



**COVID-19: LATIN AMERICA  
GUIDE FOR EMPLOYERS  
2<sup>ND</sup> EDITION**



Employment Law Expertise Provided by  
the Latin American Members of the



**Employment  
Law Alliance<sup>®</sup>**

# INTRODUCTION

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Today, across the globe, companies are trying to balance the many business challenges that are occurring due to the global pandemic of the COVID-19 virus. Employers are doing their best to take the necessary actions to protect their employees, but with local laws and government regulations constantly changing, it is difficult to keep up with the most important issues.

In this white paper, the ELA members from the Latin America region have provided answers to the most important questions that companies need to address during the pandemic. This is a guide for employers, listing the appropriate actions they must take in order to meet the needs of their employees, while also making important choices necessary to keep business moving forward.

We hope that this paper helps you address key issues in your jurisdiction. As the situation is constantly evolving, readers should take note that this publication is accurate as of 13 May 2020. Readers should also keep abreast of developments in the countries of concern to them.

If you have additional questions or need further information, please feel free to reach out to the contributors individually.

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# CONTENTS

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[Argentina](#)

[Bolivia](#)

[Brazil](#)

[Chile](#)

[Colombia](#)

[Costa Rica](#)

[Ecuador](#)

[El Salvador](#)

[Guatemala](#)

[Honduras](#)

[Mexico](#)

[Nicaragua](#)

[Panama](#)

[Paraguay](#)

[Peru](#)

[Uruguay](#)

[Venezuela](#)

# ARGENTINA

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**Q: What is the government doing to assist companies under mandatory quarantine?**

**A:** On April 1, 2020, the Government created the **Emergency Labor and Production Assistance Program** (the “Program”) by means of Decree 332/2020, further modified by Decree 376/2020 on April 20, 2020.

The Program grants some benefits to companies affected by the COVID-19 expansion and specifically by the isolation measure established by the Executive Branch. Upon said Decree 376/2020, current benefits are:

- **Social Security:** Postponement or reduction of up to 95% of the payment of employer contributions to the Argentine Integrated Social Security System;
- **Compensatory Salary:** This benefit replaces the “Compensatory Allowance” and the “REPRO” of Decree 332/20, and consists of an allowance that will be paid by the Argentine Administration of Social Security (“ANSES”) to all employees in a labor relationship of the private sector (included or not in the collective bargaining regime of Law 14,250). This *Compensatory Salary* will be equivalent to 50% of the employee’s net salary, corresponding to the month of February 2020, and may not be less than a minimum wage or exceed two minimum wages, or the total of the net salary of the employee. The *Compensatory Salary* will be considered on account of the payment of the remuneration or the cash payment in case of suspension of the employment (Section 223 bis of the Labor Contract Law).

In order to have access to the Program, the employer must be under, at least, one of the following circumstances: (i) economic activities critically affected by the geographical area; (ii) significant number of employees infected with COVID-19 or who must remain in mandatory isolation or with work exemption (e.g. risk group, or in the care of minors); and/or (iii) significant reduction of its billing after March 12, 2020. Further requirements might apply depending on the specific benefit.

Furthermore, the Company must register in the tax authority (“*AFIP*”) web site. Preliminary, such registration was valid until April 23, 2020. However, on May 14, 2020 by means of General Resolution No. 4716, AFIP reopened the term in order to proceed with such registration, until May 21, 2020. This reopening is only valid in order to request the benefits of the Program as respect of salaries and/or contributions of May 2020, but has not been reopened in order to request them for past periods (March or April 2020). Please, note that this registration is mandatory, but does not guarantee the granting of the benefits. The authority might request further documentation or information and even reject the request by the employer.

# ARGENTINA

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On a separate but related matter, although the government established a 60 days term prohibition for employers (until May 31, 2020, unless further extended) to proceed with suspensions and dismissals based on lack or reduction of work or force majeure, as well as dismissals without cause (Decree 329/2020), please note that paid suspensions agreed with employees and/or relevant union (Section 223 bis of the Labor Contract Law) are not forbidden.

Therefore, many companies and/or group of companies have been entering in suspension agreements with employees and unions. Please, note that payments under suspension: (i) according to market practice, are being agreed between 50 to 75% of the employee's salary; and (ii) have non-remunerative nature, therefore, no social security withholdings and contributions must be paid, except for employer's contributions to mandatory health plan. This type of agreements must be approved by the Labor Ministry.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** As a preliminary comment, in Argentina, employees and employers shall pay mandatory withholdings and contributions to a Mandatory Health Plan ("Plan"). Upon such payments, employees are covered by the said Plan, and shall receive the corresponding medical benefits

On the other hand, according to the Labor Risk Law, No. 24,557<sup>1</sup>, employers must provide employees with a mandatory Labor Risk Insurer ("ART", for its acronyms in Spanish). Such ART must grant employees medical and cash benefits upon the existence of a labor accident or work-related illness.

In the particular case of COVID-19, please note that upon recent Decree 367/2020, such disease is considered -on a first and preliminary instance- as a work related illness, for those employees that are required to render services in the company's establishment/offices. In this regard, please note that the Government stated a mandatory isolation measure until May 10, 2020 (unless further extended)<sup>2</sup> establishing some exception to such confinement, for activities considered as "essential".

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<sup>1</sup> This law has been modified and amended by further legislation (principally, Law No. 26,773).

<sup>2</sup> Decree No. 297/2020, and extensions by Decrees 325/2020, 355/2020 and 408/2020.

# ARGENTINA

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Considering the above-mentioned, the terms of the said Decree 367/2020 are only applicable (at least, during isolation term) for employer's performing essential activities, thus, whose offices or establishments are operative. In the event of an employee infected by COVID-19, the employer shall inform the ART, and the latter must consider it as a work related illness, and provide medical and cash benefits to the employee.

Considering the above-mentioned:

a. *Employees that are not rendering services, or those working on a home-office basis:* covered by the Plan.

b. *Employees rendering services on-site:* The COVID-19 is considered -on a preliminary basis- as a work related illness, therefore, the employer is obliged to inform to the ART when an employee has been diagnosed with such illness, or also in our opinion, when an employee has symptoms of the disease. Then, such ART must provide the corresponding and mandatory medical and cash benefits upon Law 24,557.

**Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?**

**A:** As mentioned above, considering the current isolation measure, only companies performing essential activities could be opened and operative. Therefore, all existing regulations regarding prevention of COVID-19 spread in the workplace is applicable to such companies.

However, we understand that in case of lifting of the confinement order, employer's should follow current regulations applicable to employer's with essential activities, plus any other further legislation that might be issued.

As of the date of this present report, Resolution 202/2020 of the Labor Ministry, states that employers must take all the necessary measures in order to satisfy the working conditions and environment in accordance with the protocols established by the health authority for the health emergency - COVID-19.

Furthermore, the document "*Pandemic emergency COVID-19. Special recommendations for job exceptions to the social isolation*" ("Employer Measures Document") approved by Disposition No. 5/2020 of the Superintendence of Work Risks, set forth the following recommendations:

- To maintaining distance of 1 meter between employees.

# ARGENTINA

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- To minimize the number of people using common spaces, particularly dining rooms and toilets, simultaneously.
- Whenever possible, the worker should be isolated in order to avoid coming into contact with infected people or with suspicion that they may be. In case of being necessary will be placed partitions, screens or curtains adequate to separate workers from each other and general public.
- The work must be carried out reducing the provision to minimum possible, without increasing the risk situation of the worker.

Furthermore, as to personal protective equipment (“PPE”), the Employers Measures Document establishes that they should be selected according to the activity and task to be carried out by the employee, and states that:

- The PPE are individual, so they should not be shared.
- The elements of protection against the coronavirus should preferably be disposable and should not interfere with the PPE required to develop tasks safely.
- The PPE and work clothes must be resistant to the infiltration of microorganisms, breakage and premature wear.
- The hygiene and disinfection of the disposable gloves must be carried out on a frequent basis to avoid transmission of the virus, especially when there is interaction with clients or exchange of objects (handling of cash, credit cards, delivery of merchandise, etc.).
- In addition to the provision of clothing and PPE, the employee must be specifically trained in its use, status, conservation, removal and disposal.
- The provision of clothes, EPP and kit of hygiene and disinfection according to labor demand, must be guaranteed.
- Depending on the distance between employees, facemasks must be provided.
- Other protection measures (i.e. glasses, if possible) shall be adopted.

Considering that Disposition No. 5 of the Superintendence of Work Risks contains several exhibits with recommendations and obligations, we have previously summarized its main characteristics. However, it is advisable for employers to enter into a more detailed analysis on a case by case basis.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

# ARGENTINA

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**A:** On a preliminary basis, as mentioned, the Labor Risk Insurer must provide all necessary medical and cash benefits to employees infected by COVID-19.

