

# Covid-19 Regulations and Safety Measures in Latin American & the Caribbean



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## QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION

In response to the Covid-19 pandemic and the emergence of positive cases in Barbados, the Government of Barbados has implemented quarantine and curfew measures and business restrictions aimed at controlling the spread of Covid-19.

All persons entering Barbados from March 22, 2020 are subject to a mandatory 14 day quarantine at a Government facility. All Covid-19 testing is done by the public health authorities and persons testing positive must remain at a designated health care facility until they produce 2 consecutive negative test results for Covid-19.

A 24-hour curfew is currently in effect until May 4, 2020 (this may be extended). During the curfew persons may not leave their homes unless they are attending supermarkets, fish markets, hardware stores, pharmacies, medical and dental offices, commercial banks, credit unions, post offices and petrol stations generally considered essential services (“**Essential Services**”) between the hours of 7am to 4pm (except for medical services) on specific days on which they are appointed according to their surnames. All businesses not considered Essential Services or otherwise specifically exempted from the curfew remain closed, with employees working from home wherever possible.

Individuals are restricted from being outside their homes between the hours of 6pm and 6am the next day unless they are exempted as workers in the Essential Services or have applied for and received an exemption from the office of the Attorney General of Barbados, in special circumstances.

## LABOR AND EMPLOYMENT

### 1. Has your country enacted any special labour or employment measures to deal with Covid-19?

No, the Employment Rights Act No. 9 of 2012 (the ‘**ERA**’) and the National Insurance and Social Security Act Cap.47 (the ‘**NIS Act**’) already contained provisions to address the issues arising from a pandemic.

### 2. Can employers suspend employment contracts during this Covid-19 health crisis?

The ERA allows employers to take lay-off or short-time action to temporarily suspend employment contract in circumstances where employers have to cease their business temporarily or the business requirements for employees to carry out work have temporarily ceased or diminished.

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3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?

Employees who are qualified under the NIS Act may claim unemployment benefit after their termination, or where lay-off action or short-time action has been taken against them, for a maximum specified period. Employees who are laid off indefinitely will receive benefits for six (6) months while those placed on short time will receive 60% of their earnings for the days they are not working. The Government of Barbados has indicated that it will provide supplemental support to the NIS Unemployment Fund as needed and available to meet all benefit claims which total approximately 14,000 to date.

The Government has also indicated that employers who are retaining more than three-quarters (3/4) or two-thirds (2/3) of their staff complement will be able to defer the employer's contributions to the National Insurance Scheme for three (3) months in the first instance, with another three (3) months if necessary.

Government has also instituted programs to assist 1,500 of the most vulnerable families who lost all their income due to the Covid-19 crisis providing them with BBD\$600.00 monthly, for three (3) months in the first instance.

4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?

On March 26, 2020, the Government declared Covid-19 as a public health emergency and issued an Emergency Management (Covid-19) Order 2020 and supplementary Directives, which among other things, direct all businesses in the private sector, with limited exceptions, to close for a "lockdown" period from March 28, 2020 to May 3, 2020. All employers who carry on businesses which are unexempted or do not provide essential services are obliged to comply with the Orders and Directives and close their operations. As for those employers who carry on exempted businesses or provide essential services, they should ensure to implement the recommended safety protocols at their establishment (for example: restricting the number of persons at their establishment to ensure social distancing and providing employees with the facilities and equipment to ensure the practice of the utmost hygiene).

5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

An employer is required to take such precautions as are reasonable in all the circumstances to ensure the safety, health and welfare of all persons in the workplace. The employer is entitled to deny a worker access for health reasons pursuant to the terms of the employment contract, work health and safety guidelines or directives issued by the health authorities. Considering the nature of a highly infectious virus such as Covid-19, it may be considered

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reasonable in all the circumstances for an employer to deny an employee access to the workplace if the employee is displaying symptoms of Covid-19.

## 6. Can employers implement a mandatory screening program for Covid-19 symptoms?\_

While employers are not restricted from conducting screening programs, such a program could be considered a medical examination and the employees' consent would be required.

## 7. Are employees required to inform their employer if the Covid-19 test result is positive?

Under the Safety and Health at Work Act (“**SHAW**”) an employee has a duty to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work, and to co-operate with his employer so far as is necessary to enable the employer to perform or comply with the duties imposed on the employer under the Act. Due to the contagious nature and effect of the Covid-19 an employee should inform his employer of a positive Covid-19 result. As a practical matter, persons who test positive for the Covid-19 test are currently admitted to various quarantine health centres, during this time an employee would be on medical leave and must submit a medical certificate to his employer which medical certificate *may* disclose the medical reason.

## 8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

We have found no statutory authority which prohibits this type of policy. Given the nature and effect of the virus, it may be reasonable in all the circumstances for an employer to implement this policy in order to ensure the safety, health and welfare of all persons in the workplace. In addition, the SHAW Act states that it is every employee's duty to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work, and to co-operate with his employer so far as is necessary to enable the employer to perform or comply with the duties imposed on the employer under the Act. Thus, this policy may assist both employer and employee in fulfilling their duties under the Act.

## 9. Can employers force employees to take vacation during the Covid-19 health crisis?

An employer has the right to determine the date on which an employee's holiday shall commence. However, an employer must give an employee at least 14 days' notice of the date he is required to go on holiday. An employee must waive the minimum notice requirement and consent to taking holiday on less than 14 days' notice.

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10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?

If an employer decides to lay off his employees to reduce his work force during the crisis, he should ensure to settle earnings and reimbursable or other benefits accrued prior to the commencement of the lay-off period to all employees who will be laid off. During the lay-off period, an employer is not obligated to pay salaries or benefits to an employee. However, if the lay-off period exceeds the maximum specified period outlined in the Severance Payment Act then an employer may be liable to make a severance payment, and perhaps outstanding holiday pay, to an employee who is qualified to claim that payment under the Severance Payment Act.

11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?

In Barbados, both employer and employees make contributions to the National Insurance Scheme in respect of insurance for several statutory benefits including unemployment, maternity, sickness and employment injury. Both employee and employer are exempt from liability to pay contributions in any week in which (a) no work is done by the employee and the earnings of the employee amount to less than, or are calculated to amount to less than, the minimum earnings on which contributions are payable or (b) for the whole of which the employee receives sickness, maternity, employment injury and unemployment benefit. However, both employer and employee are still liable to pay contributions for any week in which the employed person is on leave, if contributions are normally payable with respect to the employment of such person.

As it relates to benefits which are not statutorily mandated, such as medical and life insurance and contributory pension, an employer should refer to the specific terms of those policies or schemes to determine the circumstances in which they could interrupt the accumulation of those benefits.

12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?

Yes, an employer has the power to institute a temporary closure of the workplace or negotiate a temporary reduction of wages and benefits. However, before exercising those options, an employer should ensure that he follows the procedures outlined in the ERA in respect of lay-off or short-time action, where applicable.

13. If employees refuse to go to work, can their employment be terminated for abandonment?

Pursuant to the SHAW Act, where, during the course of employment, there is sufficient evidence to indicate that an employee's health and safety are in imminent danger, that employee may refuse to

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carry out the tasks assigned to him (which may include refusing to go to work) pending consultation with his job's safety committee, trade union, staff association or the Chief Labour Officer. Unless the employee can provide sufficient evidence, such as an employer's failure to implement any or sufficient health protocols or confirmation from his or her doctor of increased health risk by attending work, then that employee could be terminated for abandonment if they continue to refuse to go to work after consultation. In such cases, it is recommended that parties consult to resolve the issue and find an alternative solution, for example, the option to work from home.

#### 14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?

In Barbados, Covid-19 testing is currently done through the public health authorities and not privately, therefore the public health authorities would be aware of an employee's positive test result before the employer.

## CORPORATE

#### 1. How does the principle of force majeure apply to contract law in your country?

The principle of force majeure is not applied to a contract unless the contract expressly contains force majeure provisions. Generally, the resulting factors caused by the force majeure event must be material to the performance of the contract for parties to successfully rely on the principle. In practice, a party seeking to rely on the principle must also show that they have taken reasonable alternative steps to fulfil the obligations.

#### 2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?

A party may only rely on the Covid-19 pandemic as a basis for avoiding its obligations if it is a defined force majeure event in the contract and the circumstances caused by Covid-19 resulted in the inability to perform its obligations. While it is unlikely that most contracts prior to February, 2020 included Covid-19 as a force majeure event, if the definition of a force majeure event included reference to a "pandemic" or "epidemic" Covid-19 would be included. It is imperative that parties review the force majeure provisions carefully and obtain legal advice before seeking to rely on a Covid-19 related force majeure as basis for avoiding its obligations.

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3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?

Subject to the terms of the contract, generally, the mere declaration of a state of emergency is not by itself enough to provide automatic relief from contractual conditions of delivery or payment particularly where other reasonable measures could be taken e.g. electronic payments.

4. What remedies are available to companies in the event that they fail to meet their contractual obligations?

Parties may rely on termination provisions in the contract provided the required obligations for termination are fulfilled. In the absence of express termination or other provisions on which a defaulting party may rely, they may apply under the common law doctrine of frustration. The threshold to be met for common law frustration is high. Factors such as increased difficulty or costs are not a basis for frustration, particularly where the defaulting party could not show alternative measures were taken.

5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?

No specific protection measures have been announced as yet but the Government of Barbados remains in discussion with Private Sector Partnership on measures to be taken due to the Covid-19 pandemic.

6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?

During the period within which the Government of Barbados the courts of law are generally closed for civil and criminal hearings except for certain first appearance magistrate court hearings and domestic orders. Applications may make urgent applications e.g. interim injunctions by electronic means before the Duty Judge.

## **TAXES AND FINANCIAL MEASURES**

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- I. Has your country issued any tax amnesty or aid programs because of Covid-19?

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At the date of writing the Government of Barbados has not issued any tax amnesties. Aid programs to date have been for social welfare aid initiatives and labour and employment as discussed in the Labour and Employment section.

## 2. Has the deadline for filing tax returns been extended?

Annual personal income tax filings are due on April 30. Corporation tax and value added tax returns are to be filed quarterly. To date no extension has been given for any tax filings.

## 3. Are tax refunds and other claims being processed in a timely manner?

There are some delays in the receipt of tax refunds by which is due to economic factors, however as yet there has been no increased delay due to the Covid-19 pandemic and tax payers remain able to track the status of their returns.

Ms. Joanna M. Austin, Senior Associate | [Joanna.austin@bb.lexcaribbean.com](mailto:Joanna.austin@bb.lexcaribbean.com)

Ms. Olivia dos Santos, Associate | [Olivia.DosSantos@bb.lexcaribbean.com](mailto:Olivia.DosSantos@bb.lexcaribbean.com)

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## **QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION**

Bolivia has been under total lockdown and quarantine since March 19<sup>th</sup> and will continue to be on lockdown until April 30<sup>th</sup>, 2020, if not extended further by the National Government. This quarantine does not apply to health providers, banks, food production and oil activities, as well as the supply and distribution of these activities.

To date, individuals are allowed to buy groceries at supermarkets and limited public markets once a week depending on the last digit of their ID. International and local flights as well as interstate transportation have been closed.

Below, we provide a detailed and comprehensive Q&A Report on Labor and Employment, Corporate and Tax/Financial in regards to a series of national and state regulations issued in Bolivia due to COVID19.

## **LABOR AND EMPLOYMENT**

Andere Indacochea | [andere@indacochea.com](mailto:andere@indacochea.com)

Mariana Pereira | [mpereira@indacochea.com](mailto:mpereira@indacochea.com)

Jeannine Lozada | [jlozada@indacochea.com](mailto:jlozada@indacochea.com)

### **1. Has your country enacted any special labor or employment measures to deal with Covid-19?**

Yes, since the Declaration of Sanitary Emergency the Government issued labor regulations in order to be flexible in working hours, shifts, granting special licenses, etc. in order to help companies continue -in the extent possible- to work.

### **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

The regulations that were issued clearly state that employment contracts cannot be suspended or labor contracts be terminated.

### **3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?**

Although Government is not providing direct financial assistance to support employers and employees through this time, through different social programs, they will grant credits for companies (specially small and medium size) in order to pay salaries and guarantee their work during this time.

### **4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?**



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Employers must comply with normal labor obligations such as payment of 100% of salaries in due time. Pension funds have suspended payment of funds until the quarantine measure is lifted, and depending on where the employee is registered, health funds too.

**5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?**

Yes. Our regulation asks employees not to go to work if they have symptoms consulting the corresponding health authorities. If the virus is detected, the employee must remain at home under paid medical leave.

