

## Are Mexican companies obliged to suspend their operations?

The decree issued on March 31, 2020 in which the Ministry of Health (“SSA”) sets forth the essential activities that may continue operating during the sanitary emergency declared due to covid-19, has raised a series of inquiries for companies of the private sector, related to the position they must assume with respect to the suspension or continuity of their operations.

As a result, on April 6, 2020, the SSA published a decree which establishes the technical guidelines to provide certainty with respect of the activities related to the fundamental sectors and the critical infrastructure (the “Guidelines”).

According to the list included in the aforementioned decrees, **only the following private sector companies can continue operating:**

- a) Those that participate in the supply, services and sourcing for essential activities of the **National Health System**.
- b) Those that correspond to **fundamental sectors of the economy**, such as: financial, energy, drinking water, food and beverage industries, agroindustry, chemical industry, cleaning products, hardware stores, courier services, private security, daycare and childcare, nursing and retirement homes for the elderly, shelters and attention centers 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.

With respect of the aforementioned, the Guidelines set forth the following:

-The term “**activities that if suspended, might have irreversible effects for its continuation**”, refers to **steel, cement and glass** manufacturers, and **information technology services** guaranteeing the continuity of the informatic systems of the public, private and social sector.

Additionally, it establishes the measures the aforementioned companies must observe to comply with ongoing contracts with the Federal Government.

-With respect to **courier services**, it is clarified that such include **e-commerce** companies and platforms.

- c) Those that participate in the 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.

The Guidelines provide the measures that coal mines must observe to cover the demand of the Federal Electricity Commission.

According to a systematic interpretation of the decrees, documents and communications issued by the authorities in this regard, we conclude the following:

- a) The establishments and work centers which correspond to the **sectors listed as fundamental may continue its operations**. However, their operations shall be restricted to those that are essential and shall comply with the health measures issued by the SSA.
- b) The establishments and work centers of companies that **do not correspond to any of the aforementioned sectors listed** as fundamental, **shall suspend their activities**.

Some local governments have issued recommendations in order to clarify possible ambiguities and different constructions of the decree issued on March 31, 2020, exemplifying the activities that shall be considered as essential.

It is important to be attentive to publications of the government of the state(s) in which companies have presence, to identify any decree that may affect its operations, whether at a state or municipal level.

Each company must perform an analysis of the activities they conduct in their work establishments or centers, to determine if such can be considered essential or not in light of these governmental rulings and, therefore, determine if they can continue operating or if they shall suspend their activities during the health emergency.

It is advisable that every work establishment or center that continues operating, prepares the necessary documental support to justify the continuity of its operations and to evidence the implementation of the preventive measures issued by the Ministry of Labor and Social Welfare, in light of a possible inspection on behalf of the competent authorities.

Since phase 3 of the contagion seems inevitable, it is likely that as the situation evolves in each region of the country, the authorities could impose more severe restrictions. Therefore, companies shall anticipate an action plan considering multiple possible scenarios that might occur, in order to guarantee their continuity.

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