On the other hand, we would like to point out that current legislation establishes that, although COVID-19 is presumed to be work related illness, the Labor Risk Insurer is able to challenge such presumption through a specific proceeding before the medical committees of the Superintendence of Work Risks.

Notwithstanding the above-mentioned, Section 75 of the Labor Contract Law states that employers must guarantee hygiene and safety in favor of their employees. Therefore, even-when the ART shall assume all payments, benefits and conflicts upon infection of an employee with COVID-19, a prospective claim against the employer by the employee cannot be disregarded, in case such employer did not comply with mandatory safety obligations.

Furthermore, it is advisable for employers to adopt several and effective measures in order to avoid employees to get infected by COVID-19, not only in order to prevent a prospective claim by an employee, but also to avoid a considerable increase in the aliquot paid to the ART.

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The Government of Bolivia basically approved the following package of measures: (i) Soft loans in order for companies to be able to pay wages; (ii) Soft loans for middle size and small companies, to help them cover expenses and operating costs; (iii) Temporary suspension or extension of the term to pay mandatory contributions to the short-term and long-term social security system; and (iv) Tax measures, that include the extension of the term to pay the annual corporate tax.

From the perspective of employment law, the issuance of remote work or home office specific regulations could also be considered as a relevant measure that will help companies preserve employment under a clear legal framework.

In addition to the aforementioned, the Executive Branch of the Bolivian Government has recently submitted to the Congress a draft bill contemplating several tax reliefs, including a transitory program of remission of tax debt, a clear and beneficial set of laws related to the statute of limitations, extension of the term to offset losses with the corporate tax from two to three years, general customs measures and benefits, reduction of the tax percentages for branches and subsidiaries of foreign companies operating in Bolivia, reduction and elimination of taxes applicable to companies operating in the IT field, among others of a similar nature.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** In the event that an employee becomes infected, the benefits contemplated under the social security system will be activated in favor of both, the employer and the employee. The employee will have access mainly to all health services provided by public entities, without any type of limitation and receiving his full salary. From the employer's perspective, as a result of a potential mandatory leave/quarantine due to infection, the employer may compensate part of the wage payable to the infected employee with future contributions payable to the social security system.

Within the context of private insurances, most companies have made public announcements that coverage will be available for health treatments and other costs related to COVID-19; however, in some cases, the coverage limits applicable appear to be below the minimum that might be necessary for events of this nature.

# BOLIVIA

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***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** In accordance with local legal provisions, certain sectors, such as those related to food supply, medicine, mining industry, delivery companies, construction and other industries may work during quarantine, complying with some general health and safety measures.

The main requirement that should be met is the preparation of a Biosecurity Protocol/Manual, which must be then submitted to the Ministry of Labor.

Additionally, companies going back to work must provide transportation to its employees, given that public transportation is unavailable.

In addition, from May 10, 2020, Bolivia entered into a new phase called “dynamic quarantine”, which will allow a progressive return to work. The general safety and health measures that will be applicable depend on the level of risk identified by each Town hall or municipality. In general, the Biosecurity Protocol/Manual will be required, and the daily working hours will be reduced, in cases of municipalities with moderate risk, from eight to six.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** In the event that an employee gets infected in the workplace, he will be entitled basically to the provision of health services in kind, in accordance with the legal regime of the social security system. Furthermore, an infected employee will also be entitled to the payment of his full wage.

In the event that an employee was not be affiliated with the mandatory social security system, the employer would be violating the law. In this scenario, the employer could be obliged to pay for health services. Notwithstanding, as a result of the national emergency declaration, the Bolivian Government assumed all costs of health treatments related to COVID-19.

Other types of claims, concerning civil liability, such as compensation for damages or other similar ones, may be possible under the Bolivian legal framework that governs civil liability; however, in practice and in our experience, these types of claims are unusual in Bolivia.

# BOLIVIA

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# BRAZIL

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** Brazil is not actually under mandatory quarantine, but almost every State has declared its own calamity state and decreed restriction measures. Federal Government has issued several provisional measures and federal decrees to assist companies under this restriction period. We point out below some of them that have direct impact on companies:

- (i) The government reduced and postponed the payment of several taxes and contributions paid by companies, including those calculated over the payroll, such as Contribution to the Social Integration Program (PIS), Contribution to Social Security Financing (CONFINS), Social security contributions etc., and also zeroed the import tax over several production inputs products and reduced to 50% the companies' contributions to the federal education "S" System;
- (ii) Provisional Measures No. 927 created actions to guarantee the maintenance of jobs, such as relaxation of the rules for the adoption of telework; possibility of anticipating individual vacations even if the employee has not completed the vesting period; concession of collective vacations with limits higher than those provided by law; use and anticipation of public holidays; relaxation of rules for the use of the overtime hours' bank; and the postponement of the collection of the Unemployment Fund (FGTS) contribution by the companies;
- (iii) Provisional Measure No. 936 established rules for workers having their work schedules and wages reduced for up to three months or having their employment agreements suspended for up to two months, regarded that some legal requirements are observed; in these cases, a governmental benefit may be paid to complement part of workers' wages.
- (iv) Provisional Measure No. 944 created a low-interest financing line for small and medium-sized companies to cover the payroll of these companies and guarantee jobs.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** Employees who go on leave due to sickness receive their salaries paid by the employer during the first fifteen (15) days of leave and receive sick pay from the Social Security after the 16th day, based on their contribution salaries. The benefit ranges from the equivalent to 90% of 1,045 BRL up

# BRAZIL

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to 90% of 6,101 BRL. The first 15 days paid by the company may be later deducted from the company's contributions to social security. Apart from that, nothing specific on COVID-19 was created by the Social Security.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** There are no mandatory provisions in this sense yet, but only general recommended guidelines from the Labor authorities. Among the main preventive measures recommended, there are hygiene practices, restaurant related cautions, orientations to the Health and Safety Committees, worker's transportation cautions, use of mask, distance among workplaces, practices to be observed regarding workers who belong to exposure risk group, among others.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** If the employee goes under Social Security care, the employee may try to characterize the disease into an occupational disease in order to benefit from the statutory job tenure of 12 months after the return of the employee to work with the medical discharge by the Social Security. Further, if the employee is part of one of the so called risk groups, the employee may claim that the company is exposing the employee to excessive risk requiring the employee to work and file a claim for damages against the company.

In Sao Paulo State, for instance, Decree No. 64,864/2020 sets forth that elderly people over 60 years old, pregnant women, people with chronic respiratory diseases, heart disease, diabetes, hypertension and other immune system disorders are part of the risk groups and should be relieved from work if it is not possible to protect them from the exposure to the coronavirus. Sao Paulo State regional labor courts (although they are federal courts) have been using this criteria to determine who is part of such risk group and workers' unions have been filing injunctions to require companies to relieve employees in the risk group from work with pay.

# BRAZIL

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DEMAREST

***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The government has implemented two emergency economic plans in order to protect companies and employment. As part of said plans, the following measures have been adopted:

1. A new law regarding protection of employment and labor income has entered into force as of April 6th, 2020 (Law No. 21,227). The key features of this law are basically to allow employees who are prevented from working by an act of authority or by mutual agreement with an employer whose operation has been affected by the pandemic, to suspend their employment contracts and claim benefits under the Unemployment Insurance.

Indeed where a company has been affected by COVID-19, those employees who, by order of the health authority or by the mutual agreement of the parties, has to stay home without the possibility of working remotely, will have his/her employment contract suspended without payment of remunerations. The employer will be required to pay only the social security contributions and the employee will be able to receive an income from the unemployment insurance.

Additionally, Law No. 21,227 also allows the possibility, under certain hypothesis, for an agreement between employer and employee for a temporary reduction in the workday. Under this alternative, the employer may agree with their employees, individually or collectively, to reduce to up to a 50% the duration of their working day and a pro rata reduction in their salary. The employees will receive from the unemployment insurance a supplement to mitigate the salary reduction. In this case, the employer must continue paying the remuneration and the social security contributions, in proportion to the working day.

Please note that a new bill is in the last stages of approvals and will modify certain items of this law.

2. A new law that strengthens the Small Business Loan Guarantee Fund has entered into force as of April 27<sup>th</sup>, 2020 (Law No. 21,229).

This law eases the requirements to access loans guaranteed by the State, for companies that do not exceed annual sales of UF1,000,000 (USD34,470,000 approx.).