**6. Can employers implement a mandatory screening program for Covid-19 symptoms?**

Unfortunately, due to lack of tests and a poor health system, this is not mandatory nor regulated. Labor laws does ask employees to constantly inform employees on symptoms and can take measures in their own workplace such as taking temperatures.

**7. Are employees required to inform their employer if the Covid-19 test result is positive?**

Yes. The employee must inform the employer if the test is positive, present medical certificates and stay at home under medical leave.

**8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?**

There is no specific regulation for this. Because the information is case sensitive, we recommend to treat it in a case by case scenario.

**9. Can employers force employees to take vacation during the Covid-19 health crisis?**

Vacations cannot be imposed by employers but can be agreed upon between parties.

**10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?**

No, employers must comply with obligations as set forth in labor laws.

**11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?**

It'll have to depend on the ruling of the authority. As of right now, all employment benefits are not interrupted.

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## **12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?**

Employer can establish a temporary closure or and parties can agree on temporary reduction of wages and benefits. But in doing so, employers must still comply with labor regulations since both these situations are regulated by labor law.

## **13. If employees refuse to go to work, can their employment be terminated for abandonment?**

Yes. If the company has a permit to work in their offices during quarantine and the employee refuses to go to work, this can be a cause for dismissal.

## **14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?**

Employers do not have this obligation.

### **CORPORATE**

Alonso Indacochea [aindacochea@indacochea.com](mailto:aindacochea@indacochea.com)

Marcelo Longaric – [mlongaric@indacochea.com](mailto:mlongaric@indacochea.com)

Maria Jose Martinez – [mjmartinez@indacochea.com](mailto:mjmartinez@indacochea.com)

Juan Pablo Sanchez – [jsanchez@indacochea.com](mailto:jsanchez@indacochea.com)

### **1. How does the principle of force majeure apply to contract law in your country?**

In Bolivian legislation the term *force majeure* is not legislatively defined *per se*, in this absence, this principle is regulated as supervening impossibility which includes force majeure. The Civil Code recognizes supervening impossibility as a default event for a contractual obligation. In this sense, all obligations starting on March 20<sup>th</sup> are under supervening impossibility protection. Nevertheless, parties must comply with all contractual procedures to legally notify the supervening impossibility situation to its counterparts in order to avoid breach of contract.

### **2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?**

If a party does not develop the specific activities mentioned in the Supreme Decrees No. 4199, 4200 & 4214 (health, financial, food production and oil activities issued during COVID19 Health Emergency) meaning their activities are under a complete suspension, they could plead a supervening impossibility event given that by Sovereign Acts applied to address COVID-19 pandemic, they were forced to stop their activities and were unable to fulfill its contractual duties. It is important to note that, in order to

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plead a supervening impossibility event, the breaching party must have been under a correct fulfillment of its duties before the supervening impossibility. In case a supervening impossibility event is plead, the party invoking the plead will have to prove the following characteristics: (i) Unforeseen, which stand for the unexpected impossibility that could not have been foreseen by any of the parties; (ii) Overwhelming, meaning it was impossible to execute their respective obligations; and, (iii) Imputability, granting that the contract default was caused by an external source.

### **3. Does the declaration of a state emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?**

Not directly, the Supreme Decrees and Resolutions issued during the Health Emergency have not made any specific statement referred to the suspension or relief of contractual obligations between commercial agents (excluding financial agents).

Nevertheless, in accordance to Law N° 1294 and its Supreme Decree N° 4206 banks and financial institutions were instructed to defer for a period of 6 months -since the suspension of the health emergency- the collection of loans and obligations.

Likewise, according to Ministerial Resolution N° 70/2020, all commercial obligations have been suspended for commercial agents that closed their annual fiscal year as of December 31, 2019 (such as the approval of Financial Statements before their Shareholders Meetings). In accordance with Ministerial Resolution No. 70/2020 dated April 2, 2020, the Ministry of Productive Development and Plural Economy resolved to temporarily suspend all deadlines for compliance with commercial duties and obligations for all companies and-or sole-partnerships.

### **4. What remedies are available to companies in the event that they fail to meet their contractual obligations?**

If companies and/or individuals fail to meet their contractual obligations due to the Health Emergency measures applied during this pandemic period, the only remedy (to date) would be to file for a supervening impossibility event which can be plead by having the necessary proof that demonstrates the impossibility to fulfill the agreed conditions. Nevertheless, despite supervening impossibility event remedy, companies and individuals in the local market can renegotiate their contractual obligations.

### **5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?**

Yes, according to Supreme Decree 4216, government has implemented a Special Program to support micro, small and midsize companies as well as a Emergency Plan was implemented to support employment and job stability for companies legally established in Bolivia. Financial institutions will grant easy access loans with a five (5) year term and one (1) year of grace and loans for a maximum amount of two (2) wages for each worker in order to prevent unemployment. There have been no limitations in granting this financial support on foreign entities owning subsidiaries in Bolivia. Nevertheless,

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Regulations of this Supreme Decree will be issued through corresponding Ministries in the next days or weeks.

## **6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?**

Judicial System in Bolivia has suspended their activities since March 20<sup>th</sup>, this has caused that all terms, deadlines and fillings have been suspended until the quarantine is lifted.

During the National Health Emergency period, companies and/or individuals cannot file new lawsuits, actions nor appeals in Civil and Commercial areas of the Judicial System, during this quarantine only Criminal and Constitutional Courts are performing especial activities, in order to protect any fundamental rights violations.

## **TAXES AND FINANCIAL MEASURES**

Candys Dorado | [cdorado@indacochea.com](mailto:cdorado@indacochea.com)  
Maria Alexandra Salvatierra | [masalvatierra@indacochea.com](mailto:masalvatierra@indacochea.com)

### **1. Has your country issued any tax amnesty or aid programs because of Covid-19?**

Yes, with the National Health Emergency and Quarantine duly declared by the Bolivian Government, the adoption of fiscal emergency measures were required and issued by Supreme Decree No. 4198, Regulatory Resolution issued by Tax Authority No. 102000000008 and No. 102000000006, which regulate emergency tax aspects and extend filling taxpayers' obligations, such as:

- i. Payment facilities and deferral of the Corporate Income Tax (25%) for companies that close on December 31, 2019. These companies now can pay 50% of the Corporate Income Tax by June 1, 2020 and 50% in installments without maintenance of value and interest.
- ii. Cash donations made until December 31, 2020 in favor of public and/or private Health Hospital Centers, intended for prevention, diagnosis, control care and treatment of patients with COVID-19 will be considered deductible for the Corporate Income Tax of 2020.
- iii. VAT Tax for independent professionals now allows to credit food purchases and any other purchases in regards to health and education matters (including spouse and children)

### **2. Has the deadline for filing tax returns been extended?**

Yes, the Tax Bureau through the Regulatory Resolution issued by Tax Authority No. 102000000006 established several extensions, for example, extending the declaration and / or payment of monthly tax obligations for tax periods of February and March 2020.

Likewise, regarding the installment payment for payment facility plans that expired on February 28<sup>th</sup>, 2020 and those that expired on March 31, 2020 have been extended till April 30<sup>th</sup>, 2020. Requests

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for Tax Refund Certificates (CEDEIM) that ended in March 2020 and Tax Credit Notes Certificates (CENOCREF) have been extend until April 30th, 2020.

The fulfillment of formal obligations, such as the presentation of the VAT Sales and Purchase Book, the Information Agents and others with special regulations, which normally end during the months of March and April 2020, as well as the obligations of the Simplified Tax Regime for the two-month period of January and February 2020, will be extended to May 1st, 2020.

Lastly, tax payments for the presentation of a sworn tax declaration and the fulfillment of formal obligations under special regimes, as well as tax payments for sworn tax declaration, formal obligations under the Supplementary Value Regime, direct taxpayer of taxes-VAT (CD RC-VAT) for the quarter between January, February and March 2020, and the presentation of forms and accounting documentation corresponding to the Corporate Income Tax, have been extended until May 29th, 2020.

### **3. Are tax refunds and other claims being processed in a timely manner?**

No, the deadline to present Tax Refund Certificates (CEDEIM) and Tax Credit Certificate (CENOCREF), whose maturities would have occurred on March 23<sup>rd</sup>, has been extended to May 11<sup>th</sup>, 2020.

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## **QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION**

In Brazil, the national social distancing measures started on March 16. The Federal Decree that established the state of Public Calamity was published on March 20 and it is estimated that Brazilian authorities will keep the quarantine status active until mid-May, although some States of the South Region are already relaxing the social distancing measures and allowing people to go back to work. Currently, however, only essential business are allowed to operate, such as transportation, food providers (supermarket and restaurants – delivery only), drugstores, food industries, health and pharmaceutical products, among others.

## **LABOR AND EMPLOYMENT**

Ana Cristina de Freitas Valentim | [anavalentim@felsberg.com.br](mailto:anavalentim@felsberg.com.br)

### **I. Has your country enacted any special labor or employment measures to deal with Covid-19?**

Yes. The Brazilian Government has enacted two special labor and employment laws (Provisional Measure 927 and Provisional Measure 936).

Provisional Measure 927 provides labor and employment measures regarding teleworking; anticipation of individual and collective vacations; anticipation of periods or of federal, state, district and municipal non-religious holidays; postponement of the unemployment insurance payment (FGTS); leave of absence; establishment of hour bank. The provisional measure also sets forth all the bureaucratic process to have all such measures implemented by the companies, which must be fully followed in order to prevent labor contingences in the future.

Provisional Measure 936 provides labor and employment measures regarding:

- I. Wages and working hours reduction, for a period no longer than 90 days: (a) reduction of 25% of wages and working hours for any employee (requires employees' consent); (b) reduction of 50% or 70% of wages and working hours (for employees earning up to BRL 3,135 and in excess of BRL 12,202, the later with college degree) requires employees' consent; and (c) reduction of 50% or 70% of wages and working hours (for employees earning wages between BRL 3,135 and BRL 12,202) requires negotiation with employees' Union.\

All employees will be entitled to receive a benefit payable by the Brazilian Government. During the reduced wages and working hours period (and for an equal period thereafter), employees cannot be fired (stability) unless the company pays not only severance but also indemnification.

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2. Suspension of employment agreement. Temporary suspension of employment agreement is possible up to 60 days (may be split in two 30-day terms):
  - a. for employees earning up to BRL 3,135 and in excess of BRL 12,202, the later with college degree, requires employees' consent; and
  - b. for employees earning wages between BRL 3,135 and BRL 12,202, requires negotiation with employees' Union.

During the suspension, all benefits must be maintained (e.g. food vouchers, meal vouchers). The employee must not perform activities for the employer, under penalty of the suspension being recognized as null and void; during the temporary suspension period (and for an equal period thereafter), employees cannot be fired (stability) unless the company pays not only severance but also indemnification. The payment of an allowance to the employee by the employer during such period depends on its gross revenue in the previous period. If the employer gross revenue is above BLR 4.8 MM a mandatory allowance of 30% over the employees' salary is required by the law.

## **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

Yes. Provisional Measure 936 allows a temporary suspension of employment contracts up to 60 days (which may be split in two 30-day terms). During the suspension, all benefits must be maintained (e.g. food vouchers, meal vouchers); the employee must not perform activities for the employer, under penalty of the suspension being recognized as null and void; during the temporary suspension period (and for an equal period thereafter), employees cannot be fired (stability) unless the company pays not only severance but also indemnification. The payment of an allowance to the employee by the employer during such period depends on its gross revenue in the previous period. If the employer gross revenue is above BLR 4.8 MM a mandatory allowance of 30% over the employees' salary is required by the law.

## **3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?**

Yes. According to the Provisional Measure 936, the Brazilian Government will guarantee to the employees a benefit amount as indicated in the chart below:

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Salary reduction	Benefit amount paid by the Brazilian Government to employees	Eligibility in case of individual negotiation	Eligibility to collective negotiation
25%	25% of the federal unemployment insurance	All employees	All employees
50%	50% over the unemployment insurance	Employees with wages up to BRL 3,135 or hypersufficient*	All employees
70%	70% over the unemployment insurance	Employees with wages up to BRL 3,135 or hypersufficient*	All employees

**4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?**

During the quarantine period, the employer may comply with the authority's orders and may adopt the labor and employment measures provided by the laws enacted by the Brazilian Government during the COVID-19 crisis.

**5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?**

Yes. The Brazilian Government enacted the labor and employment law to allow the employee to work at home and if the employee will be not able to work remote, the laws also provide measures to be adopted by the employer (anticipation of vacation, for example).

**6. Can employers implement a mandatory screening program for Covid-19 symptoms?**

No; however, employers may require the employees to inform in case of symptoms or positive result of the test. This measure is important to prevent contamination and for the safety of the other employees.

**7. Are employees required to inform their employer if the Covid-19 test result is positive?**



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It is not mandatory but it is recommended because the employment contract will be temporarily suspended.

