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LAW THAT MODIFIES THE LABOR CODE AS REGARDS TO EMPLOYMENT CONTRACTS FOR SPECIFIC TASKS OR SERVICES (LAW NO. 21,122)

I.   Introduction:

On November 28th, 2018, Law No. 21,122 was published in the Official Gazzette (hereinafter the "Law"). This Law introduced new provisions that thoroughly regulate employment contracts for specific tasks or services, which until now were barely mentioned in the Labor Code. The terms of this Law will be applicable to employment contracts for specific tasks or services executed as of January 1st, 2019.

II.   Relevant Content:

a)   Definition: The Law provides a definition for the employment contract for a specific task or service, stating that it is "*the convention through which the employee obliges himself with his or her respective employer to execute a material or intellectual work, which is specific and determined in both its commencement and its conclusion, being the contract's term subject to the duration of such work. The different tasks or stages associated to a project or work cannot be subject to successive contracts of this type or else it will be understood that the contract is agreed for an indefinite term*".

The Law expressly excludes from this type of employment contracts all those that involve the execution of permanent works or services, which -due to their nature- do not cease or conclude.

b)   Vacations: This Law grants the right to fifteen days of annual leave, with full payment of remuneration, to the employee who renders continuous services to the same employer by virtue of two or more contracts agreed for the completion of a specific task or service, provided that these contracts, considered altogether are in effect during at least one year. In these cases, the employee will have the possibility of deferring the payment of the proportional vacations, as long as there is an express statement in this regard in the labor discharge and general release document ("*finiquito*") executed at the end of each contract.

Nevertheless, together with the last *finiquito* the employer shall pay the full amount represented by proportional vacations, provided that the payment has

been deferred and the employment contracts have not exceeded one year of extension.

c) <u>Severance payment</u>: The law establishes a severance payment for the period of service, applicable in case the employee's contract has been terminated on the grounds of "conclusion of the task or service that originated the contract", under Article 159 No. 5 of the Labor Code. In these cases, the employee will have the right to claim the payment of this severance as long as his employment contract has been in effect for, at least, one month.

As to the amount of this severance, the Law will enter into effect in a progressive basis, pursuant the following rules:

1) As of January 2019 and for the following 18 months: the severance will be equal to 1 day of remuneration for each month of service (or fraction thereof higher than 15 days).
2) As of July 2020 and for the following 12 months: the severance will be equal to 1.5 days of remuneration for each month of service (or fraction thereof higher than 15 days).
3) As of July 2021 and for the following 6 months: the severance will be equal to 2 days of remuneration for each month of service (or fraction thereof higher than 15 days).
4) As of January 2022: the severance will be equal to 2.5 days of remuneration for each month of service (or fraction thereof higher than 15 days).

The calculation basis of this severance is the same as the one applicable to standard legal severance for years of service, being possible as well to deduct from the severance the amount of the employer's contributions to the employee's unemployment insurance.

Finally, the Law establishes that the employee's right to receive the payment of this severance is incompatible with severances and surcharges which could be otherwise applicable due to unlawful dismissal action, but will be compatible instead with actions grounded on infractions of constitutional rights.