3. A set of tax measures to assist both small and mid-size enterprises (SMEs) and large companies, including:
  - a) Exemption of the obligation to make Monthly Provisional (tax) Payments for the months of April, May and June.
  - b) Deferral of the deadline to pay Value Added Tax (VAT) for the months of April, May and June.
  - c) Deferral of the deadline for the first payment of Real Estate Taxes or “*real estate contributions*”.
  - d) Anticipated tax refunds requested in the 2020 annual income tax return.
  - e) Deferral of the deadline for the payment of the 2020 annual income tax, until July 31<sup>st</sup>.
  - f) Stamp and Seal Tax reduction to 0% for a period of 6 months.
  - g) Total or partial forgiveness of fines and penalty interests for late payment taxes or late tax declaration filings, and facilities to reach payment agreements with Revenue Chile.
  - h) Amounts expended, voluntarily or obligatorily, by the taxpayers and which are intended to prevent, contain or reduce the spread of COVID-19 shall be accepted as deductible expenses for companies.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** If an employee gets infected with COVID-19, a medical license will be issued by a health professional, and the employee will receive his income from the social security system, up to the statutory cap for such social security subsidy (about US\$2,700).

If it is determined that the employee got infected at the workplace, it will be the social insurance for work related accidents and professional diseases administrator who shall grant the corresponding medical coverage and financial benefits. On the contrary, such coverage and benefits shall be granted by the social security health system to which the affected worker is affiliated, that is, the National Health Fund (FONASA) or the respective private Health Insurance Company (ISAPRE).

To calculate this benefit, the permanent remunerations of the 3 months prior to the start of the medical leave are considered, with a limit of UF 80,2 (USD 2,700 approx.). The benefit is paid from



the fourth day of medical leave, if it is less than or equal to ten days, and from the first day if the medical license period is larger than 10 days, which should be the case for the COVID-10 illness.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** The employer must adopt the measures determined by the health authority in connection with the emergency, as well as those which may be necessary to effectively fulfill its duty to protect the life, safety and health of the employees. The following measures should be considered (without limitation):

1. Promote and provide access to employees for correct handwashing with water, soap, and alcohol gel.
2. Provide alcohol gel permanently for those employees who do not have constant access to water and soap for hand washing.
3. Strengthen the regular cleaning of bathrooms, food consumption places, desks, door handles, pencils and other work instruments. This must be done under the instructions for the environment cleaning and disinfection of public spaces and working places contained in the “Environments Cleaning and Disinfection Protocol – COVID-19” issued by the Ministry of Public Health.
4. Disinfecting the vehicles destined for employee’s transportation each time employees use them.
5. Guide employees to, when coughing or sneezing, cover their mouth and nose with a disposable tissue or forearm.
6. Provide that, in common spaces, such as dining rooms, transport, offices, or desks, a distance of at least one meter is maintained between workers and disinfect these places after their use.
7. Effectively and timely provide employees with updated information issued from the health or other competent authority related to prevention and containment of the virus.
8. Promote non-presential meetings by means of electronic devices. In case the presential meeting cannot be replaced by electronic means: (i) reduce the number of people in the meeting; (ii) organize the meeting so attendants can maintain a distance of at least one meter between each other; (iii) count with hand washing means or if not possible, alcohol gel; (iv) keep a record of the attendants names, national identity card numbers and telephone numbers for at least one month; (v) clean the place where the meeting took place immediately after its use; and (vi) avoid to offer food or drinks during the meeting.

# CHILE

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9. Effectively control the adoption of the measures within the company, in order to achieve their real application among the employees.
10. Grant the permits that are reasonably necessary so that employees can attend the corresponding preventive exams, without this affecting or impairing them.
11. Facilitate employees to render services remotely by teleworking systems, considering their position's duties and to promote activities by videoconferences, telephone calls or e-mails.
12. Adopt different entry and exit working schedules to avoid employees' agglomeration and use of public transportation.

Also, the "Recommendations for action in the workplace" issued by the Undersecretary of Public Health indicates other specific measures for certain working areas of greater risks.

Additionally, Exempt Resolution No. 282 by the Ministry of Health (enacted on April 17th), establishes the obligation of using masks in the following cases:

- i) All individuals using: (a) public or private transportation subject to a payment; and (b) elevators or cable cars, either public or private; regardless of the number of other individuals in such places;
- ii) All individuals operating the mentioned transportation services and anyone working at them;
- iii) In certain places enlisted on the resolution, provided there are 10 or more individuals, such as closed spaces in: education establishments; airports, supermarkets, shopping centers, hotels, pharmacies, workplaces, among others.

In view of the above, if an employee must use a mask in order to arrive to and from the workplace and/or in the workplace, then the employer would have to provide masks to its employees, since it would be a cost they should necessary bear in order to render services at the company's premises.

Additionally, article 184 of the Labor Code provides that an employer is obliged to take all necessary measures in order to effectively protect the life and health of its employees, informing them about possible risks which derive from rendering services and maintaining the adequate hygiene and safety conditions in the worksite and/or workplace. Said article also imposes the obligation to maintain necessary implements in order to avoid work-related accidents and professional diseases. Such provision could well be used in order to argue that -in view of the current outbreak of COVID-19 in Chile- the employer should be the one providing masks for its employees (even if the employees are not in a situation covered by the Resolution).

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Regarding to employees' return to the company's premises, Chilean authorities have called on employers to structure a progressive return plan, starting by those employees who are strictly needed on the work places and postponing the return of employees considered to be part of a risk group of COVID-19.

Finally, employers should also follow any other specific recommendations issued by the worker's compensation insurance administrator, its health and safety department and its health and safety committees. Failing to do so may have consequences in terms of liability.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

***A:*** If an employee got infected at the workplace, it will be the social insurance for work related accidents and professional diseases administrator who shall grant the corresponding medical and financial benefits.

Work related accidents and illness usually triggers litigation claims against the employers normally in labor courts but also, in certain cases, in criminal courts (usually if a death occurs). Although an employer liability under all such claims must be based on negligence, the courts tend to have a very strict approach in assessing such negligence, falling in practice just short of strict liability.

Probably the bigger difficulty for an employee to succeed in such a claim would be to prove causation as in most cases it will be difficult to evidence the actual source of contagion. A ruling from the work accidents and professional diseases insurance administrator acknowledging coverage can be a key starting point towards evidencing causation and, on the contrary, a statement or recognition of coverage by common illness health insurance system should work in the opposite direction.

In addition, claims for violations of employee's fundamental rights (i.e. protection of employee's life and health) and claims for constructive discharge (based on serious breach of employer's obligations to protecting employees' life and health) could also be triggered depending on the circumstances. Under the first claim the employee may get a cease and desist order plus administrative fines. In the second case, payment of severance increased by 50%. Depending on

# CHILE

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the circumstances, it could be possible to combine both claims and seek an additional punitive severance from 6 to 11 monthly remunerations.

Finally, and depending on the circumstances, an employer could be subject to a sanitary investigation procedure that may result in fines, and also in a shutdown order for the facilities or operations. Probably this would be more likely if either there is more than one employee infected and/or the safety measures or work conditions are found to be substandard or non-compliant with the recommendations of the authority, workers compensation insurance administrator, the employer risk prevention department or its health's and safety committees.

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# COLOMBIA

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A: [PHR]** Through the National Guarantee Fund (FNG) the national government created 3 special lines of credit to support and mitigate the effects of the coronavirus (COVID-19) in the micro, small and medium-sized enterprises.

The three new lines of credit, which have resources of COP \$16 billion, will benefit micro, small and medium-sized companies, and independent workers. Taking into account that many companies do not have the capacity to access credit due to the level of risk that it implies for the financial system, the Government will give a guarantee through the National Guarantee Fund of up to 90% of the value of the credit. This means that, if an entrepreneur is not able to pay the credit that he contracted these days to cover his operational needs, the National Guarantee Fund will respond for up to 90% of the value of the credit.

On May 6, 2020, the National Government extended the state of economic emergency and announced 2 new measures for protecting jobs:

1. The Government will subsidize the equivalent of 40% of a current monthly minimum wage (COP \$351.121 – USD \$87.78) for each employee, regardless of the amount of their salary, for those companies whose turnover has been reduced by 20%. This means, that if a company of 100 employees suffered a reduction of a 20% in its turnover, the National Government will provide a subsidy of COP \$351.121 – USD \$87.78 per each one of the 100 employees.
2. To alleviate the cash flow of the companies, the payment of the income tax for 2019 was postponed until the end of 2020.

During April and May 2020, the National Government reduced the contribution rate to the pension system from 16% to 3%. From this 3% the employer will pay 2.25% and the employee the remaining 0.75%.