**8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?**

Yes, but the information provided by the employees may not be disclosed by the employer.

**9. Can employers force employees to take vacation during the Covid-19 health crisis?**

Yes. According to the law enacted by the Brazilian Government, Provisional Measure 927, it is possible to anticipate vacation during the COVID-19 crisis.

**10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?**

No. According to the Provisional Measure 936, the employer will still have the obligation on the payment of the salary reduction and the Brazilian Government will guarantee the payment of a benefit amount. The chart below indicates the amounts to be paid by employer:

<b>Salary reduction</b>	<b>Benefit amount paid by the Brazilian Government to employees</b>	<b>Eligibility in case of individual negotiation</b>	<b>Eligibility to collective negotiation</b>
25%	25% of the federal unemployment insurance	All employees	All employees
50%	50% over the unemployment insurance	Employees with wages up to BRL 3,135 or hypersufficient*	All employees
70%	70% over the unemployment insurance	Employees with wages up to BRL 3,135 or hypersufficient*	All employees

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**11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?**

Benefits may be suspended or not applicable in case of the temporary operational closure.

**12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?**

Yes. Employers may negotiate with the employees union. Also employers may establish temporary reduction of wages and benefits according to the Provisional Measure 936.

**13. If employees refuse to go to work, can their employment be terminated for abandonment?**

No. The Brazilian labor law establish specific terms and conditions to terminate the employment contract for abandonment.

**14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?**

No. The doctor may provide the information to the authorities.

## **CORPORATE**

João Carlos Anderson Corrêa de Mendonça | [JoaoMendonca@felsberg.com.br](mailto:JoaoMendonca@felsberg.com.br)

**1. How does the principle of force majeure apply to contract law in your country?**

In accordance with the Brazilian law (article 393 of the Brazilian Civil Code), the force majeure can be understood as actions/events which are beyond the reach of a party's will and end up preventing the compliance by such party to its contractual obligations. Therefore, the force majeure results in the exemption of liability to the party prevented from performing its obligation, automatically excluding its guilt from not complying with such obligations.

**2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?**

In accordance with the Brazilian law, the current COVID-19 pandemic typifies an event which a party plead force majeure, resulting the possibility to a party to not comply with its contractual obligations.

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However, it is important to emphasize that each case has to be individually analyzed because such institute (based in COVID-19 pandemic) cannot be indistinctly applied to all situations, i.e. Lease Agreements and obligations contracted after the decree of the state of public calamity.

### **3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?**

The declaration of public calamity (similar to a state of emergency) per se does not directly affect the accomplishment of the contractual conditions regarding the delivery or payment by commercial agents. However, the commercial agents can plea force majeure to avoid the accomplishment with their contractual obligations. On the other hand, the declaration of state of emergency impacts the functioning of public administration and the Public Agreements (executed by a private company and a governmental authority).

### **4. What remedies are available to companies in the event that they fail to meet their contractual obligations?**

Beyond the institute of force majeure, the Brazilian law also provides two (2) more remedies which the companies can use if they are not able to comply with their contractual obligation, as follows: **(a) Theory of Unprediction** – such theory is provided by the Brazilian Civil Code (article 317) and establishes the possibility for the review of a contract when an extreme event (such as COVID-19 pandemic) causes a breach in the contractual balance, resulting a manifest disproportion between the value of the service/products due and the time of its performance/delivery; and **(b) Excessive Onerosity** – such remedy is also provided by the Brazilian Civil Code (article 478) and it is very similar to the Theory of Unprediction, being able to cause the termination of contracts. Companies must comply with all formalities set forth in the legislation and in their agreements in order to properly benefit from such remedies.

### **5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?**

The Brazilian authorities have issued some regulations in order to minimize the impacts for small businesses in Brazil, such as (a) the postponement for the payment of taxes; (b) the possibility of small companies to apply for loans to the Fundo de Amparo ao Trabalhador (FAT) (the Brazilian government has released BRL 5,000,000,000.00 to help small companies with these loans for working capital); and (c) the stimulus to banks to grant loans by reducing regulatory burdens and obligations imposed to them. The only criteria to use such benefits is the size of the company (it does not matter if the

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company has a foreign shareholder or not. A local subsidiary of a foreign entity is fully able to access such benefits).

## **6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?**

The judiciary continues to operate in Brazil, however, with some material changes in view of the social distance ordered by the Brazilian authorities. In this regard, we can list as material changes (a) the suspension of procedural deadlines; (b) the suspension of face-to-face service, hearings and trials; (c) the judges and court staff are working from their homes (home office regime). Thus, the companies which will need to use the judiciary process during the COVID-19 pandemic can normally use online services (provided by the local and superior courts) to initiate legal procedures or to appeal. Of course that an extra delay on decisions shall be expected.

## **TAXES AND FINANCIAL MEASURES**

Rafael Macedo Malheiro | [RafaelMalheiro@felsberg.com.br](mailto:RafaelMalheiro@felsberg.com.br)  
Paulo Penteado de Faria e Silva Neto | [PauloPenteado@felsberg.com.br](mailto:PauloPenteado@felsberg.com.br)

### **1. Has your country issued any tax amnesty or aid programs because of Covid-19?**

Yes. Brazil has adopted several tax measures to alleviate the effects of the financial and liquidity crises arising from the Covid-19 outbreak. The most important are the following:

- Federal Government / Federal Revenue Service (“RFB”):
  - PIS/COFINS Social Security Contributions: deferral of taxes due in April and May to August and October, respectively.
  - INSS Social Security Contribution due by the employers and domestic employers: deferral of taxes due in April and May to August and October, respectively.
  - “S System” social security contribution: reductions of up to 50% available until June 30, 2020.
  - FGTS Severance Fund: deferral granted to the months of March, April and May, which may be paid in six monthly installments starting July 20, 2020.
  - SIMPLES Nacional: deferral of the term for payment of the taxes unified under the SIMPLES Nacional. Payment of federal taxes under SIMPLES (IRPJ, CSLL, PIS, COFINS, IPI and CPP) was postponed from March-May until October-December, respectively. State (ICMS) and Municipal (ISS) taxes under SIMPLES Nacional were postponed from March-May until July-September.

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- Automatic 90-day extension of the validity of tax clearance certificates (CND/CPEND) issued by Brazilian tax authorities (RFB / PGFN).
- Exemption from excise tax (IPI), import duty (I.I.) and loosening of bureaucratic requirements of customs clearance on the importation of medical-hospital goods or others destined to fight the pandemic. Currently, almost 200 items have benefited from the temporary tax cut, which is valid through September 30, 2020.
- Attorney General of the National Treasury (PGFN):
  - Suspension of tax collections and facilitation of debt renegotiation under the “Contribuinte Legal” (“good standing taxpayer”) Provisional Measure No. 899/201, already converted into Law.
- States and Municipalities:
  - No general measures, other than occasional actions, such as:
    - in Rio de Janeiro, the inclusion of hand sanitizers and baby wipes in the “basic market basket” list and the authorization for deferral of payment of ICMS in specific segments, such as electricity.
    - in the Federal District, reduction to 7% of the ICMS levied on medical masks and gloves, hand sanitizer, ethyl alcohol 70 and sodium hypochlorite.
- Suspension of deadlines in Judicial and Administrative Tax Proceedings:
  - Brazilian Federal Administrative Tax Court (CARF): suspension until April 30.
  - RFB: suspension until May 29.

## **2. Has the deadline for filing tax returns been extended?**

Yes, most notably:

- DCTF (Federal Tax Debts and Credits Return): extension of the deadline for filing the DCTF due in April, May and June 2020, until July 21, 2020.
- EFD-Contributions (Federal Social Security Contributions Digital Tax Bookkeeping): extension of the deadline for filing EFD-Contributions due in April, May and June 2020 until July 14, 2020, including in cases of corporate extinction, incorporation, merger and total or partial spin-off.
- DIRPF (Individual Income Tax Return): extension of the deadline from April 30 to June 30, 2020.

## **3. Are tax refunds and other claims being processed in a timely manner?**

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In principle, yes. However, due to the limitations imposed on the daily activities of the tax authorities and other government bodies (staff working remotely, physical offices closed or with severe reduction in their capacity to process workload), moderate to significant delay should be expected. In addition, the suspension of the deadlines for administrative tax proceedings will impact the regular timing for concluding such procedures and judgements.

On a positive note, most of the tax systems and information in Brazil have been moving to an electronic format during the past few years, so the digitalization of tax data in Brazil is relatively high. This factor may help the country to respond to the pandemic without being severely hurt in its tax collection system (apart from the natural decline in tax revenues arising from the crisis).

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## QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION

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- State of Emergency declared until April 30.
- Suspension of commercial activities until April 30, excluding Essential Activities, such as: supermarkets, gas stations, pharmacies, commercial establishments dedicated to selling raw or cooked foods and those dedicated to the food production cycle.
- Most government offices are closed to the public and all courts and jurisdictional offices are closed, except for the criminal jurisdiction regarding imprisonment hearings.
- The businesses allowed to continue with their commercial activities must reduce their personnel on working hours and send home the ones identified as vulnerable to COVID-19. The same applies for governmental workers.
- All other businesses can keep their employees working remotely from home, if possible, which is also the same for some government offices.
- Curfew from 5pm to 6am until April 30. The following were exempt from the application of the curfew and are authorized to transit on such hours: (i) persons dedicated to health services; (ii) persons with a medical emergency needing to get to a health center; (iii) duly identified persons working in private security; (iv) members of the press and other duly accredited media; (v) the personnel of the electricity distribution companies to attend emergency situations; (vi) urban and interurban vehicles dedicated to the transport and distribution of merchandise, supplies and fuel; (v) vehicles of companies and utilities that provide energy, water, telecommunications and solid waste collection services to exclusively deal with emergency situations; (vi) persons that work in ports and airports, in transit to or from their workplaces during curfew hours, provided they carry an authorized company identification; (vii) persons working in the food, pharmaceuticals and medical supplies industries, who are in transit to or from their workplaces during curfew hours, provided they carry an identification of a company authorized by the High-Level Commission for the Prevention and Control of the Coronavirus; and (viii) persons and vehicles destined for funerary services, exclusively when in service.

## LABOR AND EMPLOYMENT

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Jose Maldonad Stark | [jmaldonado@rvhb.com](mailto:jmaldonado@rvhb.com)

- I. Has your country enacted any special labor or employment measures to deal with Covid-19?

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*Health and Safety:* Social distancing measures has been enacted, such as closing of operations of companies that requires physical presence and are not engaged Essential Activities, implementation of remote work and adopting schedule and shift work flexibility.

The measures enacted with regards to companies that may continue operating, for which employers are responsible, are the following:

- a) Isolate susceptible workers.
- b) Guarantee adequate safety, health, hygiene and working environment conditions (for example, access to alcohol-based gel, soap, sinks, disposable towels, water, etc.).
- c) Adopt control and protection measures putting collective protection before individual protection.
- d) Place posters promoting hand washing and respiratory hygiene according to the indications established by the Ministry of Public Health.
- e) Give updated information on the evolution of the disease and necessary instructions to workers on the measures to be taken in terms of protection.
- f) Take into consideration the condition of pregnant employees and high-risk personnel.
- g) Reduce the personnel working in physical facilities, to allow a distance of at least 2 meters between each worker.
- h) Mandatory use of face masks in the workplace.

*Employee Support Program:* The government created the Employee Solidarity Help Fund program (*Fondo de Asistencia Solidaria a los Empleados – “FASE”*), which we further explain in answer to question number 3.

## 2. Can employers suspend employment contracts during this Covid-19 health crisis?

Yes, companies with total or partial closure of their operations can suspend the employment contracts with the previous authorization of the Ministry of Labour. Up to this date more than six hundred thousand contracts have been suspended and most of them were included in the FASE.

## 3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?

Yes, our Government created the FASE to provide a monetary contribution to affected employees during the months of April and May 2020.

FASE program consists of a contribution from the Government that will depend on the employees registered salary as of the month of February 2020 in the Social Security Treasury, equivalent to 70% of its salary, but which in no case will be less than RD\$5,000.00 or more than RD\$8,500.00. It is at the discretion of the employers to complete the remaining part of the salary or pay a proportion.



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This contribution applies to suspended employees of companies with total or partial closure of their operations (excluding companies dedicated to Essential Activities), and non-suspended employees when the company remains in operation, as long as it does not suspend a single worker and belongs to the manufacturing sectors or is micro, small and medium-sized companies, both, with the approval of the Ministry of Labour and Ministry of Finance.

4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?

Companies of Non-Essential Activities must close or implement remote work (in the possible cases). They shall remain paying employees their salaries, if the employment contracts are not suspended.

