

**Morgan Lewis**

# **LATIN AMERICA COVID-19 LEGAL LANDSCAPE**

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## LATIN AMERICA COVID-19 LEGAL LANDSCAPE

### 1. ARGENTINA

#### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

The rule is that employers cannot require employees to submit to mandatory screenings and medical evaluations, unless the employees are asking for medical leave. However, under the current circumstances, employers may be authorized to request the employees to submit to the screenings or medical examinations related to COVID-19 to protect the health and safety of other employees. This would only be applicable to those employees who need to interact with other employees.

#### B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

Decree 332/2020 established the "Emergency Assistance Program for Work and Production" granting the following benefits: (i) postponement of employer contributions to the Argentine Integrated Social Security System for the months of March and April, or reduction of up to 95% of the payment of contributions for the month of April; (ii) complementary salary - allocation paid by the National State to employees who work in the private sector equivalent to 50% of the net salary of February 2020, and cannot be less than a living and mobile minimum wage or greater than two living and mobile minimum wages or the total net salary for the month of February 2020; (iii) zero interest rate credit for people adhering to the Simplified Scheme for Small Taxpayers and for self-employed workers, with 100% subsidy of the total financial cost; and (iv) comprehensive unemployment benefits system - male and female workers who meet the requirements set forth in Acts 24,013 and 25,371 will access an economic unemployment benefit of a minimum amount of ARS\$6,000 and a maximum amount of ARS\$10,000. The benefits referred to in (i), (ii), and (iii) above can be requested by employers that meet the following requirements: (1) critically affected economic activities in the geographical areas where they are carried out; (2) relevant number of workers infected by COVID-19 or in mandatory isolation or with a work exemption for being in a risk group or having family care obligations related to COVID-19; (3) substantial reduction in its billing after March 12, 2020.

Employers that carry out activities or provide essential services for the emergency may request benefits if they had a high negative impact on their activity or service.

#### C. ***Is there a concept similar to "furlough" in your jurisdiction?***

The Labor Law permits suspending for economic reasons up to a maximum of 30 days per year, and for force majeure up to a maximum of 75 days per year.

However, Decree 329/2020 prohibited the suspension of employees for force majeure or economic reasons until May 29, 2020. The decree permits those suspensions that are negotiated with the employees, by which the employer pays them a sum of money during the suspension.

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**D. *If it exists, what is the procedure and legal terms for its exercise?***

Employers who intend to suspend or dismiss employees invoking economic reasons or force majeure need to follow a proceeding before the Ministry of Labor, which is denominated "Preventive Crisis Procedure," if the suspensions or dismissals would affect more than 15% of the payroll of employers with no more than 400 employees; or 10% of the payroll of employers with more than 400 but less than 1,000 employees, or 5% of the payroll of employers with more than 1,000 employees. Despite that, those suspensions are transitorily prohibited until May 29, 2020 and the only valid suspensions until that date are those which are negotiated with the employees, or with the union if they affect employees governed by a collective bargaining agreement. The parties have to negotiate a non-salary monthly payment, and the agreements have to be approved by the Ministry of Labor.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

Because unilateral suspension of employment agreements due to force majeure is prohibited, employers have to negotiate with the employees a suspension by mutual agreement by which the employer would pay the employee a non-salary allowance, or to negotiate a reduction of the working hours with a proportional reduction of salary. If the employer takes any unilateral decision without the express consent of the employees, the employees would have a claim for the salary difference, and/or to terminate the employment contract with cause and to claim severance payments which are currently increased to double.

**2. BRAZIL**

**A. *Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes. Employers can subject their employees to medical exams according to the parameters determined in the Medical Control and Occupational Health Program (PCMSO) to be performed by an occupational physician. Although employers can adopt medical preventive actions against COVID-19 contamination in the workplace, it is recommended that employers obtain legal advice before implementing medical evaluations and screenings related to the COVID-19 pandemic to reduce potential claims for indemnification for moral damages (e.g., arising from breach of privacy) because the legislation is silent regarding medical screenings and evaluations other than upon employees' hiring, termination, return from suspension of the employment contract, and periodical examinations. It is relevant that initiatives to prevent the spread of COVID-19 be subject to the employer's occupational physician responsible for the employer's PCMSO review and coordination.

