

Law that allows access to unemployment insurance benefits of Law No. 19.728 in exceptional circumstances, as a result of the Covid-19 pandemic.

On April 1st, 2020, the President of Chile promulgated a law that establishes extraordinary and transitory measures to protect the stability of incomes and labor sources of those employees who cannot provide services, or must adjust their working hours, because of the COVID-19 pandemic.

Below, we summarize the main guidelines of these regulations:

1. Employment effects of COVID-19 disease. Suspension of employment agreements by act of authority.

a. Exceptional access to unemployment benefits for employees affiliated to the unemployment insurance in the event that it exists:

- (a) An act or declaration by the competent authority establishing health or internal security measures for the control of the disease called COVID-19,
- (b) That these acts involve the interruption of activities in all or part of the territory of the country;
- (c) And these acts prevent or totally prohibits the provision of the contracted services.

A **substantiated resolution** issued by the Undersecretary of Finance shall indicate the area or territory affected and, when appropriate, the activities or establishments exempted from the cessation of activities.

b. Retroactive effect.

During the period between the declaration of the State of Catastrophe, due to a public calamity, dated March 18, 2020, and the entry into force of the law, employees affiliated to the Unemployment Insurance, whose employers have stopped their activities by mutual agreement or as a result of an act or declaration of authority, or have agreed to continue providing services, may access the benefits established in the aforementioned law, once the respective resolution has been published.

c. Employees who are exempt from this benefit.

- a) Employees who are not governed by the Labor Code and those who are not affiliated to the Unemployment Insurance.
- b) Employees who, when the act or declaration is made, have entered into a labor continuity agreement.
- c) Employees who are receiving a subsidy for incapacity to work.

d. Employees who will be able to access the above-mentioned benefit.

- a) Register 3 continuous contributions to the insurance in the last three months immediately preceding the act or declaration of authority.

- b) Record at least 6 continuous or discontinuous monthly contributions during the last 12 months, provided that they record at least the last 2 contributions with the same employer in the 2 months immediately preceding the act or declaration of authority.

e. Calculation and financing of the benefit.

It will be considered the average of the taxable remunerations accrued in the last three months in which contributions were registered before the beginning of the act or declaration of authority.

The resources of the individual account for the employee's unemployment will be drawn. When the resources are insufficient, the contributions shall be financed from the Solidarity Unemployment Fund.

The Superintendence of Pensions is empowered to issue a general rule regulating the application, registration, drawing, collection, payment, order and succession of the benefits of Articles 15 and 25 of Law No. 19,728 on unemployment insurance, as well as all matters related to them.

f. Labor effects of the declaration or act of authority during the period:

- i. Temporary suspension, as of right and by the sole ministry of the law, of the effects of individual contracts in the territory or territories to which they apply, unless otherwise agreed in writing by the parties, for the purpose of giving continuity to the employment relationship during this period.
- ii. Employer's obligation to continue paying all health and social security contributions, which will be calculated on 50% of the remuneration that serves as the basis for the calculation of the benefit, except those of Law No. 16,744, which establishes rules on employment related accidents and diseases.
- iii. Employers, whose labor relations are suspended, may not dismiss their employees, except for the cause established in article 161 of the Labor Code (Company needs or eviction).
- iv. The employer must apply to the unemployment insurance entity for the benefit of its employees. This request must be made on-line. The employee who is excluded from said request may make it directly before the unemployment insurance agency.

g. Special protection for domestic employees.

In the event of the declaration or act of authority referred to above, employees of private households will have their employment relations suspended and may claim the **statutory compensation established at any event of termination** referred to in article 163 of the Labor Code.

In this case, the respective social security entity shall draw from the employee's account the equivalent of 70% of his/her taxable monthly remuneration or the total balance if this is lower. If the act or declaration of authority extends for more

than 30 days and the employee has a balance in the mentioned account, the social security entity will draw the amount equivalent to 55%, 45%, 40% and 35% of the taxable remuneration, for the second, third, fourth and fifth month, respectively.

Employees in private homes may also sign the temporary suspension agreement regulated by law. In this case, the employer will only be obliged to continue paying the health contribution, and the disability and survival insurance.

2. Suspension agreements of the employment contract.

Employers whose activity is **totally or partially affected** by the COVID-19 health crisis, outside the validity of the act or declaration of the authority, may agree individually or collectively with their employees affiliated to the Unemployment Insurance to temporarily suspend the employment agreement.

This agreement has the same effects and will be requested in the same way as the suspension of the contracts by the act of authority described above.

