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Statute protecting women at the workplace

Although in the last years the women contributing have made great strides in the workplace, they continue to be unrepresented. Government in Chile has not been indifferent to this inequality and has made efforts to address the gap adopting actions to better protect women and enhance their chances to get into the workforce.

In Chile gender discrimination is forbidden, existing different legal actions available to employees against employers that tolerate gender discrimination at the workplace. Following this principle, the main anti-discriminatory regulations that protect women at the workplace are contained in the Chilean Constitution, the Labor Code and the Law No.20,609.

While the Chilean Constitution already enshrined equality between men and women, elevating equality to the category of fundamental right, the Labor Code in its article 2 came to establish the standard against discrimination against women in employment by stating that it is illegal to discriminate against an employee on the basis of sex with the objective of cancelling or altering equal opportunities or treatment in employment.

On the other hand, even though Law No. 20,609 on Measures against Discrimination is not only restricted to employment matters, from a labor perspective, supplements the already existent principle against discrimination contained in the Labor Code. In fact, the law expressly reject (and consider as arbitrary discrimination), any distinction, exclusion or restriction that lacks reasonable justification, and that causes deprivation, disturbance or threat in the legitimate exercise of the fundamental rights, in particular when they are based on grounds such sex, gender, personal appearance, among other protected characteristics.

Relevant is also to consider that nowadays in Chile there is a labor statute that protects women in most of the stages of the employment relationship.

Indeed, at the time of hiring, the employer is expressly forbidden to make job offers with requirements that are discriminatory, such as, requiring specific sex, gender or personal characteristics, unless these differences are based on the capacity or suitability required for the employment. Likewise, the employer cannot condition the hiring to the absence or existence of pregnancy or request the submission of pregnancy certificates or examinations to verify such condition. During employment, the employer may not subject the permanence or promotion of a female employee to her pregnancy status.

As well, embracing the International Labor Organization's notion of "work of equal value, employers are obliged to comply with the principle of equal remuneration

between men and women (enshrined in article 62 bis of the Labor Code), unless there are objective differences such as capacities, suitability, responsibility or productivity to make such payment distinction. Even though there is a legal procedure to address the infringement of this principle, unfortunately, the lack of effective regulation requiring companies to demonstrate compliance with gender pay-related legislation to government bodies or other authorities is a significant obstacle to closing the gap.

Furthermore, women in Chile are entitled to several important protections such as, full paid maternity leave of six weeks before birth ("pre-natal leave") and twelve weeks after birth ("post-natal leave"); companies with 20 or more female employees have the obligation to provide daycare for children up to 2 years old and female employees have the right to feed their children (of up to 2 years) for at least 1 hour per day. The law also provides that women are entitled to special permits and leaves due to: illness of the child under 1 year, severe illness of a child under 18 years and disabled child older than 18 years.

Also, Chilean law establishes special procedures in case of sexual harassment at the workplace and mandates that pregnant women have dismissal privilege during pregnancy and for a period of one year following the end of her maternity leave ("post-natal"), not being possible to dismissed them exclusively for being a woman or mistreatment them upon termination because of their sex.

As can be seen, Chile has a legal system composed by more fairly refined labor laws that have made possible the gradual inclusion of women in the workplace. Notwithstanding the foregoing, legislation is still slow to come on gender gap and there is still a long way ahead to attract, retain and promote women.

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