**B. *Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

Yes. From the labor perspective, the Presidency published Provisional Measure 927 (PM 927) aiming at simplifying certain requirements related to vacation and deferring the payment of (i) vacation premium up to December 2020, and (ii) contributions to the Employees' Mandatory Severance Fund (Fundo de Garantia por Tempo de Serviço - FGTS), by which the payments that refer to March, April, and May 2020, may be paid in six installments as of July 2020 with no indexation, penalties, or other costs. On April 1, the

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Presidency also published Provisional Measure 936 (PM 936) providing for the possibility of reduction of salaries and working hours, as well as the suspension of employment agreements by means of individual or collective agreements with an "Emergency Benefit" granted by the federal government to those employees subject to such reductions or suspensions, depending on some conditions set forth therein. On April 3, the Presidency enacted Provisional Measure 944 creating a special line of credit to companies with gross revenue in 2019 between R\$360,000 and R\$10 million to sponsor the payment of such companies' payroll and avoid collective terminations.

From the tax perspective, the main measures are the following:

*Federal level:*

(1) as previously mentioned, the Presidency published PM 927, deferring for three months the payment of the contributions to the FGTS and extending the validity period of the Tax Clearance Certificate jointly issued by RFB/PGFN for up to 180 days. This period may be extended, exceptionally, in cases of public calamity. Furthermore, the FGTS certificate of regularity was extended for 90 days.

(2) Likewise, in addition to the "Emergency Benefit" granted by the federal government, PM 936 set forth that companies that reduce wages or suspend the contract of their employees may pay a "Compensatory Aid," exempt of taxes (Income Tax, Social Security contributions, FGTS contributions and it is deductible from the Company Income Tax). The reduction or suspension together with the aid must be the object of an individual or a collective agreement.

(3) On March 31, the Presidency published Provisional Measure no. 932 that reduced by half tax rates on the Social Security contribution destined to third parties engaged in social development activities (Contribuições a Outras Entidades – Terceiros) between April 1 and June 30.

(4) On April 1, the Decree no. 10,305, published by the Presidency, reduced the tax rate of the Tax on Financial Operations (IOF) to 0% upon credit operations for 90 days, depending on some conditions provided by the decree.

(5) On March 20, Decree no. 10,285, published by the Presidency, reduced the tax rate of the tax on manufactured products (IPI) to 0% upon import of medical and hospital products to until September 30, 2020, depending on some conditions provided by the decree.

(6) On April 9, Decree no. 10,318, published by the Presidency, reduced the tax rate of the tax on social contribution (PIS/COFINS) to 0% upon import and sale revenue from medical and hospital products, Personal Protective Equipment (PPE), and other specific products, until September 30, 2020, depending on some conditions provided by the decree.

(7) On April 15, the Presidency published Provisional Measure no. 952 deferring the payment of the taxes concerning telecommunications services, depending on some conditions provided by the PM.

(8) The Ministry of Economy issued some ordinances, postponing the collection of federal taxes and the delivery of ancillary obligations and tax returns from March to June. Ordinances no. 139 and no. 150 postponed the payment of PIS/COFINS and Social Security

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contributions due in April and May 2020 to the second semester of 2020. Normative Instruction no. 1,932 postponed the delivery of the ancillary obligations DCTF, and EFD-Contributions. Normative Instruction no. 1,930 postponed the delivery of the Individual's Income Tax Returns.

(9) Resolutions from the Steering Committee of the special tax payment regime granted to micro- and small-sized companies (Simples Nacional) no. 152 and no. 154, postponed the payment of federal taxes, state VAT tax (ICMS) and municipal VAT tax (ISS). Resolution from the Steering Committee of Simples Nacional no. 153 postponed the delivery of the ancillary obligations – Declaration of Socioeconomic and Tax Information (Defis) and Annual Statement of the Individual Microentrepreneur (DASN-Simei). (10) Finally, the Gecex Resolutions no. 17, no. 22, no. 28, and no. 31, published in April, reduced the tax rate of the Import Tax (II) to 0% upon medical and hospital products, depending on some conditions provided by these Resolutions.