Additionally, to increase the cash flow, employees will not have to make the contribution to the pension solidarity fund. This contribution ranges between 1% and 2% of the employee's monthly salary for employees that earn four (4) or more minimum wages.

# COLOMBIA

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**Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?**

**A: [PHR]** Through Article 13 of Decree 538 of 2020, the National Government established that COVID-19 infection is a work-related disease, for health personnel, including administrative, cleaning, and surveillance personnel, which is why care and the recognition of economic benefits (sick leave) will be covered by the Labor Risk Administrator.

In the event that a health sector employee suffers an accident during the care of a COVID-19 patient, this accident must be reported by the employer to the Labor Risk Administrator as a work-related accident so that the health authorities take the necessary protective measures. Notwithstanding the foregoing, if the employee that had the accident is declared positive COVID-19, the contagion will be considered a labor related disease and not a work-related accident.

For other employees that are not part of the health personnel, COVID-19 is considered a non-work-related disease, which is why care and the recognition of economic benefits (sick leave) will be covered by the Health Entity (EPS).

Therefore, during COVID-19 crisis social security system offers the same coverage that had been provided before the pandemic, with the difference that for health personnel, the COVID-19 infection is considered a labor related disease. In this sense, the coverage given by the health entities is:

1. Sick leave economic allowance: During the sick leave, the social security system will pay an economic allowance as follows:
  - a. Non-work-related disease: Will be paid by the Health Entity (EPS) and will be equivalent to 66,66% of the employee's salary for the first 90 days of sick leave, and 50% of the employee's salary between day 90 and 180 of sick leave.
  - b. Work-related disease: Will be paid by the Labor Risk Administrator and will be equivalent to 100% of the employee's salary.
  
2. Welfare benefits: Employees will receive all the necessary medical attention in case of COVID-19 infection, the cost will be entirely covered by social security entities. If the disease

# COLOMBIA

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is non-work-related, the assistance will be provided by the Health Entity (EPS), if the disease is work-related, the assistance will be covered by the Labor Risk Administrator.

3. Survivors pension: In case the employee dies, its spouse or permanent partner, children under the age of 25, or children of any age who suffer disabilities, will be beneficiaries of a survivor's pension.

Additionally, Decree 488 of 2020 established that Labor Risk Administrators (ARL) will carry out promotion and prevention actions, among them, the purchase of personal protection elements for employees directly exposed to COVID-19, however Circular 029 of 2020 issued the Labor Ministry was emphatic in pointing out that the collaboration that the ARL must provide does not exempt the employer from supplying the personal protection elements and carrying out occupational safety and health activities.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A: [PHR]** Through Resolution 666 of 2020, the Ministry of Health established biosafety protocols that must be implemented by employers. Among the measures to be taken are:

1. General measures:
  - 1.1. Hand washing: The employer must provide the supplies so that the workers can wash their hands.
  - 1.2. Social distancing: There must be at least two meters of distance between workers.
  - 1.3. Delivery of personal protection items such as face masks, gloves, and eye protection.
  - 1.4. Make a permanent cleaning and disinfection of the workplaces.
2. Take prevention and management measures for situations of risk of contagion.
  - 2.1. Make constant monitoring of the health status of workers.
  - 2.2. Continue opting for remote work.
  - 2.3. Establish different work shifts to avoid conglomeration of employees.
  - 2.4. Permanently train employees on the recommendations they must apply to avoid contagion.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

# COLOMBIA

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**A: [PHR]** In case the infection is because the employer was negligent in his duty of health and care the Labor Ministry may initiate administrative sanctioning procedures against employers for non-compliance with the duty to protect and care their workers, which may result in the imposition of fines of up to 500 current minimum monthly wages (COP \$ 438.901.500 – USD \$109.725) and in case the breach is repeated, the Ministry may order the suspension of activities for up to 120 days or the definitive closure of the company.

Additionally, the employee or third parties affected by the employee's medical condition may initiate legal claims under the terms of article 216 of Colombian Labor Code in which they seek full compensation for damages caused, considering that the employer did not act diligently, prudently and with determination in its obligation of security and care. These full damages claims can result in extremely costly court decisions.

In addition to the full compensation for damages previously stated, it should be take into account that in accordance with article 12 of Decree 1771 of 1994, the Labor Risk Administrator may also charge the employer responsible for the professional contingency, claiming for the value of economic and assistance benefits that have been covered by the Administrator. The foregoing, if it is proven that the employer did not act with diligence, prudence and determination in its obligation of security and care.

Likewise, negligence in the breach of the protective duties that employers must implement to safeguard the life and health of employees can have criminal consequences. Indeed, if the link between negligent breach of duty and the result classified as a crime (death or personal injury) can be demonstrated, employers (especially administrators in the event that the employer is a legal entity) may be exposed to the penalties for wrongful death or wrongful personal injury, ranging from 1 to 15 years in prison and a fine of 6 to 150 legal monthly minimum wages in force (approx. COP \$ 5,266,818 - COP \$ 131,670,450 / USD \$1.317 – USD \$32.918).



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# COSTA RICA

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** Costa Rica is not yet in mandatory quarantine; however, we are in voluntary quarantine.

Government issued an executive order to banks to restructure loan terms and conditions. As of March 29, 2020, almost all banks have allowed deferred payments for credit cards, mortgages, and other loans. Some agencies are offering working credits for small and medium enterprises to offer continuity of work. They are offering a moratorium on payment of loans to a certain extent as well as operating expenses.

Moreover, Social Security agreed on the possibility of employers reaching out to payment agreements in connection with social contributions. Also, minimum income base to pay social security taxes would be lowered by 75%.

Congress passed a law to reduce work shift and salary with the approval of Labor Ministry; also this entity has encouraged work from home, to send employee to enjoy vacation and to seek the approval of suspension of employment contract according to the Labor Code.

Furthermore, the Health Ministry, has issued general guidelines regarding health protocols related to social distancing, cleaning measures, coughing, sneezing, use of masks, gloves and others.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** From a Social Security perspective, if an employee gets infected and it is not related to employment, the individual will have all the medical coverage and will be sent to a mandatory medical leave, the employer will pay a subsidy of 50% of the salary for the first three days and as of the fourth day the entity will pay a subsidy of 60% of the salary.

If the employee gets infected due to employment, National Institute of Insurance will provide the medical coverage and will pay 60% of the salary as subsidy from day one of the medical leave.

# COSTA RICA

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**Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?**

**A:** As mentioned, we are not in mandatory quarantine, however, for those employees who are in voluntary quarantine and will return to work, Labor Ministry, along with the Economic Ministry have issued a *Guide to Prevent, Mitigate and Business Continuity Based on COVID-19*, regarding the measures that employers must adopt, following must be considered:

- Provide water soap, paper towels and supply with these products when needed.
- Sending messages, brochures and any information related to health practices, based on the Ministry of Health and Social Security criteria.
- Having internal protocols in the event of pandemic.
- To issue general mandatory guidelines to the employees regarding the prevention of COVID-19 and protocols related to positive cases.
- Provide technological tools in order to assure remote employment.

**Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?**

**A:** The main claim would be related to work related disease in case the employer has not informed the National Institute of Insurance regarding the case, the employee would be able claim for the coverage and for damages, legal fees, interest and indexation.

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# ECUADOR

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** As for now, the Government has ordered the extension of the term for the payment of the Corporate Income Tax for the fiscal year 2019 and the Value Added Tax (VAT) to be paid in April, May and June 2020 for some type of companies. Also, the Social Security Institute has allowed the deferral of the payment of contributions to social security. It shall be reminded that in Ecuador, this value is paid by the employer and the employee.

Currently, the local National Assembly is discussing the approval of a Law that has a package of tax and labor measures, including the creation of a special account that may be used to give public funds to companies in sectors most affected by the health emergency, provided that these enterprises do not dismiss their workers. Also, the project will make the payment of contributions to social security more flexible.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** If the employee is affiliated to the social security and gets infected with COVID-19, he/she is entitled to receive all the medical assistance needed from the social security Health Insurance system. If the worker needs rest, the General Work Risk Insurance will recognize up to 1 year of paid rest. After that, if the medical situation requires a longer period of rest, the worker may be entitled to an additional year of pension due to temporal disability.

If the employee has not met at least six months of contributions to the social security prior to the infection, he/she will not be entitled to the above mentioned benefits and, in that case, the employer is obliged to pay the 50% of the monthly salary for up to two months.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** The Government has implemented a “traffic light” system starting May 4<sup>th</sup>, 2020. The different cities and locations in the country may be on red, yellow, or green light. Depending on the color, the industries and working hours may vary.

