

This article is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

While the “Preventive and Compulsory Quarantine” imposed by the Government remains in effect in the Metropolitan Area of Buenos Aires (AMBA) to stop the spread of the coronavirus, the economic and financial crisis affecting the country worsens. In this context, the Government decided to extend the recent emergency labor measures taken to mitigate the pandemic’s adverse economic consequences.

To prevent job losses, on March 31, 2020, the Government issued Decree No. 329/2020, forbidding dismissals without fair cause and dismissals due to lack or diminishment of work or force majeure, for the period of 60 days, as from March 31st. Likewise, it prohibits suspensions for the same grounds and period, except for suspensions carried out under the terms of article 223 bis of Argentine Employment Contract Law, i.e. suspensions grounded on the lack or reduction of work not attributable to the employer that establish the payment of a non-remunerative sum, during the extension of the suspension, in order to cover the living expenses of the employee.

On May 18th, the Government issued Decree No. 487/2020, which extends said prohibition for another 60 days, i.e. until July 31st.

Any dismissal or suspension ordered in violation of these provisions will have no effect and the existing labor relationship, under its current conditions, will remain in force. This means that employees being fired can file a claim against their employer demanding to be reinstated and back pay. Recent jurisprudence has determined that a company which laid off an employee during the prohibition period had to reinstate the fired employee to his previous position as well as pay any owed salary.

Moreover, in order to ease the situation of companies and self-employed workers, the Government also extended the Program of Emergency Assistance to Work and Production (ATP Program) which establishes several measures to aid companies in paying salaries, as well as self-employed workers in obtaining loans.

Zero interest rate loans for self-employed workers and workers under the simplified tax regime until which have been granted since last May to mitigate the effects of the pandemic, were extended until July 31st. The maximum amount to be loaned is \$ 150,000 ARS and may not exceed 25% of the upper limit of gross income that corresponds to each category of the simplified tax regime. It can be returned in a minimum of 12 installments and a maximum of 18 fixed installments without interest, with a 6-month grace period.

In addition, MiPyMEs (micro-, small- and medium-sized companies) are granted access to capital work loans and loans for the payment of salaries with a subsidized rate of 24%.

Regarding the portion of the employee’s salary that is being paid by the Government and the postponement and reduction of the payment of employer social security contributions, these benefits were also extended during June and will probably be extended for as long as the Preventive and Compulsory Quarantine lasts. For those employees who earn less than the minimum wage (currently \$ 16,875 ARS), the Government covers 100% of their salary; for those who earn between one and two times the minimum wage (between \$ 16,875 and \$ 33,750 ARS), the Government will cover up to an amount equal to the minimum wage (\$ 16,875 ARS); for those who earn between two and four times the minimum wage (between \$ 33,750 and \$ 67,500 ARS), the Government covers exactly 50% of their salary; and finally, for those who earn more than \$ 67,500, the State covers a maximum of two times the minimum wage (\$ 33,750 ARS). Thus, the higher the salary, the percentage covered by the State decreases.

To access this benefit, employers must meet the following requirements:

- Carry out activities critically affected by the COVID-19 or have a significant number of employees infected with the virus, in compulsory isolation or with a work exemption for being part of a risk group or having family care obligations related to the virus.
- The company’s turnover between March 12 and April 12, 2020 must not have grown more than 5% compared to the same period in 2019.
- In the case of companies that have started their activity after March 2019, the billing corresponding to the period from November 12 to December 12, 2019 will be taken into account to make the comparison.
- In the case of companies that have started their activity during 2020, they will be considered critically affected due to their recent creation, assuming that the requirements for being beneficiaries of the measure have been met.

The benefits now apply to every company, regardless of the number of workers they employ.

Lastly, on June 10th, the Argentine Executive issued Decree 528/2020 which extends the duration of the “public emergency with regard to employment” and the obligation to pay double severance in cases of dismissal without fair cause, which was originally established for the term of one hundred and eighty (180) days as of December 13, 2019, for 180 more days. Hence, the new term will expire on December 7, 2020.

This means that in the event of termination without fair cause the employer must pay, within the 4th business day following the dismissal, double severance for all severance items stemming from the termination, i.e. seniority compensation, compensation in lieu of notice, compensation for the dismissal month, and the

proportional part of the annual bonus (SAC). For other grounds of termination (death, resignation, mutual agreement, dismissal with fair cause) the payment of this double severance does not apply.

Taking into account the jurisprudential criteria raised in the past in a similar scenario -during the validity of Law 25561 which also regulated a public emergency- the duplication of severance also applies to the aggravated compensation for maternity and marriage.

However, to avoid hindering the reactivation of the employment market, this disposition does not apply to those employees hired after December 14, 2019.

Since the scenario is continuously changing, these emergency labor provisions could be modified and more measures could be taken in order to mitigate the pandemic and its economic consequences.

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