5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

Yes, they can and should according to the recommendations issued by the Ministry of Public Health.

6. Can employers implement a mandatory screening program for Covid-19 symptoms?

Yes.

7. Are employees required to inform their employer if the Covid-19 test result is positive?

Yes, they must inform their employers.

8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

Yes, they have. As well, they must follow a protocol on these cases that should mirror the indications established by the Ministry of Public Health. In case there is a suspicious case, an isolated space must be set up to keep the employee while the public health authorities arrive.

9. Can employers force employees to take vacation during the Covid-19 health crisis?

Yes, employers have this capacity. Also, the Ministry of Labour urge employers whose establishment will remain closed, to grant or advance paid vacation to employees, for their benefit.

Once the vacation period is over, the employers can suspend the employees, otherwise they must keep paying their salaries.

10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?

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No, they are not released and shall continue paying the salaries to those employees that are not suspended.

11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?

No, employment benefits and acquired rights are not interrupted during the closure of the establishment nor the suspension of the employment contract.

12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?

The Ministry of Labour recommended that the flexibility measures adopted by the companies do not interfere with employees' salaries. Nonetheless, employers can reduce working hours, and temporarily and by mutual agreement with the employees, reduce the salary.

13. If employees refuse to go to work, can their employment be terminated for abandonment?

In principle, the employment can be terminated. However, each individual case must be evaluated.

14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?

Yes, they are. In those cases, the employers must inform the Ministry of Public Health and set up an isolated space to keep the employee while the authorities arrive.

## **CORPORATE**

- I. How does the principle of force majeure apply to contract law in your country?

Our Civil Code recognizes the principle of force majeure although does not explain its concept, which has been defined by the doctrine and by court law. In general, is a justified exemption from liabilities to a party in a contract which cannot comply with his obligations due to force majeure event.

Under court law, the following three conditions must be meet in order to consider an event as force majeure:

- a. Exteriority, which means an event no attributable to the debtor;

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- b. Unpredictability, refers that the event couldn't be anticipated when the contract was executed;  
and
- c. Irresistibility, meaning the event couldn't be prevented during the performance of the contract.

**2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?**

Yes. However, each case must be evaluated separately. Even if the situation generated by the Covid-19 has the character of external and unpredictable, the irresistibility condition must be evaluated and proved.

**3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?**

It will depend of the case, as indicated above.

**4. What remedies are available to companies in the event that they fail to meet their contractual obligations?**

It will depend of the contract's terms and conditions. In any case, and during this State of Emergency, an amicable agreement on whether suspend or terminate the contract is recommended, considering that all judiciary and extra-judiciary actions are suspended.

**5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?**

Our authorities have approved different economic measures to protect companies (including small business) aiming towards the flexibility of tax obligations during the State of Emergency period, such as exemption of the payment of Advanced Income Tax (*Anticipo*), extension of payment deadlines, as well as measures aiming to reduce the interest rates in the financial market, and provide liquidity to banking entities.

Additionally, as previously mentioned, FASE delivers a monetary contribution to affected employees during the months of April and May 2020, releasing the companies from the salaries' payments.

All companies duly registered at the Mercantile Registry and the Tax Bureau can have access to such benefits, although some other compliance may apply depending of the commercial activity.

**6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary, during the current health crisis?**

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The Council of the Judicial Power (CPJ) suspended all jurisdictional and administrative activities as well as deadlines (excluding criminal process initiated). The Alternative Dispute Resolution Center is also closed.

Only the Services Judicial Office of Permanent Attention of the Criminal Jurisdiction is operating, which will attend its ordinary cases (imprisonment hearings) and cases of habeas corpus and appeal for legal protection (*Acción de Amparo*).

## **TAXES AND FINANCIAL MEASURES**

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### **1. Has your country issued any tax amnesty or aid programs because of Covid-19?**

Yes, the General Directorate of Internal Taxes (DGII) granted an exemption on the payment of the Advanced Tax Income of the month of April.

### **2. Has the deadline for filing tax returns been extended?**

Yes, DGII granted extensions for the presentation and payment of the Personal Income Tax of natural and legal persons for the 2019 fiscal period and taxpayers included under Simplified Tax Regime, Sworn Declaration of Non-Profit Organizations, Informative Return for transactions carried out between Related Parties (DIOR) and payment of Asset Tax instalment.

Additionally, payment agreements deadline was automatically extended for 3 months for quotes due on April, May and June 2020. Penalties on outstanding tax debts are eliminated.

### **3. Are tax refunds and other claims being processed in a timely manner?**

No, they are not.

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## QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION

Situation	Ecuador
Borders	Closed until April 30
Quarantine / Curfew	In-home quarantine until <b>April 19</b> / Curfew 14h00 – 05h00. Waiting for new resolutions. Obligated to use disposable face masks when leaving home for any reason.
International Flights	Suspended until April 30
Domestic Flights	Suspended until April 30
Employees	In home quarantine until <b>April 19</b> , waiting for new resolutions.
Schools	At home until the end of the school year on June 30, 2020, All classes will be digital beginning May 4, 2020.
What are considered “essential” businesses?)	Energy; Telecommunications; Banks; Agriculture; goods such as food, medicines (basic products); Export and Import of goods.
Events	No mass/group events during April and May
Incoming passengers – Humanitarian flights Mandatory Quarantine	Yes - 14 day quarantine
Incoming Passengers – Humanitarian flights Mandatory Quarantine at home or in government facility	Government Facility

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## **LABOR AND EMPLOYMENT**

Since April 15, 2020, the guidelines issued by the Ministry of Labor for the reduction, modification or emergency suspension of working hours in the private sector, during the Emergency Declaration are the followings:

Permission to *reduce working hours* for a period not exceeding six months remains authorized. This period can be renewed for up to six additional months on a single occasion.

The employer is allowed to *modify in an emergent way, the working hours* of its workers including Saturdays and Sundays, for up to 40 hours per week. The mandatory rest of two consecutive days is guaranteed

In cases in which, due to the nature of the business, it is impossible to continue working by teleworking, reduction or modification of the working day, *the suspension of the working day is maintained*. This does not imply the end of the employment relationship.

### **1. How does the principle of force majeure apply to contract law in your country?**

In accordance with the Ecuadorian Civil Code the principle of force majeure is applied as an exemption from responsibility for contractual obligations. In general terms, the principle of force majeure applies to the case of Covid-19, depending on the particular circumstances.

### **2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?**

Yes, a party can plead for a force majeure in the event that, due to the Covid-19, this party cannot fulfill its contractual obligations.

Under the Ecuadorian Civil Code, the person who breaches a contract is obliged to prove the fortuitous case or force majeure that he alleges.

### **3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?**

In general terms force majeure will last as long as the declaration of emergency subsists.

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However, it should be considered that the generic event (declaration of a state of emergency by COVID 19) by itself does not generate a fortuitous event or force majeure. The particular circumstances of each commercial agent are those that generate fortuitous event or force majeure, so it is necessary to analyze each specific case to determine if it is exempt from delivery or payment obligations due to COVID -19.

#### **4. What remedies are available to companies in the event that they fail to meet their contractual obligations?**

Companies can plead for force majeure and postpone to meet the obligations of the contract while the emergency subsists, in the event that due to the Covid-19, this company cannot fulfill its contractual obligations.

#### **5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?**

At the moment, no protective measures have been issued for small businesses. In the event that measures are issued, these would be applied to the local or subsidiary company of a foreign company.

#### **6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?**

In accordance to a Resolution Issued by the Judiciary Authority all the legal process are suspended for that reason not resolutions has been issued and not necessary to appeal resolutions.

## **TAXES AND FINANCIAL MEASURES**

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#### **1. Has your country issued any tax amnesty or aid programs because of Covid-19?**

At the moment there is not any tax amnesty.

#### **2. Has the deadline for filing tax returns been extended?**

Only the prescription time for all tax obligations are suspended.

#### **3. Are tax refunds and other claims being processed in a timely manner?**

Yes.

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[www.romeroartetaponce.com](http://www.romeroartetaponce.com)

**Diego Romero | Partner**

**Romero Arteta Ponce Law Firm**

Phone: 593-2-2 986 666 USA Line: 954-727 5551 Cel 099 569020

E-mail: [dromero@law.com.ec](mailto:dromero@law.com.ec)



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At the present time, public and private sector have been “suspended” since March 17th, 2020. There is a curfew in force: 16:00 to 04:00. Allowed to operate and not subject to the curfews the next essential businesses: Health services providers, hospitals, food supply establishments and chains; sanitary services [garbage removal], pharmacies; communication services, electricity and water providers, industries/manufacturers of said services, transportation related to said goods and services.

## **LABOR AND EMPLOYMENT**

### **1. Has your country enacted any special labor or employment measures to deal with Covid-19?**

Yes. Not all companies are authorized to work; but those who have to or those who chose to, have to guarantee employees' transportation and sanitary measures instructed by the government. Forms have to be submitted informing which employees are working and providing personal information to facilitate contact and control in case of infection.

### **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

Yes, they can. They are provided with 2 options:

- a. They can suspend most or all labor relations; in this case they need no prior agreement with employees, but authorization must be provided by the Ministry Office.
- b. They can suspend individual labor relations, in a case by case basis; in this scenario, they need prior agreement with employee.

### **3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?**

- An unemployment fund has been created to be executed. It will be given specifically to employees that have been suspended.
- A capital fund has been created for all businesses that require funding to continue with operations during this period, execution pending.
- Tax payment period has been extended to provide relief on such obligations. Central government and bank authorities have granted a 2-month payment deferral on several payment obligations.

### **4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?**

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A “quarantine” order has already been issued and enforced since March 17<sup>th</sup>. Employers have to:

- a. Close businesses, or comply with government health and labor requirements
- b. Employees have to receive their salary, if no suspension has been declared

## 5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

They have to report it immediately to the telephone numbers the government has facilitated for such matters and plus medical attention for employees.

## 6. Can employers implement a mandatory screening program for Covid-19 symptoms?

Government has obliged employers to implement such program, although it is relatively simple. It consists on taking employee’s temperature and reporting if any symptom is presented.

## 7. Are employees required to inform their employer if the Covid-19 test result is positive?

Yes, employees are required to inform since a positive result constitutes a mandatory transfer to designated hospitals, and quarantine for any person that has had contact with them (including co-workers).

## 8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

Although no official “law” in the terms of a decree emitted by Congress has been passed, pursuant the presidential dispositions have exhorted employers that are allowed to work to set out a protocol for hygiene and security in the work place that can include informing employers of having symptoms of Covid-19 that can possibly endanger the rest of their coworkers. According to the presidential dispositions, everyone, including employee, is responsible for adhering to hygiene and security protocol, so this policy can be enforced in the workplace.

## 9. Can employers force employees to take vacation during the Covid-19 health crisis?

According to the Labor Code, employers are the ones that are obliged to set out the date when it is most convenient for the employees to enjoy their vacations. It is important to mention that vacations can’t be advanced, as they must be earned after each continuous year of effective labor. With that being said, employees must be made aware that these days during the Covid-19 health crisis when they are not working will be taken as vacations and must be signed off, or there is a presumption that these were not awarded.

## 10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?

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There are no dispositions regarding employers being released from obligations of compensation in case of reduction of work force due to the health crisis of Covid-19. As a result, if any employer wants to terminate a labor contract with any worker without a justifiable cause, they are obliged to pay compensation for time served. There is an exception in case the employer receives authorization of a collective suspension of labor and the health crisis persists for more than three months, the compensation obligation can be forgone.

**11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?**

No, there are no dispositions regarding an interruption in the accumulation of employment benefits during that period of time.

**12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?**

According to the presidential dispositions, employers are exhorted to negotiate with their employees for the measures that they consider the most beneficial in the short, mid and long term, with their employees for both parties. Although no negotiation terms have been proposed by the Guatemalan government, there is the possibility that the negotiation may refer to temporary closure of the workplace or a temporary reduction of wages and benefits.

**13. If employees refuse to go to work, can their employment be terminated for abandonment?**

According to the Labor Code, pursuant Article 77, f), employers can terminate a labor contract for abandonment if any employee stops showing up for work without an express permit from the employer or due to a justifiable cause for two full, consecutive days, or six half days within the same calendar month.

As a result, if employers have not allowed employees to stay home during the Covid- 19 health crisis, and employees refuse to go to work, there is a justifiable cause to terminate the labor contract without having to pay a compensation for time served.

**14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?**

Although employers are not obligated by any new disposition to inform health authorities regarding cases where their employees test positive for Covid-19, they are obliged to inform about any employee that presents symptoms – even though they may not be positive – as a means for the State to be in charge of the handling of the patient.