# ECUADOR

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Specific instructions regarding a complete return to work have not been released yet by the Government. General guidelines have been published: every workplace shall have an internal plan to preserve health and sanitary standards. The shifts must be organized preventing the agglomeration and massive usage of public transportation. Telework must be preferred in all activities in which it is suitable. The Emergency Operations Committee will establish which industries are authorized to operate, depending on local necessities.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

***A:*** If the employee is dully affiliated to the social security, the risks of claims are minimum, since that institution is legal obliged to provide health assistance and economic benefits in the event that the employee is not enabled to work.

If the worker is not affiliated to the social security or if the employer is not up to date with the correspondent payments, the company could be held responsible to indemnify the worker and directly recognize the economic and health benefits that he/she will be entitled under the social security regime.

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# EL SALVADOR

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**Q: What is the government doing to assist companies under mandatory quarantine?**

**A:** The Congress passed the "*Transitory Law to defer the payment of bills of potable water, electricity, and telecommunications services (telephone, cable, and internet)*". The purpose of this decree is to defer the payment of bills for potable water, electricity and telecommunications services during the months of March, April and May, 2020, which may be paid over a period of 24 months, in level installments from the expiration of the postponed period, in addition to the normal charge of the invoice of the respective month.

The beneficiaries will be all those who cannot pay for the services during the months indicated because of the measures taken to deal with COVID-19.

Also, the Legislative Assembly approved Legislative Decree 641, containing the "*Salvadoran Employment Protection Law*" which has the purpose of safeguarding the job stability of Salvadoran private sector employees, guaranteeing employees a decent income, without affecting the sustainability of business activity, without distinction of sectors or economic items. The decree is effective as of May 5<sup>th</sup>, 2020.

The support measures established in the "Salvadoran Employment Protection Law" are as follows:

- During the State of Emergency, employees, and employers, by mutual agreement, may establish individual vacations in advance, in a single period or in installments, and without prior 30-day notice established by the Labor Code. If mutual agreement is not possible, the employee may choose their programmable vacation in the last quarter of the year.
- The subsidy program is created for employees of micro, small, and medium- enterprises registered as employers in the Salvadoran Social Security Institute, ISSS, who are affected by the COVID-19 crisis and its effects, which will be administered by the Development Bank Of El Salvador (BANDESAL) and will apply to employers who: a) Had in the registry of the Salvadoran Social Security Institute, ISSS with less than one hundred employees reported in the last return filed between December 2019 to February 2020, as applicable; and; b) had annual gross sales income in the year 2019, declared as of March thirty-one in 2020, or 2018 for an amount equal to or less than Seven Million Dollars. The Employee Subsidy Program will be equivalent to fifty percent of the employer's monthly payroll for a maximum period of two months and for up to a monthly allowance per company of twenty-two thousand five

# EL SALVADOR

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hundred dollars, for a total of the company of forty-five thousand dollars. The benefit of the subsidy will be up to five hundred dollars per employee. The payment of the subsidy to employees will be made in full and will not be subject to withholding of taxes of any kind, or discounts for social security.

- The special line of credit for working capital Program is created for Salvadoran companies or entrepreneurs registered as employers in the Salvadoran Social Security Institute affected by the COVID-19 crisis. The credit will be granted at a maximum interest rate of three percent per year, for a maximum term of ten years and with a 12-month grace period, which will be administered by BANDESAL.
- The Productive Financing Program is created for entrepreneurs in the informal sector, who have at least one credit in force in the national financial system and / or cooperative financial system or credit history registered as of December 2019, who have credit risk category A or B as of February 29, 2020, and that have been affected by COVID-19, mainly in working capital that allows their economic recovery. The credits will be granted at a maximum interest rate of three percent per year, for a maximum term of ten years and with a 12-month grace period, which will be administered by the Development Bank of El Salvador, BANDESAL.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** Currently, provision 2, section a) of the Social Security Law establishes that the risks to which employees are exposed due to illness, common accident will be covered. Also, the article 48 of the same law regulates benefits for illness and common accident, establishing that, in the event of illness, individuals covered by Social Security will have the right, within the limitations established by the respective Regulations, to receive medical and surgical services, , pharmacists, dentists, hospitals and laboratories, and prosthetic and orthopedic devices that are deemed necessary, also establishes that the insured will be entitled to financial assistance from the fourth day of disability.

The financial assistance will be extended until the individual, in the opinion of the Institute's doctors or those authorized by it, recovers the ability to work. The daily temporary financial assistance will be equivalent to 75% of the insured's salary. (Art. 24 and 27 of the regulations for the application of the social security system)

# EL SALVADOR

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**Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?**

**A:** Currently there are no specific safety guidelines for the return of employees after mandatory confinement, however, in general, Executive Decree 22 introduces isolation measures in which it is established that the industries and activities that are currently authorized to operate must implement all the necessary measures to protect their employees from a possible contagion of COVID-19, such as social distancing, mandatory use of a mask, placement of gel alcohol and constant hand washing, among others that employers consider appropriate.

**Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?**

**A:** Currently, the type of claims that may be triggered if an employee gets infected with COVID-19 in their workplace is not regulated in our legislation, however, the article 109 of the Health Code establishes that if the workplace is considered that constitutes a serious danger to the health of the employees, the ministry may cancel the corresponding authorizations and order the closure of the establishments. Also, article 314 of the Labor Code establishes that every employer must adopt and put into practice adequate safety and hygiene measures in the workplace, to protect the life, health, and bodily integrity of employees; failure to do so, by designing and implementing a Work Related Risks Prevention Program, in accordance with the General Law for the Prevention of Risks in Workplaces, may be punishable with a fine of up to US\$ 5,475.06.



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# GUATEMALA

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** Guatemalan government approved by decree, credit support programs for companies who suspend labor contracts by force majeure before the Ministry of Labor, which allows the employees to access an employment protection fund by giving a subsidy. Also given the possibility of deferring the employer's contributions (Social Security) for the months of March, April and May 2020.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** Medical care and a subsidy while the employee is ill because it is a cause that does not allow to perform his job, according to the social security regulations.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** Must comply with the health prevention plan prepared by the Ministry of Health, in addition to complying with the Occupational Safety Regulations and all related regulations, such as:

1. Provide masks and antibacterial gel to all the employees.
2. Social distancing of 1.5 meters.
3. Ensure health services for all employees, in accordance with the Occupational Health and Safety Regulations.
4. Provide information to your employees related to the prevention of COVID-19 infection.
5. Provide health services, in accordance with the Occupational Health and Safety Regulations
6. Have a person in charge of medical services.
7. Have the list of employees, with addresses and telephone numbers, where appropriate, to ensure traceability in the event of any employee presenting symptoms related to COVID-19. It is advisable to take employees temperatures.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***



# GUATEMALA

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**A:** Temporary closure of the commercial establishment and a mandatory quarantine of partial or all employees

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# HONDURAS

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The Government of Honduras has taken the following measures to assist companies under this mandatory quarantine under the new Law to Assist the Productive Sector and the Workers to the effects caused by the Pandemic COVID-19:

- An extension for the filing and payment of the Income Tax, Solidarity Contribution and Net Assets Tax which were due on April 30th, the extension is until June 30th, 2020. This extension applies for small and medium taxpayers, individuals, and independent professionals.
- The payments of the Income Tax for the 2020 period will be calculated on 75% of the total amount. These payments will be done on August 31, October 31, and December 31, 2020.
- An extension for the filing of the Annual Informative Affidavit on Transfer Pricing of period 2019, until July 31, 2020.
- To the taxpayers that maintain their employees from the national sanitary emergency until December 2020 and that did not suspend their labor contracts, can receive a deduction of 10% of their gross income calculated on their monthly wages while the emergency lasts.
- An extension for the presentation and payment of Sales Tax of the months on emergency to all taxpayers who were not operating during this time, should be done on the following 10 business days following the end of the emergency.
- For a period of three months (March, April, and May), the companies do not have to pay contributions to the Private Contribution Regime (Régimen de Aportaciones Privadas RAP).

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** An employee infected by COVID-19 will get full coverage to treat the disease if they pay their contribution to the social security. During this period, most companies are suspending their labor contracts, however, the Law to Assist the Productive Sector and the Workers to the effects caused by the Pandemic COVID-19 provides that even though contracts are suspended, employees still have the right to medical aid and to assist the social security institute.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

# HONDURAS

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**A:** Employers must comply with the Safety and Hygiene Protocol for Workplaces in prevention of COVID-19, the General Manual of Biosecurity for Workplaces due to the Pandemic COVID-19 and the Executive Decree PCM-019-2020. Such protocols establish that employers must provide their employees with personal protection equipment (gloves, masks, gel), at least masks are mandatory (N95 are recommended), social distancing between at least 1.5-2 meters, temperature measurement before entering the premises and a brief questionnaire regarding symptoms.