State and local level:

(1) States granted tax exemption of ICMS concerning donations to governmental and/or assistance entities for goods used to fight COVID-19.

(2) States granted tax exemption of ICMS of the imported goods and internal goods exits to fight COVID-19.

(3) States granted tax relief of the ICMS in operations with PPE and other specific products.

(4) States granted tax exemption of the State Donation Tax (ITCMD) concerning donations to government entities to fight COVID-19.

(5) States and municipalities have postponed the payment of ICMS, tax upon the property of vehicles (IPVA), tax upon the property of land and real estate properties (IPTU) and ISS, under different specific criteria and postponed the delivery of some ancillary obligations and tax returns due between March and June 2020.

(6) State and municipalities also extended the valid period of Tax Clearance Certificates.

(7) Some states have extended the tax payment installment plans and special regimes.

## **C. *Is there a concept similar to "furlough" in your jurisdiction?***

Yes. The Brazilian Labor Code authorizes companies to undergo collective bargaining with the labor union in order to suspend the employment contracts for a period of two to five months (period reduced to one to three months during the effectiveness of PM 927) for qualification purposes. This alternative, locally called layoff, requires collective bargaining and the employees' individual consent. Employees will be entitled to an allowance to be negotiated with the labor union as well as to the unemployment benefit to be paid by the federal government.

As a result of the COVID-19 pandemic, PM 936 provided for an additional furlough alternative: employers may suspend their employees' contracts for 60 days, during which period the government will be responsible for paying the emergency benefit. Employers may pay a compensatory non-salary aid that will not be included in the calculation of contributions to Social Security (INSS) and FGTS and in the Individual Income Tax ("IRPF"),

and may be excluded from net profits for the purposes of calculation Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL) of legal entities taxed on the basis of the real profit. Companies with gross revenue exceeding R\$4.8 million in 2019 are required to pay monthly compensatory aid equivalent to 30% of the employees' salary during the suspension period, but may benefit from the reduced payroll taxes mentioned above.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

The temporary suspension of employment contracts are limited to 60 days, during the state of public emergency due to the COVID-19 outbreak. The employees cannot work during the suspension period, even if partially or under a remote work regime. The suspension may be implemented upon individual or collective authorization, according to salary thresholds. During the suspension (1) all benefits granted by the employer must be maintained (e.g., meal vouchers, health insurance plan); and (2) the company with gross revenue exceeding R\$4.8 million in 2019 is required to pay monthly compensatory aid equivalent to 30% of the employee's salary during the suspension period. This compensation will not have a salary nature and, therefore, will have reduced payroll impacts. It may be excluded from the net profit for purposes of calculation of IRPJ and CSLL of legal entities taxed on the basis of the real profit.

The employee is entitled to job tenure during the suspension period and, after the activities are resumed, for a period equivalent to the suspension period. In case of termination without cause during such period, in addition to the payment of severance, the employee is entitled to an indemnity equivalent to 100% of the salary that the employee would have been entitled to receive during the employment guarantee period.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

Brazilian legislation does not provide for specific alternatives due to Acts of God. However, the Brazilian Labor Code provides for reduced statutory severance pay due to temporary or definitive suspension of activities determined by acts of municipal, state, or federal authorities (termination for factum principis). In these cases, Brazilian case law has considered such authorities - and not the employers - responsible for paying part of statutory severance pay (i.e., prior notice and FGTS indemnification; remaining severance pay being owed by the employer). Nonetheless, the Brazilian labor justice adopts a very restrictive position on the circumstances justifying the termination for factum principis (e.g., total impossibility of performing any activity) and it is unclear if Brazilian labor courts will consider the mandatory quarantine sufficient to characterize it.

Aside from the layoff mechanism set forth in the Brazilian Labor Code and the suspension of employment contracts pursuant to the PM 936, PM 927 allowed employers to anticipate vacation time, facilitated the offsetting of working hours and holidays, and authorized employers to postpone the payment of vacation premiums and FGTS contributions.

