of the health authority, massive events, reunions and congregations of **more than 50 persons**.

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<sup>2</sup> [https://www.uv.mx/plandecontingencia/files/2020/03/GUI\\_A\\_DE\\_ACCION\\_PARA\\_LOS\\_CENTROS\\_DE\\_TRABAJO\\_ANTE\\_EL\\_COVID-19.pdf](https://www.uv.mx/plandecontingencia/files/2020/03/GUI_A_DE_ACCION_PARA_LOS_CENTROS_DE_TRABAJO_ANTE_EL_COVID-19.pdf)



- Identify the tasks or functions that may be **flexible**, allowing the reorganization of shifts and the staggering of working hours, as well as the use of technologies to minimize direct contact, including remote work.
  - Identify the functions that, due to their **degree of exposure** or attention to the public, are most risky, to determine the actions that must be carried out in the different scenarios of the epidemic.
  - Implement a general **supervision filter** to enter the workplace and send home the worker with symptoms of the disease and refer him to his medical care center.
  - Keep the record of **disabled personnel** and evaluate possible cases of contagion, as well as prevent the return of sick workers without the pertinent medical evaluation.
- c) The labor legislation establishes that the declaration of sanitary contingency is a cause for suspending the labor relationship (article 427, section VII of the Federal Labor Law (LFT)), in which case the employer does not require the approval of the labor authorities **being only obliged to pay the employees an indemnity equivalent to a day of general minimum wage in force, for each day the suspension lasts, without exceeding a month** (art. 429, section IV of the LFT).

However, considering the political impact this may imply, the labor authorities have manifested against this interpretation, remarking that labor relationships have not been suspended.

It seems the labor authority aims to classify the declaration of health emergency as a cause for suspension due to force majeure or unforeseeable circumstances, not attributable to the employer, that produces as a necessary, immediate and direct consequence the suspension of the works (art. 427, section I of the LFT), in which case the employer must give notice to the authority for its approval or rejection (art. 429, section I of the LFT), which currently is materially impossible.

Even though from a strictly legal standpoint this interpretation is questionable, it is illustrative of the position that the labor authority will assume in this situation.

- d) The collection and treatment of **personal health data** of workers due to the implementation of these preventive measures, must be reported through the provision of a privacy notice.
- e) It is recommended that employers implement protocols to guarantee the **security of the information** that workers will be treating outside the workplace.



## 6. Equality and Nondiscrimination:

- a) **Prevention protocols** for discrimination are tested in periods like the current one. These protocols should be considered while establishing the measures adopted by companies to address the spread of the virus, especially with regards to consumers and workers, who are most exposed to being victims of discriminatory acts, which could cause considerable harm to businesses. The protocols are a useful tool to determine the **appropriateness, necessity** and **proportionality** of these prevention measures.

## 7. Suspension of procedural terms and deadlines:

- a) It is anticipated that in the coming days, each authority, within the scope of their respective powers, will be issuing the decrees to extend the **suspension** of the terms and deadlines of their procedures until April 30, 2020.

## 8. Attention to the public and reception of complaints:

- a) The advisory and complaint services offered by the competent authorities regarding consumer protection (PROFECO)<sup>3</sup>, telecommunications (IFT)<sup>4</sup> and financial services (CONDUSEF) will continue to be provided by remote means of communication.

**ECIJA México, S.C.**

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<sup>3</sup> <https://www.gob.mx/profeco/acciones-y-programas/oficinas-de-defensa-del-consumidor-en-el-pais>

<sup>4</sup> [http://www.ift.org.mx/sites/default/files/acuerdo\\_p.ift\\_ext\\_200320.6.pdf](http://www.ift.org.mx/sites/default/files/acuerdo_p.ift_ext_200320.6.pdf)