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## CORPORATE

1. How does the principle of force majeure apply to contract law in your country?

It is regulated in our civil, commercial, labor, tax, administrative, criminal regulations as an unavoidable force or act; in most cases as an exception to contractual or legal responsibility. COVID-19 is currently recognized as a cause of force majeure according to recent legislation.

2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?

Correct, it depends specifically in the contract provisions; if there is not a written contract, parties will be subject to applicable law.

3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?

Yes, in some cases; there are some commercial agents due to their ratio of operations, cannot be relieved from contractual nor legal obligations.

4. What remedies are available to companies in the event that they fail to meet their contractual obligations?

Once again, it depends on the contract subscribed; in some sectors, contracts are being modified or reformed in good faith if the force majeure provision was not precise about the consequences of the event and compliance.

5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?

As long as small businesses are recorded before commercial and tax authorities, they will be treated equally with term extensions, legal resolutions by Congress or central government provisions. However, a special fund has been created so small businesses can acquire credits to continue operating. No procedure to apply to such fund has been published, therefore we cannot determine if a local subsidiary can apply.

6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?

Judicial process also suspended, upon Supreme Court independent instrument. By now, during the current health crisis, companies should rely on Economy Ministry Office; Registry Offices are working with less personnel and only for some procedures; consumer protection authority is in

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force. Our constitutional court is receiving constitutional actions, it is regularly attending its competence. If companies are in need of criminal or constitutional warranties process, both are working. Any other process, such as civil or commerce, is suspended.

## TAXES AND FINANCIAL MEASURES

### 1. Has your country issued any tax amnesty or aid programs because of Covid-19?

Until today, not tax amnesty, terms extension; aid programs are resolved, most are to be enforced on May 1<sup>st</sup>.

### 2. Has the deadline for filing tax returns been extended?

Yes, for some taxes and specifically for filing.

### 3. Are tax refunds and other claims being processed in a timely manner?

No, refunds and claims are delayed “normally” and they will certainly suffer additional delay upon this pandemic.

María Marroquin | [mpemueller@mra-legal.com](mailto:mpemueller@mra-legal.com)

Pedro Marroquin | [pmarroquin@mra-legal.com](mailto:pmarroquin@mra-legal.com)

Laura Ordoñez | [lordonoz@mra-legal.com](mailto:lordonoz@mra-legal.com)

Jose Portabella | [jportabella@mra-legal.com](mailto:jportabella@mra-legal.com)

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## QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION

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### I. Office Closures? Curfews? Who is allowed to operate at this time? What are considered “essential” businesses?

As of March 16<sup>th</sup>, the following provisions are in place in Honduras:

- a. Work in the public and private sectors is suspended;
- b. Events of any kind and number of people are prohibited;
- c. Suspension of the operation of public transport;
- d. Suspension of on-site religious celebrations;
- e. The operation of businesses including shopping centers is prohibited; and,
- f. The closure of all air, land and sea borders on Honduran territory.

The following exceptions to the aforementioned prohibitions are in place:

- a. The entry of Honduran citizens, permanent and temporary residents, as well as the diplomatic corps accredited in the country are exempted from the border closure, which must enter into mandatory quarantine immediately upon entry according to the guidelines of the Ministry of Health;
- b. Exceptions are made for public employees, personnel incorporated to attend to this emergency, senior officials, health, relief, security and national defense personnel, the Consumer Protection Directorate, customs, immigration, ports and airports personnel or other indispensable public services;
- c. Hospitals, health care centers, medical and veterinary laboratories;
- d. Pharmaceutical industry, pharmacies, drugstores and companies dedicated to the production of disinfectants and hygiene products;
- e. Public transport for health reasons and those contracted by companies within these exceptions to mobilize their workers;
- f. Gas stations;
- g. Markets, supermarkets, convenience stores and grocery stores;
- h. Restaurants with self-service, which may only serve through drive through;
- i. Kitchens of restaurants that have delivery service and companies that are dedicated to delivery services;
- j. Hotels for accommodation and food to the room of their guests;
- k. Security companies and transport of valuables;
- l. Banks and credit unions;
- m. Waste collection;
- n. Agro-food industry including food and beverage distribution centres;
- o. Agricultural industry, agricultural work of collection and companies of agrochemicals;
- p. Industry dedicated to energy production; and,

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- q. Telecommunications, internet providers and the media including radio, television, newspapers and cable companies.

Other companies may operate with a permit granted by the Government through the Security Ministry.

The following provisions must be followed in order to circulate:

Day	From	To	ID termination, passport and/or resident card	Mandatory measures
<b>Monday</b>	9:00 a.m.	5:00 p.m.	1 and 2	Use of facial mask, hand sanitizer and social distancing is required.
<b>Tuesday</b>	9:00 a.m.	5:00 p.m.	3 and 4	
<b>Wednesday</b>	9:00 a.m.	5:00 p.m.	5 and 6	
<b>Thursday</b>	9:00 a.m.	5:00 p.m.	7 and 8	
<b>Friday</b>	9:00 a.m.	5:00 p.m.	9 and 0	
<b>Saturday and Sunday</b>	Nobody is allowed to circulate			
Special attention to seniors, pregnant women and people with disabilities, according to their ID termination, passport and/or resident card:				
<ul style="list-style-type: none"> <li>• Supermarkets and pharmacies: 7:00 a.m. to 9:00 a.m.</li> <li>• Banks: 9:00 a.m. to 10:00 a.m.</li> </ul>				

## LABOR AND EMPLOYMENT

### I. Has your country enacted any special labor or employment measures to deal with Covid-19?

Due to the National Emergency declared by the Government, all labor is suspended until April 19, except for specific industries related to hospitals or medical care facilities, pharmacies and pharmaceutical companies, gas stations, supermarkets, security companies, banks, food industry, energy producers, agricultural industry, telecommunications, internet providers, media, water supply and cargo industry for supplies. For a business to be operating in Honduras, it must be listed in the above and have a safe passage granted by the Ministry of Security. For the companies who are still operating, they 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. On April 3, Congress approved a new Relief Law for the productive sector and the employees for COVID-19.

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## **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

Yes, labor contracts may be suspended during the crisis. Employer must request authorization to the Ministry of Labor.

## **3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?**

The Government provides a financial assistance to employees who have been suspended and whose employer has suspended under the new Relief Law for the productive sector and the employees for COVID-19.

## **4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?**

Even if the employer cannot operate due to the quarantine, they have to respect their employee's labor rights, unless they request the suspension of labor contracts at the Ministry of Labor.

## **5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?**

Yes, the employer may deny a worker access if they detect symptoms of COVID-19, the employee should immediately leave in order to seek medical assistance and take the laboratory test for COVID-19.

## **6. Can employers implement a mandatory screening program for Covid-19 symptoms?**

The employer should take every employee's temperature before entering the workplace. If the Company has a Doctor on the premises, he should evaluate any employee who presents symptoms, if not, the employee should be sent to seek medical attention immediately. If an employee is confirmed negative for COVID-19, he should notify the employer and get back to work, in case the employee is confirmed positive for COVID-19, he should immediately go into self-isolation and is required to notify the employer.

## **7. Are employees required to inform their employer if the Covid-19 test result is positive?**

The employee is required to notify the employer in case that they test positive for COVID-19 so that the employer may take precautions such as notifying other employees who may have interacted with the person who tested positive.

## **8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?**



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Yes, under Executive Decree PCM-019-2020, the employee is required to notify the employer if they have symptoms of COVID-19 or any other similar symptom that affects the respiratory tract.

### **9. Can employers force employees to take vacation during the Covid-19 health crisis?**

No, employers may not force employees to take vacations during COVID-19, however, they may sign an agreement which needs to be sent to the Ministry of Labor for it to be effective.

### **10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?**

No, employers are not released from this obligation in case a reduction of work force takes place. Termination due to COVID-19 would mean a wrongful dismissal, therefore the Company shall pay full severance to its employees.

### **11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?**

As stated on answer number 1, Honduras is currently on temporary operational closure, however, employers must still pay the labor benefits unless they request the suspension of labor contracts to the Ministry of Labor.

### **12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?**

The employer may not reduce wages or benefits, this may be considered as a wrongful dismissal. They may only request the suspension of labor contracts to the Ministry of Labor.

### **13. If employees refuse to go to work, can their employment be terminated for abandonment?**

Given that we are currently on a National Sanitary Emergency, public transportation has been suspended, if the employer can assure that the employee has been given all the means necessary to assist to work, as well as the mandatory personal protection equipment and that the company has a safe passage granted by the Ministry of Security, they may carry out a disciplinary process. If the employer may not assure the above, the recommendation would be to persuade the employee into signing a vacation agreement.

### **14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?**

Yes, employers must notify the Ministry of Health if an employee tests positive for COVID-19.

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## **CORPORATE**

### **1. How does the principle of force majeure apply to contract law in your country?**

The force majeure within Honduran legislation is not expressly defined. In other laws of America, the term "Force Majeure" and "Act of God" meet in one, but in Honduras the first differs from the second in that it is produced by mankind and the second by nature. However, if it is exemplified through the law. Likewise, it is established by current national regulations as an exemption from liability that can be agreed by the parties or if it is not, alleged by the affected party in a contractual relationship so that a competent court can resolve the matter.

### **2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its contractual obligations?**

In order to determine that force majeure is an exemption of any liability in a contractual relationship, there must be a causal link between the event or situation that occurs and the impossibility of compliance the event or situation generates for one of the parties. In other words, in order for one of the parties to be able to claim this condition and exempt itself from liability, the following requirements must be met:

- a. that the event is unpredictable
- b. that the event is irresistible
- c. that the event makes the fulfillment of an obligation impossible
- d. that there is no intervention from the person who alleges it.

### **3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?**

Not by the mere declaration a state emergency. It must be studied if a force majeure event was established in the contractual dispositions as an exemption of liability and the process to end the contract. If it was not stated by any of the parties, it should be alleged by the harmed party at the competent authority which can be a Court House or Arbitral Authority authorized by the parties, which in addition, will resolve the matter waiving of liability or forcing the completion of every obligation stated in the contract.

### **4. What remedies are available to companies in the event that they fail to meet their contractual obligations?**

According to Honduran Law, if any party fails to meet their contractual obligations for reasons beyond its control, the party can make use of the following:

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- a. Negotiate with the other party the dispositions of the contract that affect the party in the comply of its obligations
- b. Allege Force Majeure or Acts of God to end the contract or to modify dispositions from it so that the commercial relationship does not end
- c. Allege the rule of “excessive onerousness” (Rebus Sic Stantibus) at the competent authority so that the contract can be modified or terminated

### **5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?**

Tax measures have been adopted to benefit companies in the late filing of tax declaration and their respective payments without this implying a fine or generation of late payment interest at their expense. Also, a state institution was empowered so that with its own funds and the trusts it manages, it enables the financing mechanism of "accelerated lines of credit" so that disbursements can be granted with the simple presentation of a promissory note and that credits can be formalized for small businesses.

### **6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary during the current health crisis?**

No, judiciary processes are taking place only on Criminal Law or those stated as primary concerns for Honduran Government. Judicial processes will return to normality after sanitary emergency is lifted by Honduran Government.

## **TAXES AND FINANCIAL MEASURES**

### **I. Has your country issued any tax amnesty or aid programs because of Covid-19?**

Yes, through Decree 33-2020 the National Congress issued the Law of Aid to the Productive Sector and to Workers in the Face of the Effects of Pandemic Caused By COVID-19 which contains some relief measures as follows:

- Extension in the filing and payment of the income tax, assets tax and solidarity contribution return for the year 2019 until June 30, 2020, for small and medium taxpayers (normally due on April 30). Large taxpayer cannot apply to tis benefit.
- Extension in the filing and payment of the of specific Income Tax return on lease or rent of houses or apartment buildings for the year 2019 until June 30, 2020, for small and medium taxpayers (normally due on April 30). Not applicable to the income derived from horizontal property, therefore, these must be met no later than April 30 of the year 2020.

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- 8.5% discount on the Income Tax payable for the fiscal period 2019 for small and medium taxpayers, if they make the filing of the return and the payment of this no later than April 30, 2020.
- Payments on account of the Income Tax for fiscal period of 2020 for small, medium and large taxpayer, must be calculated on the 75% of the amount of the Income Tax determined in the fiscal period 2019 and the payment dates of the first three installments are extended as follows:
  - a. 1st installment: August 31, 2020.
  - b. 2nd installment: October 31, 2020.
  - c. 3rd installment: December 31, 2020
- Extend the deadline for submission of the Annual Informative Return of Transfer Prices of fiscal year 2019, which must be submitted no later than July 31, 2020 (normally is due on April 30).
- Additional special deduction from the gross income equivalent to 10% calculated on the payment of wages and salaries paid in the months of the decreed state of emergency, which may be accounted for as a deductible expense for purposes Income Tax in the fiscal period 2020, to the taxpayers who keep all their employees within the period started from the declaration of a state of emergency issued by COVID-19 until December 2020, respecting the payment of wages and labor rights and who have not carried out suspension or termination of employment contracts. This benefit will be lost in cases where the employer terminates or suspends employment contracts.
- Extension in the filing of sales tax return to taxpayers who have not operated during the emergency, which will be filed 10 business days after the end of the emergency. Not applicable to taxpayer that operated during the emergency.