PM 936 also allows employers to reduce employees' salaries and working hours: companies may reduce employees' salaries, proportionally to their working hours, up to 90 days during the COVID-19 pandemic, in the percentages of 25%, 50%, and 70%. The hourly rates shall be maintained and, upon collective bargaining, it is possible to adopt other percentages for salary and working-hour reduction. The possibility to reduce salaries upon

individual negotiation was allowed by the PM for certain pay levels. Where salaries and working hours are reduced, the government will pay workers the emergency benefit which will vary between 25% and 70% of the unemployment benefit rates. To reduce the financial losses to employees, employers may pay a compensatory non-salary aid with reduced payroll taxes and that may be excluded from the net-profit for the purposes of IRPJ and CSLL of legal entities taxed on the basis of the real profit. The employees are entitled to job tenure during the reduction period and, after the activities are resumed, during the period equivalent to the reduction period; in case of termination without cause during such period, employees will be entitled to severance pay and variable compensation proportional to the period of salary/working-hour reduction.

### 3. CHILE

#### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes, as the employer is obligated to safeguard the life and wellbeing of the employees; however, the employer must be careful and not engage in discriminatory behavior. Further, according to the recommendations of the Ministry of Health, if an employee has a fever above 37.8 degrees Celsius and any of the symptoms among dry cough, muscle aches, sore throat, or difficulty breathing, then the employee may not show up for work or continue at his or her workplace until evaluated by a doctor. In addition, employees who do not comply with the mandatory isolation period could be required by their employer to leave their workplace.

#### B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

##### 1. Pending bills:

- Income protection insurance for self-employed workers who have experienced losses equal to or greater than 20% of their average income
- Establishment of an emergency family income
- Prohibition of distribution of dividends in the companies where employment relationship has been suspended

2. Measure from National Consumer Service (SERNAC) regarding the time limits for enforcing consumer guarantees for the goods and services they purchase. The deadlines for enforcing the guarantees to consumers are suspended for the duration of the state of catastrophe decreed by the government.

##### 3. List of measures to facilitate the flow of credits to businesses and households adopted by the Chilean Financial Market Commission (CMF):

- Regulatory treatment facilitating the possibility of postponing up to three installments in the payment of mortgage loans to be added after the original loan termination date, to those debtors who were up to date with their obligations.
- Facilities for banks to make credit terms for small to mid-sized enterprise debtors (SME)

more flexible by up to six months without this being considered a renegotiation.

- Possibility of using surplus mortgage collateral to guarantee loans to SMEs.
- Extension of 18 months for banks to dispose of Goods Received in Payment.
- Amendment to the treatment of the cash amount that banks must provide as collateral for the variation margin of bilaterally netted derivatives transactions.
- Capital standards for banking: review of the date in which Basilea III standards will be implemented, until December 2024.

#### 4. Tax-related Measures:

- Suspension of provisional monthly payments of income tax for companies for the next three months.
- Postponement of VAT payments for the next three months for all companies with sales of less than Unidad de Fomento 350,000 (approx. \$12 million), making it possible to pay in six or 12 monthly installments at an actual interest rate of 0%.
- Advance payment of income tax refund corresponding to SMEs which will be returned in April.
- Postponement until July 2020 of the payment of income tax for SMEs.
- Postponement of April's contributions tax payment for SMEs.
- Temporary reduction of the stamp duty to 0% during the next six months.
- Flexibility to enter into tax debt payment agreements without interest or fines, focused on SMEs and lower-income population.
- All company expenses associated with the sanitary contingency will be accepted as a tax expense.

5. Amendment of the Guarantee Fund for Small and Medium-Sized Enterprises (FOGAPE), in order to facilitate access to liquidity for companies in all industries that are facing a significant decrease in income as a result of this crisis. The FOGAPE is a state fund designed to guarantee a percentage of the principal of loans and other financing mechanisms that financial institutions grant to micro and small entrepreneurs. This amendment temporarily eases the requirements for access to the FOGAPE guarantee.

6. Municipalities would create a solidarity fund which would be channeled to attend to social emergencies due to a drop in sales of the local micro-commerce.

