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Workplace Leave and Practical Issues Applicable in Venezuela

Under the Venezuelan Labor Law workplace leave is understood as all those leaves of absence granted to employees in certain circumstances indicated in the labor law. The law provides several situations where employees can take workplace leaves. These situations include a) Maternity Leave; b) Parental Leave; c) Adoption Leave; d) Family Care leaves and e) Other types of leaves. This article reviews and summarizes each of the different workplace leaves commonly used in Venezuela.

A. Maternity Leave

Pregnant employees are entitled to a maternity leave of six weeks before childbirth (prenatal leave) and to 20 weeks after (post-natal leave), or for a greater time due to an illness that, according to medical opinion, is a consequence of the pregnancy or childbirth and prevents the employee from working. The employee maintains her right to her job position and to a social security benefit.

If an employee does not use her entire pre-natal leave, the time not used can be applied to the period of post-natal leave. If childbirth occurs after the anticipated date, the prenatal rest will be extended to the date of the childbirth, and the duration of the postnatal leave may not be reduced.

Maternity leaves cannot be waived. The pre and post-natal leaves must be computed in determining the employee's time of service in the company.

Permission for breastfeeding: Breastfeeding mothers are granted 2 one hour breaks a day for breastfeeding when there is an early education center at the workplace and a 2 one and a half hour breaks when there is no early education center at the workplace.

During the maternity leave the Social Security must pay the equivalent to the 100% of the salary employees.

B. Parental Leave

Fathers are entitled to a paid paternity leave of 14 continuous days, counted from the date of childbirth. The employee must present to the employer the birth certificate of the newborn child registered in the Civil Registry. The Social Security law do not provide payment. In this case the is the employer who can pay the salaries but is not mandatory.

C. Adoption Leave

In the event of adoption, the adopting mother is entitled to 26 weeks of maternity leave, starting from the date on which the child is received by the adopting family and authorized by Venezuelan Youth Institute. In addition to maintaining her right to her job, the adoptive mother will receive the indemnification corresponding to her maintenance and that of the child.

The adopting father of a child under the age of three is entitled to the 14- day paternity leave, counted from the moment the sentence is declared by the Minor Protection Court.

D. Family Care Leave

Family Care Leave is granted when an employee needs time to take care of a family member up to the first degree of consanguinity. This leave provides a special license for the care of a family member in case of emergency during a period agreed by the parties. This permit implies that the parties must sign an agreement that contains the terms and conditions that will govern this leave, which means that it is not a right that arises automatically but must be agreed with the company.

In case this license is granted, the employer do not have to pay the salary to the employee.

E. Other types of leaves

Generally, employee and employer can agree to other types of leave different than those indicated above. The law covers these leaves with a suspension of the employment contract. These leaves are commonly provided for studies or other special situations. And in the practice, companies can provide these leaves as paid leaves or as unpaid leaves.

As a result of the recent diaspora of Venezuelans to other countries, employees request permits from their employers to explore the possibility of leaving the country or simply visiting a close relative. Many do not return, and it is there that it is important from the point of view of Human Resources, to take in advance the necessary provisions to avoid subsequent risks.

To grant a permit under these conditions, two alternatives are considered: a) The employment contract is terminated and reactivated once the worker returns to the company and b) The employment contract is suspended, by means of an agreement signed by the parties.

The provisions that HR must take when agreeing to a suspension of the employment contract are the following:

1. Define the type of permit to be granted, that is, if it is for studies or for other purposes in the interest of the worker.
2. Determine if the permit will be paid or unpaid. From a legal standpoint, when there is no provision of services, there is no right to receive a salary payment, however, some companies for internal policies and to benefit the employee, grant a paid permit.
3. Establish the period that the permit will last and the consequences that will result if the employee does not return to the employer on time or if the circumstances that caused the permit are no longer met (acts of God, force majeure, etc.).
4. Draft an agreement between the parties that contains the terms and conditions under which the permit is granted.

The provisions contained in the agreement are extremely important as they will be the guide of how the company should act in case the employee does not return to the company after studies or after having made a trip abroad for personal purposes.

Employees are also entitled to a statutory paid vacation leave each year. Employees and employer can determine how the employee can best use this leave. Then employees can negotiate with employers any other required unpaid leave if necessary. In many occasions, due to financial and economic circumstances, companies may choose to grant special leaves to employees, to reduce the general labor costs, by avoiding paying overtime or any other special type of productivity bonuses.

It is important to review requests for leaves of absences carefully and apply the respective rules for each types of leave. It is also important to determine whether the leave is paid or unpaid, or whether the employee will be entitled to social security benefit as a result of the leave.

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