### **2. Has the deadline for filing tax returns been extended?**

Yes, deadlines for filing tax returns have been extended as previously explained.

### **3. Are tax refunds and other claims being processed in a timely manner?**

No, due to the fact that the tax authority is not working normally, deadlines have been suspended and activities reduced.

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## **QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION**

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On March 16, 2020, the Governor of Puerto Rico (Hon. Wanda Vázquez-Garced) issued an island-wide “lock-down” in response to the global threat of the COVID-19 pandemic. On April 11, 2020, the curfew and lock-down was extended until May 3, 2020 (EO-2020-033).

Among the measures imposed, no business other than essential services are allowed operate during this time. Failure to comply may results in fines and loss of business licenses. Law firms are not considered an essential service. The judiciary is only operating for emergency procedures and criminal processing. All hearings, and/or any other major event has been postponed until at least mid-April. Individuals are only allowed to leave their homes during the day for essential services. The government has also made more flexible and promoted the use of telemedicine to avoid people having to leave their homes.

Given the lock-down, many businesses had to fully shut-down during this time and lay-off their employees. For non-essential businesses still operating, employees are being asked to work remotely. At the same time, since schools and day cares are not allowed to operate either, parents have their children at home. Labor and employee protections have been implemented.

- 24/7 lockdown currently in place for all citizens
- During the lockdown, citizens are only able to go out to obtain essential services, if not presenting any COVID-19 symptoms. All citizens must wear mask or cover their noses and mouths in public.
- Mandatory curfew in place from 7pm – 5am.
- Sundays consist of full-lockdown, allowing only food pick-up/drive-thru services and drive-thru pharmacies.
- The autistic may conduct therapeutic walks, before curfew, with a companion.
- Recognized essential services include:
  - Medical and Hospital Personnel
  - Grocery stores
  - Businesses related to the food distribution chain (including agricultural, processing and packaging, and sale)
  - Postal and delivery services (private and public)
  - Pharmacies
  - Medical Cannabis Dispensaries
  - Financial Services

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- Firemen
- Policemen
- Aid cars (paramedics)
- Emergency automobile services
- Emergency constructions (for essential services)
- Emergency house repairs (plumbing, electrical, elevators)
- Telecommunication industry
- Pharmaceutical, Biomedical and Biotechnological companies (for manufacturing and sales)
- Manufacturing and sale of cleaning, protective and disinfecting materials, needed for the COVID crises
- Oil and Gas Industry
- Governmental employees in fiscal operations (inspectors for Treasury, Consumer Affairs, or other relevant agencies)
- Dental offices (only by appointments, for emergency services)
- Veterinary services (only by appointment)
- Elderly car facilities
- Medical insurance companies
- Medical offices for emergencies and previous appointments (not allowed for elective procedures)
- Textile industries working under a Department of Defense Contract or creating Personal Protective Equipment (PPE).

Exempted industries must provide protective equipment to its employees and impose social distancing measures. In case of industries that tend to customers, commercial establishments cannot allow customers without a mask and/or piece of cloth covering their mouths and noses. Commercial establishments are also required to create social distancing measures, limit access to establishments, and are encouraged to implement an appointment system to limit the number of customers.

Other industries allowed limited operations:

- Construction: as it relates to an exempted industry needed for emergency purposes.
- Auto shops and repairs: only on Wednesdays and Thursdays, by appointment. Shops must remain closed, and only assist with emergency repairs.

# Covid-19 Regulations and Safety Measures in Latin American & the Caribbean



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- Hardware stores: limited to Thursdays, Fridays, and Saturdays. Thursdays only for exempted industries by previous order. Fridays and Saturdays by appointment only. Must be only for emergency equipment, cannot have the display rooms or retail store open to customers.
- Corporations Act: An exception was created for scheduled annual shareholders meetings that would have to be postponed, any new notice of the new meeting date to shareholders can be issued by any alternative communication means.

There are special licenses created for employees during this COVID period, which are discussed in the following section.

### **LABOR AND EMPLOYMENT**

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#### I. Has your country enacted any special labor or employment measures to deal with Covid- 19?

Yes.

##### **A. EXECUTIVE ORDERS:**

The amended “lock-down” Order instructs private businesses to require their customers to comply with the measures previously explained. To this end, private businesses must:

- Refuse entry to any person who does not wear a face mask or other similar mouth and nose cover;
- Provide stations or mechanisms in the business to allow persons to disinfect their hands while remaining in the premises; and
- Ensure that customers are keeping at least 6 feet apart from each other inside and outside of their premises.

To prevent the spread of infection during the lockdown, the Order requires that on Sundays, markets, supermarkets or businesses with supermarkets must remain closed, pharmacies may only sell medication and personal hygiene products; and gas stations may only sell fuel and medication.

##### **B. DOL OPINION LETTERS AND OTHER DISPOSITIONS:**

On March 13, 2020, the Puerto Rico’s Secretary of Labor published Opinion 2020-01, an important opinion outlining employers’ legal obligations to provide a safe work-environment to their employees. The Secretary stated that employees in Puerto Rico have a constitutional right to be protected against risks to their health and safety at work and, accordingly, employers should adopt practices to safeguard their employees against the transmission of COVID-19. For that reason, the Secretary directed Puerto Rico employers to have in place a plan to avoid the spread of the virus at

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work, including measures such as flexible work schedules and a work-from-home plans and policies.

On March 23, 2020, the Puerto Rico's Secretary of Labor published Opinion 2020-02, an important follow up opinion clarifying employers' legal obligations during the COVID-19 lock down in Puerto Rico and outlining some dispositions regarding the most recent federal mandatory leaves.

## **C. SPECIAL LEAVE:**

On April 9, 2020, the Puerto Rico Governor enacted Act No. 37 of 2020. The purpose of this Act is to amend the Puerto Rico Minimum Salary, Vacation and Sick Leave Act and establish a special paid leave for non-exempt employees infected or who are suspected of being infected with an illness that triggers a state of emergency declared by either the Governor of Puerto Rico or the Secretary of the Puerto Rico Health Department. The Act provides for an employee that is infected or suspected of being infected the right to a special paid leave of five (5) working days. In order to use the special paid leave, the employee must first exhaust all otherwise accrued leave. It also provides that an employee cannot be penalized for the use of the special leave or used as a measure of the employee's efficiency when determining pay raises or promotions. Likewise, those absences cannot be used to justify disciplinary actions, such as suspensions or termination.

## **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

Yes. The current situation may constitute just cause for suspension or termination of employment. In Puerto Rico, Law 80 of May 30, 1976 requires that employers have "just cause" to terminate an employee hired for an indefinite period of time. If it is determined that there is no just cause, the discharged employee is entitled to a severance. Just cause exists, among other, when the following occurs:

- The full, temporary, or partial closing of operations.
- Technological or reorganizational changes occur, as well as changes of style, design or nature of the product made or handled by the employer and/or the services it renders to the public.
- Reductions in force that are necessary due to a reduction in the volume of production, sales, or profits, anticipated or present at the time of the termination.

In the specific context of closings, reductions in force, or reorganizations the employer must retain the most senior employees among the job classification. However, when there is a reasonably clear or evident difference in favor of the capacity, productivity, performance, competence, efficiency, or conduct on an employee when compared to others, the employer may keep said employee. If within 6 months of a termination for the stated reasons the employer has an opening for a similar job classification, it shall follow the same seniority rules to re-employ laid off employees.

Given the COVID-19 pandemic and the State of Emergency, many employers have experienced reductions in sales and profits, thus for purposes of Law 80, terminations and suspensions will be justified if performed following the criteria provided for by the Law.



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3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?

## *Private Employers*

### **A. Tax Credits under the Families First Coronavirus Response Act of 2020**

As we commonly know, the Families First Coronavirus Response Act of 2020 (“FFCRA”) requires certain employers to provide expanded family and medical leave and paid sick leave to employees unable to work or telework due to certain circumstances related to COVID-19. Division G of the FFCRA provides for a credit against the tax imposed by section 3111(a) or 3221(a) of the Internal Revenue Code (“Code”) for each calendar quarter in an amount equal to 100 percent (100%) of the “qualified sick leave wages” and “qualified family leave wages” required to be paid under the FFCRA. Particularly, sections 7001 and 7003 of Division G of the FFCRA provides refundable tax credits for businesses and tax-exempt organizations with fewer than 500 employees that pay qualified sick leave wages and qualified family leave wages to their employees (hereinafter “eligible employers”), as required by the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

According to Notice 2020-21 issued by the Internal Revenue Service (“IRS”), the refundable tax credits for eligible employers apply to “qualified sick leave wages” and “qualified family leave wages” paid for the period beginning on April 1, 2020, and ending on December 31, 2020. Eligible employers may claim the credits on their federal employment tax returns (e.g., Form 941, Employer's Quarterly Federal Tax Return), but they can benefit more quickly from the credits by reducing their federal employment tax deposits. The eligible employer should first reduce its remaining federal employment tax deposits for wages paid in the same quarter to zero. If the permitted reduction in deposits does not equal the qualified leave wages (and allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages), the Eligible Employer may request an advance payment of the credits from the IRS by submitting a Form 7200, Advance Payment of Employer Credits Due to COVID-19, for the remaining qualified leave wages (and any allocable qualified health plan expenses and the Eligible Employer's share of Medicare tax on the qualified leave wages) it has paid for the quarter for which it did not have sufficient federal employment tax deposits. The IRS expects to begin processing these requests during this month (April 2020).

### **B. Tax Credits under the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”)**

To encourage eligible employers to keep employees on their payroll, despite experiencing economic hardship related to COVID-19, on March 31, 2020, the Treasury Department and the IRS launched this Employee Retention Credit. In general, an employer will receive a credit against applicable employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages with

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respect to each employee. The amount of qualified wages taken into account for each eligible employee, however, will not exceed \$10,000 per calendar quarter and the credit will not exceed the applicable employment taxes owed for such calendar quarter. The credit is available to all employers regardless of size, including tax-exempt organizations. However, the credit is not available for small businesses who take small business loans.

An eligible employer for purposes of the Employer Retention Credit are those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either: (i) the operation of their trade or business was fully or partially suspended during any calendar quarter in 2020 due to orders from an appropriate governmental authority as a result of COVID-19, or (b) the employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter. These measures are calculated each calendar quarter.

Section 2301 of the CARES Act provides a refundable tax credit against an eligible employer's Creditable Employment Taxes for each calendar quarter for Qualified Retention Wages paid by the employer. The credits are fully refundable because the eligible employer may get a refund if the amount of the credit is more than certain federal employment taxes the eligible employer owes. The refundable tax credit is reported on the employer's return for reporting its liability for FICA tax or RRTA tax, as applicable, which for most employers subject to FICA tax is the quarterly employment tax Form 941. An employer may claim and receive an advance payment of the refundable tax credit for Qualified Retention Wages under section 2301 of the CARES Act by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19.

Lastly, it is important to clarify that the IRS has stated that an eligible employer may receive both tax credits (under FFCRA and Cares Act) but not for the same wages. Therefore, the amount of qualified wages for which an eligible employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.

### *Public Sector Employees:*

After the declaration of State of Emergency and mandatory lock-down, the Governor announced that central government employees will continue to receive their regular salary during the COVID- 19 emergency. The Mayors of the different municipalities aligned with that determination and are also paying municipal employees their salaries during this emergency.

### *Private Employees:*

The Families First Coronavirus Response Act of 2020, enacted to handle the current COVID-19 emergency, including the *Emergency Paid Sick Leave Act* and the *Expanded Family and Medical Leave Act*, applies to non-exempt and exempt employees in Puerto Rico.

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Employees are eligible for unemployment benefits in Puerto Rico, if they worked in Puerto Rico for at least two quarters within the last 18 months and become unemployed due to reasons beyond his control. Unemployment benefits are up to \$190 per week for up to 26 weeks. An increase in benefits is scheduled for July 1, 2020. Thereafter, employees will receive up to \$240 per week. As a result of the Coronavirus Aid, Relief and Economic Security Act unemployment benefits are extended and additional 13 weeks (for a total of 39 weeks) and the weekly benefits up to an additional \$600.00 (for a total of \$790.00, until June 30, and \$840 starting on July 1st).