**Q: *What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** An employee may trigger a claim alleging that this would be an occupational disease on the Ministry of Labor. To dismiss such claims the Company must prove that they followed each of the protocols stated on the previous answer and that they pay their social security to each worker in order for the social security to take responsibility for it as stated by the Labor Code.

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# MEXICO

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The Federal Government has been reluctant to provide assistance to big companies, therefore it has focused such assistance to small and medium companies, as well as to the employees. Some measures that have been announced regarding assistance to companies include i) loans by the Mexican Institute of Social Security and the Ministry of Economy, each for up to \$25,000 MXP and with terms and conditions of their own, as well as support programs to the commercial banks to channel loans to individuals and small and medium companies; deferral of social security contributions by the Mexican Social Security Institute and the National Institute for Workers' Housing Fund, in accordance with the terms and conditions provided by such authorities; and iii) flexibility on payment of credits and loans, as the National Banking and Securities Commission has amended banks' accounting regulation to allow commercial banks to provide extensions and suspension of principal and interest payments of loans to individuals and small and medium companies. Please note that such Government has not granted any relevant tax relief or incentive other than deferring up to June 30, 2020 the deadline for filing annual tax returns for individuals. Certain state governments (including Mexico City, Jalisco and Nuevo Leon, among others) have announced incentives on reduction, deferment or exemption of a number of local taxes (including payroll, lodging and alcohol taxes), in the understanding that specific rules and conditions vary per state. Please refer to the following link for further detailed information in this regard: <https://s-s.mx/en.v2017.s-s.mx/legal-updates/9407/legal-update-%e2%80%a2-update-on-coronavirus-tax-incentives-in-mexican-states>.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** If an employee gets infected of COVID-19 during or due to their work (including transport), the Mexican Institute of Social Security may deem such disease as work-related, in which case the employee would receive a subsidy equal to full payment of his/her salary during his recovery from such Institute, subject to the limits provided by the Social Security Law. Now, if the disease is not deemed work-related, such contagious disease is cause for suspension of the employment relationship as of the date in which the employer becomes aware of such contagious disease or the date in which the Mexican Institute of Social Security issues an incapacity as a general illness, up until the conclusion of such incapacity or once the employee recovers. During the incapacity, such

# MEXICO

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Institute would pay him/her a subsidy equal to 60% of his/her salary, subject to the limitations and requirements set forth by the Social Security Law.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** In Mexico there is no general mandatory confinement order. The Ministry of Health has issued certain resolutions on March and the latest on April 21st, in which it provided that all non-essential industries, as set forth in the Decree, shall suspend their operations up to May 30th, 2020, or May 18th, 2020, if the municipality in which the activities are located have very few or no confirmed cases of COVID-19. The Ministry is still pending to issue the guidelines to define which municipalities will be allowed to restart their economic activities in May 18th. Therefore, only such non-essential workers shall avoid attending the workplace and are invited to stay at their homes in order to avoid the spread. All other workers of essential industries shall continue to work, aside from employees over 60 years of age, pregnant or postpartum, or diagnosed with high blood pressure, diabetes mellitus, chronic heart or lung disease, immunosuppression (acquired or provoked), kidney or liver failure, who shall stay and home and shall not attend their employers' work center or any other establishment because of their work.

Now, regarding the sanitary and safety measures, please note that the sanitary regulation in Mexico, to this date, does not provide an obligation for the employers to deliver protective personal equipment to their employees in connection with COVID-19, however, it does provide certain sanitary measures that shall be complied with, including facilitating frequent hand-washing (water and soap or hand-sanitizer, and run some tests/questionnaires to the employees in order to verify if they have COVID-19 symptoms. Additionally, employees shall cover their mouth and nose while sneezing or coughing, shall avoid handshakes, hugs and kisses, maintain social distancing of at least 1.5 meters, and shall not exit their homes if they have symptoms compatible with COVID-19. It is also advisable to implement a policy to document all the safety measures that employees shall follow at the workplace.

Certainly it can be anticipated that, in accordance with Mexican Official Standard 017-STPS- 2008, employers shall carry out a risk assessment to identify the risks to which the employee is exposed and provide the necessary equipment to carry out their job, in the understanding that there are specific equipment that shall be provided depending on the risk assessment. Please note that these

# MEXICO

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obligations do not derive from the coronavirus outbreak, rather, they shall be observed on regular basis by the employers.

Also, additional obligations/measures in connection with COVID-19 are expected to be issued by the Ministry of Health regarding the gradual restart of operations. In the meantime, the Mexican Institute of Social Security has issued certain guidelines and recommendations for the employers to guarantee a safe return to the activities and prevent contagion, including engineering, administrative, personal protection, training and health promotion measures, as well as social distancing, maintaining home office, if possible. To that end, IMSS recommends to implement a three step restart of activities, i) elaborate a work plan, including a situational diagnosis, apply engineering, administrative and personal protection measures, as well as massive training to the employees, ii) gradual and phased return to work, allowing home office for those employees who can perform their work in such modality, specialized training and promote health control, and iii) total return to work, in which all employees shall continue their normal activities, continuing specialized training and applying control and surveillance measures. Such Institute also issued a questionnaire which could be used by employers to analyze if they comply with such guidelines and recommendations.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** In accordance with the General Health Law, it is mandatory for a Company's managers, authorities and health professionals to immediately notify the health authorities (in practice it is the Epidemiological and Health Intelligence Unit) if they have knowledge that any employee has been infected with COVID-19, as well as the Mexican Institute of Social Security if the employer considers that such infection is work-related. It is important to review the Company's privacy notice in order to determine if such disclosure of personal data is covered by such document, otherwise it may be advisable to modify it. Therefore, health, social security and data privacy claims may be triggered by the Employee. Now, if the employment relationship is terminated by the employer without justified cause (i.e. in order to reduce personnel or due to the employee getting COVID-19), certain actions such as labor or discrimination claims may be filed by the employee. Certainly, it will depend on the specifics of the case at issue the risk of such actions.

Finally, please note that health authorities have been publicly stating that if an employee gets infected of COVID-19 at the workplace, while rendering their services for a non-essential business,

# MEXICO

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the Ministry of Health may inform the Public Prosecutors Office for them to investigate if a crime against health has been committed by the employer.

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# NICARAGUA

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** There is no a mandatory quarantine in Nicaragua, companies and individuals continue doing business and working, they are implementing certain protection measures such as home office, where possible, and the use of face masks, gloves and other self-protection means for personnel.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** There is not a specific COVID-19 coverage offered by the social security system in Nicaragua, so the general framework is applied allowing an employee to obtain a paid sick leave from the Social Security Institute.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** In absence of a mandatory confinement order, employers have implemented measures they believe appropriate to continue doing business under the current circumstances. Where available and possible, companies have chosen the home office alternative for their employees, and when a work or task cannot be completed from home, the employee must follow some safety measures including the use of face masks, gloves and others, staying a limited number of hours at the office. It is envisioned that these measures will continue to be applied while the COVID-19 situation is ongoing.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** Since the COVID-19 is not recognized as a labor-related disease, nor as a professional-risk disease, then no claims would be triggered if an employee gets infected with COVID-19 at the workplace. An employee with COVID-19 would be treated according to the general social security framework, that is, to obtain a sick leave while sick, disregarding the place where the employee got infected.



# NICARAGUA

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# PANAMA

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** To support companies, the Panamanian Government has issued temporary decrees that allow for the reduction of salaries and working hours, as well as the suspension of work contracts, without payment of salary.

It has also extended the deadlines for payment of Social Security contributions and all taxes, without interest or surcharges.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** In Panama, Social Security offers full health care coverage to employees for illnesses of all kinds, including COVID-19.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** Employers are required to form a special Health Committee to prevent the spread of COVID-19. This Committee must be made up of representatives of the company's management as well as employees. Among its functions is to approve and implement a Protocol for COVID-19 at work.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** The employer could face a lawsuit for damages if the employee can prove that the employer did not follow the mandatory measures to prevent the spread of COVID-19 at work.