3. Agreements for temporary reduction of working hours.

Employers may agree with their employees, individually or collectively, **to reduce the length of their working hours by up to 50%**. The employer must continue to pay the remuneration and social security contributions corresponding to the new taxable remuneration agreed.

The employee shall also receive a supplement to his/her remuneration from his/her individual account for unemployment insurance and, once used up, from the Unemployment Solidarity Fund which shall be up to 25% of his/her remuneration, if the reduction of the working day is 50% (with a maximum of \$225,000 CLP per month). In addition, he/she will maintain benefits such as bonuses, allowances and other exceptional or sporadic items.

Employers may not hire new employees to perform the same or similar functions rendered by those who have signed such agreements.

Subscription requirements: Employer.

- a) VAT Tax payers whose average decrease in sales for a period of 3 consecutive months exceeds 20% with respect to the average sales in the same 3-month period of the previous fiscal year (as from October, 2019).
- b) That is in a reorganization bankruptcy proceeding.
- c) That it is in an insolvency proceeding.
- d) Companies, establishments or worksites exempted from the act or declaration of authority that cannot paralyze its activities and need to reduce the working hours of

its employees, in order to maintain its operational continuity or to effectively protect the life and health of its employees (for example, to tend to social distancing).

Subscription requirements: Employees.

- a) With an indefinite contract: 10 monthly contributions, continuous or discontinuous, with the same employer.
- b) With a fixed-term contract, for a determined work, or service: 5 monthly contributions, continuous or discontinuous.
- c) In order to access the benefits charged to the Unemployment Solidarity Fund, such contributions must have been registered within the last 24 months prior to the date of the respective agreement. In addition, the employee must register the last three continuous contributions with the same employer with whom he or she signs the temporary working-time reduction agreement.
- d) In the case of an agreement for the reduction of working hours in companies, establishments or workplaces that have been exempted from the act or declaration of authority and that need to reduce or redistribute the ordinary working hours of their employees in order to maintain their operational continuity or to effectively protect the life and health of their employees, the employee must record (i) three continuous contributions in the last three months immediately preceding the agreement or (ii) a minimum of six continuous or discontinuous monthly contributions during the last twelve months, provided that at least the last two contributions are recorded with the same employer in the two months immediately preceding the agreement.
- e) Employees who are protected from dismissal do not qualify to agree a temporary reduction of the working schedule for purposes of this law.

Duration of the agreement.

It is always temporary, with a maximum duration of:

- a) 5 continuous months for employees with an indefinite contract.
- b) 3 continuous months for fixed-term employees, for a specific work, job or service.
- c) In both cases, the minimum duration is 1 month.

Signing of the agreement.

The agreement must be signed electronically through the platform provided by the Labor Department, which must contain certain stipulations such as the individualization of the parties, duration and date of entry into force of the agreement, average of the remunerations, percentage of the reduction and remuneration corresponding to such work schedule and a sworn declaration by the employer that the requirements for compliance have been met.

Termination of the labor relationship during the effectiveness of the agreement.

In this case, the legal or conventional severance that the employee is entitled to receive will be calculated in accordance with the remunerations and contractual conditions in force prior to the signing of the agreement.

4. Other provisions.

Termination of employment contracts due to force majeure.

For six months or during the Constitutional State of Catastrophe, employees may not be dismissed on the grounds of force majeure or fortuitous events as set out in Article 159, No. 6 of the Labor Code, based on the health emergency caused by the COVID-19.

Applicability of unemployment insurance outside these exceptional circumstances.

Contributions counted for the purposes of access to the benefits of the law may be re-counted for the purposes of access to unemployment benefits. In addition, the use of the Solidarity Unemployment Fund by employees will not be counted for the restriction of use of this fund established by the law on unemployment insurance, of twice in a period of five years, nor will it limit the maximum benefits that can be accessed from this fund.

Termination of contracts before the validity of the aforementioned law.

During the period between the declaration of the State of Catastrophe and the entry into force of the law, the parties who have terminated the employment relationship, whatever the cause, may cancel such termination, in which case they may avail themselves of the benefits of the law.

Validity of the law.

The law will be in force since its publication in the Official Gazette.

The provisions on the suspension of the labor relationship by an act of authority and agreements to suspend it shall be governed by a period of six months counted from the entry into force of the law.

The provisions on agreements to reduce working hours shall be in force until the last day of the tenth month following the entry into force.

However, for agreements to reduce working hours in companies, establishments or tasks that have been exempted from the act or declaration of authority and that need to reduce or redistribute the ordinary working hours of their employees in order to maintain their operational continuity or to effectively protect the life and health of their employees, the law shall be in force for 6 months.

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