4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?

Employers are required to comply with executive orders in Puerto Rico. Any person or company that fails to comply with the provisions of EO 2020-033 or any executive order, may face up to six months of incarceration and/or a fine of up to \$5,000.00.

5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

Yes. EO-2020-033 states that any person suspected to have been exposed to or diagnosed with COVID-19 shall remain in their residence for a period of 14 days, regardless of whether they show any symptoms or not. However, given the national emergency, employers are authorized to require employees to stay at home if they show any symptoms related to COVID-19.

6. Can employers implement a mandatory screening program for Covid-19 symptoms?

On-site screening is not mandatory. However, the Secretary of Labor issued a safe harbor policy allowing employers to inquire about employees' recent travels and/or contact with persons that could have been infected with COVID-19, or their medical conditions, symptoms or impairments (otherwise forbidden under ADA). Additionally, employers may also require employees with symptoms to provide a medical certificate before returning to work, to avoid exposing other employees to health risks. DOL Opinion Letter 2020-01.

7. Are employees required to inform their employer if the Covid-19 test result is positive?

Employers should adopt policies and protocols to require employees to report any COVID-19 related symptoms or any exposure to people with symptoms.

8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

Yes. According to Executive Order OE-2020-033, a person suspected to have been exposed to COVID-19 will not be able to return to work for a period of at least 14 days. Likewise, persons diagnosed with COVID-19 must also remain in their residence for a period of 14 days as instructed by their doctor. As explained by Puerto Rico's Secretary of Labor in published Opinion 2020-01,

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employers must take measures to avoid contagion in the workplace and are allowed to establish protocols to detect symptoms in their employees such as taking their body temperature (with their previous consent) and inquire regarding employee's whereabouts and contacts to determine any potential infection threat. Employers may require a doctor's note to certify the associate may return to work. However, due to the nature of the emergency, the employer may have to consider alternative methods, like an email from the health provider or a negative test result, etc.

### **9. Can employers force employees to take vacation during the Covid-19 health crisis?**

According to Executive Order OE-2020-033, a person suspected to have been exposed to COVID-19 will not be able to return to work for a period of at least 14 days. Employers can force exempt employees to take vacations, since this a company benefit. Vacations for nonexempt employees are a right and should be scheduled by agreement between the employer and the employee. However, there are other mandatory leaves available in Puerto Rico.

### **10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?**

Employers are allowed to move their workforce to unpaid leave if reduction of workforce is necessary due to the health crisis of Covid-19. Those employees will be eligible for the unemployment insurance benefits. That is also true, when due to the emergency, employers are unable to provide employees regular working hours and thus available work is reduced. That being said, according to the Law 80 of May 30, 1976, employers will be justified to terminate employers due to "just cause". Law 80 considers as "just cause" any reduction in labor force that is necessary due to a reduction in the volume of production, sales, or profits, anticipated or present at the time of the termination.

### **11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?**

Yes. However, if a nonexempt employee is under sick leave or vacation leave, they will accrue both benefits.

### **12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?**

Currently, a mandatory lockdown is in place for non-essential businesses. Employers are encouraged to continue regular salary payment. In the alternative, employees have their leave bank (vacation, sick and any other granted by the employee) available. Finally, employees may also request the unemployment insurance benefits, when their employers are unable to pay their salaries and/or the work has reduced significantly.

### **13. If employees refuse to go to work, can their employment be terminated for abandonment?**

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Yes, but after a few considerations. A mandatory lockdown is in place for non-essential businesses. For those businesses that are permitted to open, the Puerto Rico's Secretary of Labor in the published Opinion 2020-01, reminded that all employees have the right to be protected from risks to their health or personal integrity in the workplace, as established by the Article II, Section 16 of Constitution of the Commonwealth of Puerto Rico. Therefore, employers must prepare and establish those necessary policies to procure a safe work environment. Employers policies must be aligned with CDC recommendations as those are updated. Opinion 2020-01 also highlighted that during this emergency employees could request adjustments in schedule, reductions in hours, workplace changes or to make up for non-worked time, all such request must be considered by the employer without retaliation. Finally, employees will have available their leave bank (vacations, sick or any other company granted leave) during this emergency as well as the special leaves granted by the Families First Coronavirus Response Act of 2020 (for those applicable employers) and the Special Leave of Act No. 37 of 2020 providing employee infected or suspected of being infected with the disease or illness that caused the state of emergency the right to a special paid leave of five (5) working days.

#### 14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?

OSHA's record keeping requirements in 29 CFR Part 1904 require covered employers to record certain work-related injuries and illnesses on their OSHA 300 forms. While 29 CFR 1904.5(b)(2)(viii) exempts the registration of colds and common flu, COVID-19 is a Recordable disease when a worker becomes infected on the job.

Yasthel Gonzalez, Esq. | [ygonzalez@estrellallc.com](mailto:ygonzalez@estrellallc.com)  
Maité Medero Benítez, Esq. | [mmedero@estrellallc.com](mailto:mmedero@estrellallc.com)

## CORPORATE

### 1. How does the principle of force majeure apply to contract law in your country?

The Puerto Rico Civil Code, as amended, in its Article 1058 and 1494 recognizes the possibility of invoking force majeure in cases of impossibility of compliance due to unforeseen circumstances. Not every contractual relationship can apply it, as some events that may constitute force majeure to others, could be foreseeable in other contractual relationships. In cases where it was unforeseen, it can be used as a defense. Though not required, it is recommended to be included as a contract term. If not included, it will be in controversy whether the specific events constitute a force majeure. When included in contracts, parties can specify the situations in which force majeure will apply and limit application of the same.

### 2. Can a party plead force majeure if the events relating to Covid-19 prevent that party from fulfilling its

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contractual obligations?

Yes, parties can plead force majeure due to COVID-19. However, its application is not automatic. Thus, the Courts will analyze every specific contractual relationship to determine if it comes within the force majeure case law application. In cases where the contract included a force majeure clause, the application of the same will depend on how it is drafted. Not all force majeure clauses include situations of pandemics and/or forced governments shutdowns. Likewise, on some occasions the clause will only regulate the postponement of obligations and the non-compliance in the COVID-19 situation. Particularly, if the obligation could be postponed or conducted remotely.

Alternatively, parties may benefit from the civil law doctrine of *rebus sic stantibus* which allows for the amendment of a contract where there is an unforeseeable fundamental change in the circumstances, such as would be the case of this global pandemic. This doctrine does not serve to terminate a contract, but it would allow for the alteration of obligations, including key terms, such as, for example, rent under a lease.

3. Does the declaration of a state of emergency by the competent authority provide commercial agents with any relief from their obligation to comply with the contractual conditions of delivery or payment?

It depends on the language of the contract. Some contracts may allow for any state of emergency declaration to provide relief from contractual obligations. In others, or if there is lack of language, the declarations of state of emergency may provide commercial agents with relief, if the declaration prevents them from operating. However, if their operation is not limited by the state of emergency limitations, this relief is not available.

4. What remedies are available to companies in the event that they fail to meet their contractual obligations?

Companies are currently using force majeure clauses and forced government contract to suspend or modify their obligations. Alternatively, some are resorting to contract amendments under the principle of fundamental change in circumstances (*rebus sic stantibus*) to be able to modify their contractual obligations considering the new pandemic reality. Though this principle does not cancel the contract, it does allow for renegotiation of key terms based on the changed in circumstances for the parties' contractual obligations and compliance.

5. Is there protection for small businesses in your country and can the local subsidiary of a foreign entity access it?

The United States Government has issued through the U.S. Small Business Administration (SBA) COVID-19 Payment Protection Plan (PPP) loans and Economic Injury Disaster Loan (EIDL) and EIDL Advance (Grant). In cases of PPP, SBA will issue loans up to 2.5x of payroll amount. The loans are

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aimed to protect employees and must be used 75% for payroll. A PPP loan will be condoned if employments are preserved and other requirements are met. As to the EIDL, SBA is issuing loans up to US\$2 Million payable in 30 years with 3.75% interest rate (or 2.75% in cases of Non-Profits) with a one-year payment moratorium. Loans can be used for payroll, rent, and payment of materials and debts.

Local government has also granted a US\$1,500 economic stimulus incentive to all small and medium-sized businesses (defined as an entity with 50 employees or less and a volume of business of US\$10 million or less). A local subsidiary of a foreign entity can access these funds if it complies with the definition stated previously. It also granted self-employed workers a US\$500 economic stimulus incentive. Further details of these programs will be provided in the tax section of this document.

6. Is the judiciary process operating in your country? If not, what processes are in place to allow companies to appeal to the judiciary if necessary, during the current health crisis?

Both federal (US) and local (PR) courts are currently closed to all non-emergency processes. Courts are also handling emergency proceedings, including injunctions and temporary restraining orders by electronic filing and teleconference, if necessary.

Courts are operating in limited capacity. Emergency procedures include family proceedings for emergency custody and protective restraining orders, involuntary commitments, arraignments, and any other emergency motion. Any hearing on these matters is conducted by webconference, or teleconference. The Court has automatically extended all protective restraining orders for domestic violence victims until the end of the lock-down period. New petitions can be requested thru their online platform. Outside Court working hours, the emergency Judges panel rotation is working and being handled through the local police station.

The local Judicial Branch has suspended all hearings until May 1, 2020. However, it recently announced that it will be conducting teleconferences, in cases where parties request so and all parties are available. All non-emergency judicial deadlines have been postponed until May 17, 2020. As for appeals, the emergency appeal panels will handle any emergency motion filed. Non-emergency appeals are postponed until after the lockdown period, and the filing deadlines extended until May 17, 2020.

## TAXES AND FINANCIAL MEASURES

- I. Has your country issued any tax amnesty or aid programs because of Covid-19?

Yes. The Strategic Plan declared by the Governor of Puerto Rico seeks to assist small and medium sized businesses and workers.

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The Puerto Rico Department of Economic Development and Commerce (“DDEC”) has declared that the requirements to access the US\$1,500 economic stimulus incentive for small and medium sized companies are:

- i. The business must have 50 employees or less;
- ii. Its volume of business does not exceed the USD\$10 million annually, and
- iii. The business must be registered as a merchant in the Unified Internal Revenue System (“SURI”) of the PR Treasury Department and have a valid Merchant certificate (Model SC 2918) as of March 15, 2020.

Regarding the US\$500 economic stimulus incentive for self-employed workers, the Puerto Rico Treasury Department issued Circular Letter Number 20-21 (“CL 20-21”) on March 26, 2020 establishing the eligibility requirements of this incentive. Eligible Individuals for the USD\$500 incentive must comply with the following:

- i. Be a Puerto Rico resident and self-employed;
- ii. Be subject to federal social security tax;
- iii. Be registered in SURI as a merchant, and
- iv. Have a valid Merchant’s certificate (Model SC2918) as of March 15, 2020.

In addition, the Strategic Plan approved by the local government includes the following bonuses or contributions:

- i. A bonus of up to \$4,000.00 for all nurses in the public and private sector and up to \$2,500.00 for health technicians who assist in medical tasks during the crisis. However, the PR Department of Health needs to provide further guidance regarding this matter.
- ii. A contribution of up to \$4,000.00 was designated for emergency medical response personnel.
- iii. A contribution of up to \$3,500.00 was designated for police officers, firefighters and correctional officers, amongst other public servants.

## 2. Has the deadline for filing tax returns been extended?

Yes. The due date for income tax filings has been extended from April 15, 2020, to July 15, 2020. However, Treasury’s Administrative Determination Number 20-09 (“AD 20-09”) sets other due dates (not July 15, 2020) for income tax returns with different original due dates or extensions of time duly filed for said return. For more information, please refer to the chart further below. Taxpayers may also defer Puerto Rico income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, irrespective of the amounts owed.

Moreover, AD 20-09 automatically extended the validity of the Internal Revenue Licenses



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expiring within March 15, 2020 through April 30, 2020 until May 31, 2020. The PR Treasury Department has issued other communications extending other payment dates, modifying temporarily the obligations of certain withholding agents and other legal provisions. For example, any administrative review letter (certifies that a debt is under review by the PR Treasury Department) issued on or before March 12, 2020, will be in force for 120 days. Additionally, payment plans have been extended, and the PR Treasury Department will not impose any penalties, fines or interests for lack of payments within March 16 to April 30, 2020.

<b>Tax Return</b>	<b>Extended Due Date</b>
Income tax returns with due date or extended due date of March 15, 2020, including Returns that were previously extended and that were due on March 16, 2020.	June 15, 2020
Income tax returns with due date or extended due date of April 15, 2020.	July 15, 2020
Tax returns with due date or extended due date of May 15, 2020 or June 15, 2020.	July 15, 2020
Other Returns with due date of March or April of 2020.	Same day as original due date but during the month of June of 2020.
Other Returns with due date of May or June of 2020.	Same day as original due date but during the month of July of 2020.