#### 7. Other measures:

- Acceleration of payment to state providers. Pending bills will be paid, and in the future all invoices issued to the state will be paid within 30 days.
- New capitalization of Banco Estado (Chile's only state-owned commercial bank) for \$500 million, which will be mainly for financing individuals and SMEs.



**C. *Is there a concept similar to "furlough" in your jurisdiction?***

In Chile, the general rule is that an employer cannot unilaterally grant employees unpaid leave or reduce working hours. However, the law does allow employers to reach an agreement with employees to (i) reduce the working day, or (ii) suspend the employment relationship with or without less pay. If the leave is agreed upon without remuneration, the employee cannot be forced to provide services during the agreed period. The parties must define in the agreement the conditions and effects of the suspension of the employment relationship. Further, the agreement must define the period during which the employment relationship will be suspended (the suspension cannot be indefinite). However, the period during which the employment relationship is suspended is considered for purposes of calculating the vacation and severance pay for years of service (in the event that the employment contract is terminated for any reason that gives right to such compensation) to which the employee is entitled.

Within the framework of COVID-19:

1. Employers whose activity is affected, totally or partially, by the COVID-19 crisis by a shutdown declared by an act of authority, can agree with their employees to temporarily suspend their contracts. Employees will receive their salaries from the Unemployment Insurance, according to the gradual payment rates of Unemployment Insurance, starting with 70% of the income of the last three months, decreasing according to the months and while there are funds in the individual account. Once the funds are spent, salaries can be paid with the Unemployment Solidarity Fund. The eligible employees are the ones who pay contributions for Unemployment Insurance and private household workers who are affected by this situation. Employees must register three continuous contributions in the last three months, or six continuous or non-continuous contributions in the last 12 months. In the latter case, the last two contributions must be with the same employer. The employer would be obligated to continue paying all health and social security contributions calculated on 50% of the remuneration that serves as the basis for the calculation of the benefit. Employers, whose labor relations are suspended, may not dismiss their employees, except for the cause established under Article 161 of the Labor Code (employer needs or eviction).
2. Employers whose activity is totally or partially affected by the COVID-19 health crisis, outside the validity of the act or declaration of the authority, may agree individually or collectively with those employees affiliated with the Unemployment Insurance to temporarily suspend the employment agreement. This agreement has the same effect and will be requested in the same way as the suspension of the contracts by the act of authority described above.
3. Employers could sign agreements for temporary reduction of working hours. Employers may agree with their employees, individually or collectively, to reduce the length of their working hours by up to 50%. The employer must continue to pay the remuneration and social security contributions corresponding to the new taxable remuneration agreed. The employee shall also receive a supplement to his/her remuneration from his/her individual account for Unemployment Insurance and, once used up, from the Unemployment Solidarity Fund which shall be up to 25% of his/her remuneration, if the reduction of the working day is 50% (with a maximum of \$225,000 CLP per month). In addition, he/she will maintain benefits such as bonuses, allowances and other exceptional or sporadic items. Employers may not hire new employees to perform the

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same or similar functions rendered by those who have signed such agreements. This agreement is always temporary, with a maximum duration of five months for employees with an indefinite contract or three continuous months for fixed-term employees, for a specific work, job or service.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

General rule: An agreement to suspend the employment relationship must be in writing as an addendum to the employment contract (in Spanish), which must be signed by the employee and the employer. An agreement to reduce the working day must also be made in writing as an addendum to the employment contract (in Spanish) and signed by both parties. Therefore, even though the law does not regulate unpaid leave, there is nothing to prevent an agreement (for unpaid leave) between the employee and the employer.

The closing of activities ordered by health authorities is regarded as force majeure and, in this case, employers are exempt from paying salaries. Labor contracts are deemed suspended. Yet, the Department of Labor has noted that the "force majeure" ground for termination would not apply in cases of company closures by health authority decision because these actions would be temporary in nature. On the other hand, if the employer decides to close the business as a preventive action or due to a business reduction that is not a force majeure event, then such employer should continue paying salaries.