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# PANAMA

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# PARAGUAY

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**Q: What is the government doing to assist companies under mandatory quarantine?**

**A:**

**A) The government offers through the National Development Bank (NDB), a public bank, the following loans:**

**1. A short-term line of credit for operating capital, for uses until June 30, 2020, for MSMEs and large companies. The credit conditions, updated according to a statement dated March 24, 2020, are the following:**

- The credit limit according to the client's business category is:
  - a. Up to 25 minimum wages (PYG 54,820,975 or USD 8,452.80 to date) for Level 1 Micro Enterprises, which are those that employ up to 10 people (owner included), have annual turnover of up to PYG 500,000,000 (or USD 77,094.58), and who are not either taxpayers of the IRE-Simple or have a Municipal Patent.
  - b. Up to 50 minimum wages (PYG 109,641,950 or USD 16,905.60 to date) for Micro Enterprises Level 2, which are those that employ up to 10 people (owner included), have annual turnover of up to PYG 500,000,000 (or USD 77,094.58), are taxpayers of the IRE-Simple and have a Municipal Patent.
  - c. Up to PYG 600,000,000 (or USD 92,512.50) for Small Enterprises, understood as those that employ up to 30 people (owner included) and have an annual turnover of up to PYG. 2,500,000,000 (or USD 385,472.91).
  - d. Up to PYG 5,000,000,000 (or USD 770,945.83) for Medium and Large Companies with unsecured guarantee from the beneficiary (natural person) or joint co-debtorship of managers and/or shareholders (all legal entities but Production Cooperatives). For larger amount loans, the BNF will require guarantees to cover the excess amount.
- The annual interest rate will be 7% for operations in PYG, and 5% for operations in USD.

# PARAGUAY

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- The term to repay the loan is up to 12 months.
  - The credit payment method will be a single payment of principal and interest at the end of the period.
  - The operation may be renewed only once, with a payment of at least 60% of the principal, maintaining the original financial conditions (term and rate) for the new operation.
- 2. Credits to MSMEs to finance its payroll during the COVID-19 outbreak with the following conditions:**
- Up to PYG 328,000,000 (or USD 50,574.05 to date) or up to 10 times the amount of the entire monthly payroll, whichever is lower.
  - The credit will only be granted in PYG.
  - The annual interest rate will be 7%.
  - The term to repay the loan is up to 12 months.
  - The credit payment method will be a single payment of principal and interest at the end of the period
- 3. The Development Finance Agency (AFD) and the BNF announced in a press release of March 20, 2020 that they will make available to MSMEs the sum of PYG 600,000,000,000, a third of which was contributed by the BNF, under the following conditions:**
- The resources will be made available to the public by the AFD, through the Financial Institutions and Cooperatives.
  - The annual interest rates will be as follows:
    - a. For operations in PYG, the AFD will charge a 4.75% annual interest rate to Financial Institutions and Cooperatives, who are obliged not to charge to its clients more than 7%.

# PARAGUAY

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- b. For operations in USD, the AFD will charge the Financial Institutions and Cooperatives a 4.50% annual interest rate, while the rate that these charge to its clients will be determined by them, according to their credit policy.
- c. The maximum term of the loan will be 7 years, including a grace period of up to 2 years within the total term of the financing.

**B) On April 13, 2020 the Executive Branch transferred USD 100,000,000 to the Guarantee Fund for MSMEs (FOGAPY) to cover the guarantee and/or re-guarantee the credits for MSMEs up to the principal amount of each financing, according to the following conditions:**

- The maximum term of coverage of the FOGAPY will be 10 years, including renegotiations (renewals, refinancing or restructuring) of the operation, regardless of the term of the financing or re-secured guarantee (which may be longer).
- The banks or other credit institutions that grant credits backed by FOGAPY may request the payment of the guarantee and/or re-guarantee, after fulfilling the conditions set by the AFD.
- The FOGAPY will be subrogated in the rights corresponding to the payment of the guarantees, being able to seek their reimbursement or to forgive them, according to the conditions established by the AFD.

The AFD has also received USD 100,000,000 in Trust from the Executive Branch (Trustee) to grant guarantees and grant new loans preferably aimed to provide financial support for MSMEs through Intermediary Institutions authorized by the Trustee.

The Executive Branch has announced that it may allocate 20% of the net capitalized earnings that result from the 2019 exercise of the BNF, for the constitution of a trust that will be administered by the AFD as trustee, and which will have as beneficiaries MSMEs and other types of companies, as determined by the Executive Branch.

**C) With the enactment and publication of the Emergency Law dated March 26, 2020, employer contributions to the Social Security Institute (“SSI”) for March, April and May 2020, may be refinanced without interest for up to 18 (eighteen) months.**

# PARAGUAY

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**Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?**

**A:** Law N° 6524/20 (“Health Emergency Law”) created the COVID-19 Sub-fund, to grant sick leaves to all active contributing workers with a COVID-19 medical diagnosis, according to a medical certificate rendered by physicians from SSI or by external physicians. SSI will process these requests under the rules of Articles 32 and 82 of Decree-Law 1860/50, as amended, which are the following:

1. To be eligible for the sick leave, the insured must have at least 6 weeks of contribution for effective work in the last 4 months.

2. The benefit is paid per day of incapacity (including holidays) and is equivalent to the lower of the following amounts:

- 50% of the average daily wage of the insured, determined by the sum of his taxable wages of the four (4) months preceding the beginning of the disability, divided by 120 or the number resulting from subtracting from 120 the number of days paid by SSI in said 4 months.
- The amount of five (5) legal minimum daily wages (PYG. 365,473 to date, according to Decree 2046/19), determined by the Minimum Legal Salary in Force (MLSF) for activities not specified in the Capital (PYG. 2,192,839 to date, according to Decree 2046/19) multiplied by 5, and the subsequent division of this result by 30

3. The insured will receive half the value of the sick leave so long as the following conditions are met:

- Remain in hospital at the expense of the SSI.
- Does not have either any family members living with him or any person under his/her custody.

Sick pay under COVID-19 will be liquidated daily, separately from the payments for common illnesses in general, by the means established by SSI, which will be in accordance with the methods normally used by the institution for the payment of sick leaves for common illnesses.

# PARAGUAY

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***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** The Ministry of Public Health and Social Welfare (“MPHSW”) and the Ministry of Work, Employment and Social Security (“MWESS”) have rendered guidelines which must be followed by employers so that employees can return to work after the mandatory confinement order. The main provisions are the following:

- Establish a system of teamwork and shift work to ensure the rotation in such a way as to minimize risks without affecting the service to the customers.
- Clean and disinfect the workstations at every shift change.
- Wash and disinfect uniforms daily. Textile garments must be washed mechanically in 60/90°C washing cycles.
- Suspend or limit the fingerprint check and replace it with another type of system.
- Ensure good ventilation in all premises.
- Carry out frequent cleaning and disinfection of the facilities with special attention to surfaces, door handles, furniture, sinks, floors, telephones, etc. For this purpose, sodium hypochlorite at 5 - 6% of domestic use diluted in water must be used, following all the protective measures against chemical agents.
- After each working day, companies must clean and disinfect surfaces, vending machines, door handles, counters, etc., and in general, any surface that may have been touched by hand in accordance with the protocols cleaning procedures established for this purpose.
- For cleaning tasks, vinyl gloves must be used. In case latex gloves are used, it is recommended to use them over a cotton glove.
- Cleaning staff should use appropriate personal protective equipment depending on the level of risk considered in each situation, dispose them safely after each use, and then wash their hands.
- For a correct cleaning of the facilities, either carried out by own personnel or by subcontracting a company, the head of the establishment must ensure that the employees have taken all the preventive measures and have the protective equipment.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** The failure of employers to adopt the measures rendered by competent authorities could give



# PARAGUAY

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rise to complaints from workers, especially if they argue that COVID-19 is an occupational disease, stating that the harmful event – the transmission of the virus - has occurred in the workplace.

Law No. 5,804/17 states that the possibility of a worker to suffer damage at the workplace is a "labor risk". Among such damages are diseases, pathologies or injuries originated by the work activity either directly or indirectly. Serious and imminent occupational risk is the one which materializes in the immediate future, and which may involve serious damage to the health and/or integrity of workers. In turn, the aforementioned law states that an occupational disease is one contracted as a result of exposure to risk factors inherent to the work activity, or the environment in which the worker performs his duties.

Therefore, if COVID-19 is considered an occupational disease, workers who have contracted it during the course of their activities may file civil and labor lawsuits against their employers, as well as criminal or administrative complaints. Therefore, it is essential that companies adopt a series of preventive measures in order to, on the one hand, prove compliance with legal obligations and health recommendations that guarantee the health of all their workers and, on the other hand, reduce the risk of labor conflicts.