### 3. Are tax refunds and other claims being processed in a timely manner?

At least both of the economic stimulus incentives (US\$1,500.00 and US\$500.00) declared by the local government in the Strategic Plan are being processed within a reasonable period. However, since many tax refunds are still pending, the Puerto Rico Treasury Department allowed taxpayers to request that the following refunds, that were duly requested and are still pending, be applied to other taxes owed to the Puerto Rico Treasury Department:

- i. Excess income tax payments;
- ii. Excess excise tax payments, and
- iii. Excess alcoholic beverage tax payments and/or the accumulated unused sales and used tax credits paid on imports of taxable items for resale that cannot be used against the sale of future inventory.

Further guidance will be issued by the Puerto Rico Treasury Department regarding the requirements and rules for the processing of these requests.

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Neysha Natal, Esq. | [nnatal@estrellallc.com](mailto:nnatal@estrellallc.com)

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## **QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION**

The government of Trinidad and Tobago closed the country's borders to all travelers, as of 12am on the 23<sup>rd</sup> March 2020 and issued a "stay at home" order for all non-essential business which is currently set to expire on the 30<sup>th</sup> April 2020.

The borders remain open for the movement of goods, although crewmembers of cargo vessels are prohibited from disembarking.

Attached is the **Public Health [2019 Novel Coronavirus (2019 -nCoV)] (No.9) Regulations, 2020** issued by the TT government for the period 10<sup>th</sup> April -30<sup>th</sup> April 2020.

There is no curfew or lockdown in effect.

Essential business/services as outlined in the regulations attached may operate, but can only have those employees critical to such operations.

Apart from the essential businesses/services, persons are asked to stay at home unless they need to shop for food, pharmaceuticals or if they need supplies from the hardware or have to do essential banking.

Kindly note that the authorities may question persons as to their status and purpose for being out. As such the employees of essential businesses should be provided with company letters, advising of the person's status i.e. that this person is considered an essential employee and required to report to work. These letters should also state the employee's name, identification number or driver's license information.

Government offices remain operational with limited staff.

## **LABOR AND EMPLOYMENT**

1. Has your country enacted any special labor or employment measures to deal with Covid-19?

No.

2. Can employers suspend employment contracts during this Covid-19 health crisis?

An employer may temporarily lay-off or suspend employment contracts of those employees who are not necessary to its operations as a result of the regulations and the effect of Covid-19.

Please note that a temporary lay-off is a matter of last resort and ought not to exceed a period of 3 months. If a temporary lay-off is being considered, this possibility should be discussed with

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your employees or union (if applicable) prior to making a final decision. If the lay-off is likely to exceed the 3 months, then any extension to that time must be discussed and agreed with the affected employees or the recognized majority union, if applicable.

3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?

Yes.

The government has implemented:

- i. a Salary Relief Grant of up to \$1,500.00 for up to three (3) month to mitigate the financial challenges experienced by persons who were Retrenched, Terminated or experienced Reduced Income as a result of the novel coronavirus (COVID-19) from the 1<sup>st</sup> March 2020; and
  - ii. a Rental Relief Grant of up to \$2500.00 for up to three months.
4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?

Employers **must** comply with a "quarantine" or similar order.

5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

Yes.

6. Can employers implement a mandatory screening program for Covid-19 symptoms?

Yes, however the HR policies should be amended to reflect same and/or a memo issued so that all employees are made aware of such a screening program. Further, it is important to note the disclosure requirements at No. 7 of the attached regulations if persons have tested positive for Covid-19.

7. Are employees required to inform their employer if the Covid-19 test result is positive?

As this is a public health crisis it would be incumbent on employees to disclose that information to the employer to protect the health and safety of fellow employees and visitors to the workplace.

8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

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Yes.

## 9. Can employers force employees to take vacation during the Covid-19 health crisis?

Generally, an employer cannot force employees to take their vacation time during this Covid-19 health crisis, as typically vacation leave is taken at the mutual convenience of both parties. The ability to do this would therefore be largely dependent on how the employment contracts, HR policies and/or collective agreements, if any, which govern how vacation leave is to be taken are written.

There is currently no statute governing vacation leave for employees who do not fall within our minimum wage legislation.

## 10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?

An employer is not released from the obligations of compensation in case of a reduction of work unless that reduction is either agreed with the employees (or union, if applicable) or unless the employer takes some step to reduce its work force through either a temporary lay-off of employees as identified at paragraph 2 above or a reduction of its labour force through retrenchment in which case it has to comply with the Retrenchment and Severance Benefits Act.

**Only workers who have completed one year or more of service qualify for retrenchment/severance benefits. Casual workers, temporary workers, fixed term-contracted employees and seasonal workers do not qualify for severance payments.**

## 11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?

An employer cannot interrupt the accumulation of employment benefits during the period of closure with the agreement of the employees or union, if applicable, unless the contract of employment specifically gives it the power to do so. Even if the contract of employment were to allow such an interruption, the employer ought still to discuss that option with the employees or union.

## 12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?

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Yes, however the employer would be required to discuss the particular option(s) with affected employees and or union, if applicable.

## 13. If employees refuse to go to work, can their employment be terminated for abandonment?

If a worker refuses to work during this period or to follow a lawful instruction, the employer may have grounds for sanctions or even dismissal of the employee. This would depend on the particular set of circumstances. If an employee simply fails to attend work in excess of two consecutive days without providing any notice or a medical certificate proffering a reasonable excuse, this could be viewed as abandonment of the job and grounds for dismissal. The employer must however, follow the procedures set out in its HR policy with regard to discipline/dismissal and good industrial relations practices prior to the employee being sanctioned and/or dismissed i.e. warning letter etc.

## TAXES AND FINANCIAL MEASURES

### 1. Has your country issued any tax amnesty or aid programs because of Covid-19?

Tax amnesty – No.

Aid Programs – Yes. See also response to No. 3 under Labor and Employment.

- Additionally, the Central Bank of Trinidad and Tobago (CBTT) has reduced the reserve requirement for Commercial Banks from 17% to 14%.
- The Repo Rate reduced from 5% to 3.5%
- CBTT has told commercial banks to reduce the spread between deposit rates and lending rates. Deposit rate is 1%-2%, and the prime lending rate is 9.25%.
- Prime lending rate is expected to decrease from 9.25% to 6%.
- Government has asked commercial banks to reduce the interest rate to 10% for small business with credit card limits of \$25,000 or less.
- Credit card interest rates will be reduced by amounts ranging from 10%-17% of the existing rates – on a bank by bank basis.

### 2. Has the deadline for filing tax returns been extended?

No.

### 3. Are tax refunds and other claims being processed in a timely manner?

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Tax refunds and other claims are being processed. The government has assured that these will be delivered in a timely manner.

Bronock Reid, Partner | [bronock.reid@tt.lexcaribbean.com](mailto:bronock.reid@tt.lexcaribbean.com)

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## **QUARANTINE STATUS AND HEALTH EMERGENCY DECLARATION**

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On March 13th, 2020 Uruguayan Government declare a national health emergency as a result of the COVID-19 pandemic. Since then, on a daily basis, a series of measures have been adopted seeking to prevent the spread of this pandemic and trying to mitigate the economic and social impact on the population.

Mandatory quarantine has not been declared, except for those who have tested positive for COVID-19, have had direct contact with people who have tested positive for COVID-19, or enter the country after having been to or stayed in high risk areas as defined by OMS. People aged over 65 must also comply with preventive quarantine.

Curfew has not been decreed. The government aims to avoid having to declare a complete mandatory quarantine thus trying to sustain the economy. Employers are required to adopt all means available to put in place preventive and protection procedures related to the eventual spread of COVID-19 and are urged to implement and encourage homeworking whenever possible providing the necessary tools for their employees.

Classes have been suspended at all educational levels both in public and private institutions. Suspension of all public shows and spectacles and any event or activity that implies gathering and crowding are discouraged.

Store owners and managers are required to shut down as a preventive measure, except for food stores and pharmacies. Construction which was suspended started working after Easter holidays.

## **LABOR AND EMPLOYMENT**

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### **1. Has your country enacted any special labor or employment measures to deal with Covid-19?**

Yes, since the declaration of the national health emergency many measures concerning labor and employment have been implemented.

### **2. Can employers suspend employment contracts during this Covid-19 health crisis?**

Yes, it is legitimate provided that the employee has the right to benefit from the unemployment subsidy paid by the Social Security or the contract is suspended by granting a paid leave, pending or advanced, to the employee. Besides these cases, the suspension of the employment contract implies that the employer stops providing employment and paying salaries and that might be considered as a breach of the labor contract by the employee being therefore entitled to claim the dismissal indemnification owed in accordance with the legislation in force.



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3. Are federal, state or local governments providing any type of financial assistance or support to employers and/or employees during this health crisis?

Several measures have been adopted in that sense. A special temporary redundancy benefit scheme was created which was initially applied to certain areas of the economic activity but was subsequently extended to all sectors without restrictions. Workers entitled to this benefit will be those subject to partial suspension of tasks, either whose work is suspended for at least six working days within one month or subject to a reduction of 50% or more of workers' total regular working hours. It was granted initially for a period of 30 days and has been extended up to May. Entitlement to this special benefit will not be conditional on the existence of the workers' untaken leave.

Special benefit for people aged over 65. They are entitled to sick pay always providing their tasks cannot be performed by teleworking.

Authorization to take advance annual leave accrued within 2020 for all activities, always provided said advance responds to the health emergency situation.

Parliament passed a bill including Covid 19 as an occupational illness for health care workers (whether or not physicians) and thus workers can be covered by the occupational illness scheme under the Banco de Seguros del Estado when proving evidence that they were infected during the performance of duties.

4. What are the obligations of employers if the competent authority in your country issues a "quarantine" (or similar) order?

It will be necessary to attend to the provisions enacted in said resolution. However, in any case of temporary closure of companies, the general regimen of the redundancy benefit paid by the Social Security might be applicable. On the other hand, it is important to note that in any case, the employer is obliged to comply with all the rules and measures imposed by the government related with the health and safety of the employees.

5. Can employers deny a worker access to the workplace if they detect symptoms of Covid-19?

Yes. Additionally, certain actions should be implemented in the event of a worker developing symptoms of coronavirus, comprising of at least the following:

- a. the intervention of Workplace Prevention and Health Services (Decree 127/014) if available in the company, or the worker's health provider;
- b. prompt and effective adoption of control measures for workers who have been in contact with the suspected infected person within a period of not less than 14 days prior to the onset of symptoms. As long as the employee is not certified by the National Certification System, the employer must pay the salary if the decision not to admit it is up to the company.

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6. Can employers implement a mandatory screening program for Covid-19 symptoms?

Employers have the obligation to implement at least the measures set out in the protocol approved by the Ministry of Labor and Social Security, which includes prevention and control measures as well as action measures. Such protocol states the minimum guidelines to be adopted, enabling the adoption of other measures for the purpose of guaranteeing workers' health according to the characteristics of each workplace.

7. Are employees required to inform their employer if the Covid-19 test result is positive?

Yes.

8. Can employers have a policy that requires employees to report if they or their co-workers have symptoms of Covid-19?

Yes.

9. Can employers force employees to take vacation during the Covid-19 health crisis?

Given the circumstances, we understand that it is a possible tool and therefore workers can be forced to take their pending leave. Moreover, the Ministry of Labor has exceptionally authorized the advancement of paid leave (to be originally taken on 2021), but requiring a written agreement between the parties.

10. Are employers released from the obligations of compensation in case a reduction of work force is necessary due to the health crisis of Covid-19?

No, there are not. As previously said, the Government has created a special temporary redundancy benefit scheme for part time workers, for all sectors of the economy, as a measure to sustain employment and ease the burden on the employers.

11. If the ruling authority orders a temporary operational closure, can employers interrupt the accumulation of employment benefits during that period of time?

No.

12. Can employers negotiate or institute a temporary closure of the workplace or a temporary reduction of wages and benefits?

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Employers are free to adopt whatever measures they deem appropriate but must face their consequences. In Labor Law, violating acquired rights may give the worker to consider himself indirectly dismissed.

### 13. If employees refuse to go to work, can their employment be terminated for abandonment?

Employees must prove well-founded reasons for not going to work in order for them not to be considered as having abandoned their employment.

### 14. Do employers have an obligation to inform health authorities or other relevant authorities of cases where their employees test positive for Covid-19?

There is no obligation on the employers to inform the authorities, except in the case of doctors wherein it is considered an occupational disease.

Dra. Cecilia Demarco | [cdemarco@ppv.com.uy](mailto:cdemarco@ppv.com.uy)