Within the framework of COVID-19: An agreement to suspend the employment relationship must be in writing as an addendum to the employment contract (in Spanish), which must be signed by the employee and the employer. The employer must also apply online to the Employment Insurance Entity (AFC). Any employee who, for various reasons, is excluded from such a request may make it directly to the AFC. Only in the case of employees from private homes, the workers themselves must apply for the benefit before the AFP, where they make monthly contributions to the Compensation Fund. While on suspension, the employer must pay social security contributions.

The agreement for temporary reduction of working hours must be signed electronically through the platform provided by the Labor Department, which must contain certain stipulations such as the individualization of the parties, duration and effective date of the agreement, compensation average, percentage of the reduction and remuneration corresponding to such work schedule and a sworn declaration by the employer that the requirements for compliance have been met. The employer must pay social security contributions.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

There are other ways to keep an employment contract in force during an emergency: (i) agreeing to render services from home through the use of technology when possible; (ii) agreeing to different work shifts to avoid crowded environments, either at the workplace or when using public transportation at rush hour; (iii) agreeing on an individual basis to take vacation in advance; and (iv) an employer can order collective vacation to all employees or to employees working in an entire section (for no less than 15 business days, once a year).

## 4. COLOMBIA

### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes. Pursuant Decree 1072 of 2012 (that compiled Resolution 1016 of 1989, Resolution 6398 of 1991, Decree 1295 of 1994, Resolution 2346 of 2007 and Resolution 1819 of 2009), employers have to conduct compulsory medical screenings at the beginning, during the course of, and at the termination of the employment agreement to assess the health conditions of the employees. Regarding the current measures adopted to mitigate the outbreak of COVID-19, employers must adjust and/or modify their Health and Safety Management System (SG-SST) in accordance with the measures, protocols and/or standards indicated by the Ministry of Health and Social Protection per economy sector. It should be noted that medical screenings can only be conducted by medical practitioners.

### B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

From the labor standpoint:

1. A secured line for loans to micro, small, and medium companies (MiPyme) destined to payroll payments.
2. The temporary reduction for payment of pension contributions. Pension contributions for the months of April and May 2020, payable in the months of May and June 2020, respectively, can be paid considering a percentage of 3%. This measure will result in a reduction of 13% of the actual percentage for pension contributions (16%).
3. Considering the mentioned percentage, the employers will be in charge of 75% and the employees will be in charge of 25% of the total contribution to the pension system. In other words, employers will be in charge of the 2.25% and employees of the remaining 0.75% for a total of 3%.
4. A temporary tax over public servants' salaries. A compulsory tax will be applied over the salaries and/or monthly fees of public servants and state contractors, respectively, equal of higher than €2,500 - \$2,564.
5. During the economic emergency and up to one month following the termination date of the emergency, interests in arrears for the late payment of social security contributions to the Social Security System will cease (Article 26, Decree 538, 2020).

For the implementation of measures (b) and (d), the Ministry of Labor and Social Protection will conduct the mandatory adjustment to the Social Security Payment Form (PILA) in line with the mentioned regulations. Considering that Decree 538 and 558 were recently enacted, additional adjustments in this regard are not in force yet.

### C. ***Is there a concept similar to "furlough" in your jurisdiction?***

Yes, the Colombian labor legislation provides the suspension of the employment agreement, in which case the employee is released from rendering services and, consequently, the employer from paying the corresponding the salary. During the suspension the employee will not accrue unemployment aid, interest on unemployment

aid, or vacations. It also affects the payment of the services premium, as the days of suspension are not considered for the calculation of this fringe benefit. Moreover, labor risk contributions, payroll taxes and transportation aid (if applicable) are also suspended. However, the employer must pay contributions to the social security system for pension and health. Suspension of the employment agreements can substantially reduce labor costs while guaranteeing the employees' access to the social security system without terminating the employment agreement.

This alternative is provided in Article 51 of the Colombian labor code and the following scenarios can occur during the COVID-19 pandemic: (i) unpaid leave; (ii) suspension of the employment agreements due to force majeure or fortuitous events; and (iii) suspension of the employment agreements for up to 120 days for economic reasons.