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**V O U G A**  
A B O G A D O S

***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The government has approved the following measures to assist companies during the Sanitary Emergency:

1. Employers have received 35% of the remunerations of their employees' remunerations when they earn less than S/ 1,500 (as per their remunerations reported in January 2020), provided said employees were still employed as of March 15, 2020.
2. The Social Security Agency (ESSALUD) will reimburse employers for the subsidies paid during their employees' COVID-19 related absences when the employee diagnosed with COVID-19 earns less than S/ 2,400. Usually employers cover the first 20 days of illness-related absences and ESSALUD reimburses the subsidies paid starting on day 21.
3. The government has approved plans to provide loans for small businesses at a reduced rate.
4. It could be argued that the special furlough created by Emergency Decree No. 038-2020 is a measure that assists companies, as it allows them to legally suspend operations in order to stop paying employees. However, our legislation already contemplated *force majeure* scenarios (including epidemics) as a valid cause that justified suspending activities and payment, in a much less restrictive way.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** The social security system (ESSALUD) offers full coverage of COVID-19 cases, including employees subject to a furlough period. Even those not covered by the social security system can get treatment at the Ministry of Health's hospitals (MINSAs).

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

**A:** The following measures must be complied with in order for employees to return to work:

# PERU

Topics	Obligation
Plan for the Surveillance, Prevention and Control of COVID-19	<p>Each workplace must have this document, which must comply with the following:</p> <ul style="list-style-type: none"> <li>- Be approved by the Occupational Safety and Health Committee or Supervisor.</li> <li>- Be registered at the Ministry of Health.</li> <li>- The content must include the seven guidelines of the regulation (cleaning and disinfection of the workplace; assessment of the employee's health condition; hand washing and disinfection; awareness of employees; collective protection measures; individual protection measures and health surveillance).</li> <li>- It includes interns, visits and suppliers.</li> <li>- The structure is developed in Appendix 4 of the Technical Document.</li> </ul>
Cleaning and disinfection of workplaces	Employers must clean and disinfect all workplace environments and its components on a daily basis.
Assessment of the employee's health condition prior to return or re-entry into the workplace	<p>This obligation includes the following:</p> <ul style="list-style-type: none"> <li>- Identify the risk of exposure to COVID-19 of each job position.</li> <li>- Apply the epidemiological sheet before return or re-entry.</li> <li>- Check the temperature at the time of entry into the workplace and at the end of the workday.</li> <li>- Apply serological or molecular tests following the periodicity indicated by the Occupational Doctor.</li> </ul>
Mandatory hand washing and disinfection	Employers must have hand washing or alcohol gel stations and implement a wash point station at the entrance to the workplace along with an information poster.
Awareness of contagion prevention in the workplace	This obligation implies carrying out information campaigns addressed to all employees, regarding the importance of hand washing; coughing or sneezing covering the mouth without touching the face; and the use of facemasks during the working hours.
Preventive measures of collective application	<p>It requires the implementation of several measures to prevent becoming infected, such as:</p> <ul style="list-style-type: none"> <li>- Keep a distance of 1 meter.</li> <li>- Avoid crowds.</li> <li>- Preferably carry out virtual meetings.</li> </ul>
Personal protection measures	The employer must ensure the availability of personal protective equipment.
Employee's health surveillance in the context of COVID-19	<p>This surveillance includes.</p> <ul style="list-style-type: none"> <li>- Having a health professional (doctor and nurse, depending on the number of employees).</li> <li>- Identifying COVID-19 suspected cases.</li> <li>- Evaluating other health-related risks.</li> <li>- Introducing preventive measures for mental health.</li> </ul>

# PERU

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Before a company can register their Plan for the Surveillance, Prevention and Control of COVID-19 with the Ministry of Health, it needs to request their sector's authorization to re-start activities.

Each sector will publish their own mandatory protocols to complement these general obligations. So far, the Government has issued protocols for employers that belong to the following sectors: mining, electricity, oil & gas, textile, e-commerce, construction, telecom, transportation, industrial fishing, restaurants, hotels and recycling services.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** Employers could face claims for damages from either (i) the affected employees or (ii) their families, in case of death.

Employer representatives could also face criminal charges under Article 168-A of the Criminal Code if their non-compliance with safety and health at work regulations has led to employees getting infected with COVID-19, provided they have sustained serious injury or died from the disease.

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# URUGUAY

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** Although Uruguay is not under a mandatory quarantine, the Government has taken measures to assist companies during the health emergency declared due to the COVID-19 pandemic.

The most representative measures adopted are the following:

- Special unemployment insurance scheme for employees with monthly remuneration
- Employees with 65 years of age or older may remain in isolation for a maximum period of 30 days. They will be entitled to receive the benefit corresponding to the “sickness leave” for isolation period.
- Loans for small and medium-sized businesses.
- An economic subsidy for small companies.
- The payment of a certain percentage of social security contributions for small and medium-sized companies was postponed
- Small and medium-sized businesses were exempted from part of the social security contributions.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** The employee will be covered by the sickness insurance and will be entitled to receive 70% of the salary during the illness period.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***

# URUGUAY

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**A:** As stated before, Uruguay is not under a mandatory confinement. Due to said reason, during the health emergency, certain actions were recommended to be taken by companies in order to prevent the spread of COVID-19.

The measures are the following:

- I) Provide the employees with the necessary information regarding prevention and measures to be adopted, according to the guidance issued by the Ministry of Health.
- II) Provide the necessary hygiene equipment, such as the distribution of sufficient quantities of alcohol, and other personal protection equipment for example: gloves, masks, etc.
- III) Extreme regulatory hygiene measures through the maintenance and disinfection of equipment that projects air, such as hand dryers, air conditioners, as well as the daily hygiene and disinfection of work clothes, personal protective equipment and surfaces to which employees are exposed.
- IV) Adopt work organization measures that mitigate the risk of spread of the COVID-19, in line with the possibilities and nature of the activity, such as the implementation of remote work.
- V) Comply with all the measures suggested by the Health and Prevention Services. - Provide with information to employees on prevention and measures to be taken, issued by the Ministry of Health.

***Q: What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** As explained in the previous question, companies are required to take certain actions in order to avoid the spread of the disease in the workplace.

If the health and security actions adopted by the Company are aligned with the Government requirements, no actions should be triggered.

If the actions do not comply with the Government requirements, the Company may be held accountable before the Ministry of Labor and subject to a fine.

# URUGUAY

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If an employee gets sick and suffers severe effects to his health because the company fails to fulfil its obligations (eg. does not adopt hygiene measures), then the company may be subject to a legal action that could be filed by the employee requesting the payment of the damages suffered.

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***Q: What is the government doing to assist companies under mandatory quarantine?***

**A:** The Government has implemented a scheme to help protect the payment of payrolls of small and medium enterprises, so that employees can continue to receive their wages during the time of the contingency for a period of up to 6 months.

This announcement was not published in the Official Gazette, but some steps or procedures have been communicated towards the implementation of the payments.

Under this scheme the payment of the payrolls of small and medium companies will be carried out through the "Patria" system or platform, which is a web page developed by the State for the registration of the employers and the employees, and also for the compilation of the necessary information for the accomplishment of transactions on the occasion of the payment of "bonuses", "complements" or "salaries" by the State.

The government did not indicate the amounts that they would offer under this scheme. However, it is our understanding that those employees whose employers registered with the Patria system have been receiving minimum wage (approximately US\$ 5). There is also information that the government has provided special bonuses to all individuals registered in the Patria platform as an assistance program for staying at home.

***Q: What coverage is offered by the social security system if an employee gets infected with the COVID-19?***

**A:** Under the Venezuelan Social Security System if employees become infected and sick with Covid-19, the employee will be entitled to receive an indemnity from the Social Security Institute equal to 66.66% of lost wages. Depending on whether the disease is considered an occupational disease, the employee may also be entitled to a separate indemnity from the employee equal to 33.33% of the employee's registered salary, to cover for the entitled lost wages. Whether COVID -19 is an occupational disease will need to be determined on a case by case basis and will need that the infection be clearly related to work.

***Q: Which safety measures must be adopted by employers so that employees can return to work after the mandatory confinement order?***



# VENEZUELA

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**A:** The mandatory confinement order has been extended for another 30 days through June 13, 2020. If and when the confinement order ends, we recommend that employees take safety measures to assure adequate hygiene in the workplace to avoid future infection of the disease. Some recommended measures are: using hand sanitizers at the entrance of the workplace, measuring of body temperature, gradual return to work of the entire workforce, etc.

**Q: *What type of claims may be triggered if an employee gets infected with COVID-19 at the workplace?***

**A:** We expect that if an employee gets infected with COVID-19 at the workplace, that the employee will file a claim for occupational disease indemnity. For such a claim to prevail gross misconduct by the employer as well as breach of any occupational safety and health rules.

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