

**COVID-19 and the Labor Implications Derived from the Declaration of Sanitary Emergency in Mexico.**

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As we know, the COVID-19, commonly known as “coronavirus”, has led to a worldwide pandemic, and within the current efforts to reduce its effects in Mexico, the Mexican government has established mandatory contingency measures.

Mexico was one-step ahead in its legislation regarding these potential events. In 2012 Mexico amended its Federal Labor Law (*Ley Federal del Trabajo*) (the “FLL”) after when the world suffered the sanitary contingency for the virus of Influenza H1N1. Due to this situation, the law was amended in order to contemplate further cases of sanitary contingencies in the future. Since then the Federal Labor Law now contemplates in its article 427 section VII, that in order to suspend work, a sanitary contingency declaration may be made by the competent authorities, and once the declaration is official, article 429 section IV of the FLL stipulates that employees will be indemnified during the term of the suspension with the payment of one minimum wage salary for one month.

Notwithstanding the foregoing, Mexico declared a national sanitary *emergency* on March 30 of 2020, based on a case of force majeure, which may surprisingly imply different legal consequences to the ones contemplated in a “sanitary contingency”. To this date, this emergency will be in effect through April 30, 2020.

This sanitary emergency is not based on the referred section VII, but instead on section I of the article 427 of the FLL, which refers to a work suspension by cause of force majeure. Derived from this apparent technicality, employees will not be compensated by the payment of one minimum wage salary for one month as contemplated for the sanitary contingency, but rather should follow the determinations set forth in the article 429 section I of the FLL. This section determines that the employer shall give notice of the work suspension to the labor authority, and upon its receipt the authority will begin a special collective procedure by which the authority may or may not authorize said suspension and determine, on a case by case basis, the compensation that should be paid to the workers for as long as the suspension takes place, in the understanding that this compensation will not exceed more than one month of salary. In the meantime, and in accordance with the information set forth by the authorities, it is expected that employees will receive the totality of their salary during this period, even if they cannot work because they must remain in their homes following the rules established in this sanitary emergency.

With the information available right now, there are only generic descriptions of the “essential industries”, which will be excluded from this emergency suspension. Likely, there is no precedent which may allow for an informed estimate of the expected outcome of the potential results of the special collective procedure, or even a precedent to guide on which cases the workers should keep attending their workplace for being considered as a part of the essential industry during this sanitary emergency.

In consideration with the foregoing, each employer should analyze this situation and the available options shortly, and decide on a course of action based on the information available. Our team at JATA is available to advice in this process and the decision-making process.

In the event that an employer decides to take the option of filing for the special collective procedure under the, it is critical to prepare and file the notice of the suspension of labors to the labor courts as soon as possible, and even if there is ambiguity on the terms for the payment of the salary between the moment of the notice and the expected approval of the suspension, said salaries should be completely paid to the employees as the company would normally pay them. In this same regard, given that it is highly probable that the authority will take some time to respond to the special collective procedure, in addition to the uncertainty of the terms of the resolution and its potential legal effects, we suggest that the employer contemplates within its business continuity plan, the creation of a file with all the documentation that reasons each and every one of the decisions and actions the company will take in relation to the payment of the salaries, the action of sending the company's employees to their homes and the reasoning to keep requesting certain workers to keep attending the workplace, information that may be necessary in the future to justify and defend the company's actions.

We are convinced that the sooner that prevention measures are taken and risks calculated, better are the chances that the company will be able to move forward in the most orderly fashion. Please send any question and or comment to [info@jata.mx](mailto:info@jata.mx). The authors are part of the legal team of JATA–J.A. Treviño Abogados. JATA is a Mexican law firm with offices in Monterrey, Mexico and Houston, Texas.

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