The use of these alternatives must be analyzed carefully on a case-by-case basis. It is necessary to consider if the employer's activities are not restricted during the compulsory self-isolation and if there are other alternatives (such as telecommuting, home office or granting vacation periods) available.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

The procedures are as follows:

1. Unpaid leave cannot be unilaterally imposed by the employer; it requires the employee's consent. Therefore, it must be agreed in writing with the employee using an addendum to the employment agreement. Circular 27 of March 27, 2020 issued by the Ministry of Labor highlighted the fact that employers cannot force and/or constrain employees to request or accept this alternative, at the risk of being terminated. The latter will be considered illegal and subject to further investigations and sanctions from the mentioned authority.
2. Suspension of the employment agreements due to force majeure or fortuitous events requires prior notice to the Ministry of Labor which will verify if the force majeure circumstances did occur. Once the notice is filed with the Ministry of Labor, the employer must communicate to each of the employees that his/her agreement will be suspended until the force majeure events cease. The outcome is unpredictable and it is complex to apply for it, especially considering that a labor judge will have discretion to assess whether the alleged force majeure event is able to suspend the employment agreements. In relation to COVID-19, the Ministry of Labor has stated that it does not consider this option to be viable. So far, there are no judicial decisions that have ruled specifically in this regard.
3. Suspension of the employment agreements for up to 120 days due to economic reasons requires the Ministry of Labor's prior authorization. The alleged technical or economic reasons must be duly verified when requesting authorization from the Ministry of Labor.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

The Ministry of Labor stated that the COVID-19 emergency is not considered an alternative to suspend employment agreements due to economic reasons. Therefore, such authority will be reluctant to grant authorization to suspend activities. Moreover, Decree 803 of 2020

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established that the central level of the Ministry of Labor has the preferential exercise of the administrative investigation power. Therefore, all claims, investigations, or procedures related to collective dismissal or suspension of employment agreements due to economic reasons will be carried out under the direct supervision of the vice minister of Labor Relations and Inspection. On the other hand, Circular 022 created the figure of severe labor investigation on the decisions taken by the employers during the emergency. With such figure, the Ministry of Labor intends to strengthen its inspection, surveillance, and control mechanisms.

Aside from the risks that may be triggered in case of suspension of the employment agreements, the Ministry of Labor has encouraged employers to assess the feasibility of the following cost-cutting alternatives:

- Reduction of working hours of employees with a reduction of salary;
- Enforced annual vacation leave including collective, accrued, or anticipated vacation period;
- Redeployment within the business (to a working-from-home role);
- Redundancy (termination without cause) under the limitations of a collective redundancy;
- Retirement plan (voluntary redundancy/mutual agreement);
- A temporary paid leave by which the time off can be compensated with additional working hours;
- The alternative for employers and employees to voluntarily review the terms and conditions initially agreed in the employment agreement (e.g., work schedule, salary, job functions, position) and the possibility to modify them through an addendum to the employment agreement;
- The alternative to modify and/or interrupt the payment of extra legal and non-salary allowances paid in kind or in cash. In this case the parties should voluntarily agree in writing the mentioned changes as a valid alternative to set economic reservations to keep jobs; and
- The alternative to verify the extra legal allowances granted at the level of a CBA or a CA. The unionized or the nonunionized employees may voluntarily agree with employers the mentioned changes as a valid alternative to keep jobs. However, the agreements in force under the CBA or CA cannot be eliminated but temporarily modified or suspended.

## 5. COSTA RICA

### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Under Costa Rican labor law, there are no mandatory screenings or medical evaluations. Nonetheless, all citizens have the obligation to remain in isolation if they are symptomatic. Moreover, employers may implement screenings as long as these are nondiscriminatory or do not violate any personal rights of the employees. Many work centers have implemented a temperature check before employees start their shifts. Any individual (including employers) who sees an individual displaying symptoms of COVID-19 should make a report to a special hotline (1322).

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**B. *Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

1. Loans and credit: Government issued an executive order to banks to restructure loan terms and conditions. As of March 29, 2020, almost all banks have allowed deferred payments for credit cards, mortgages, and other loans (applications and policies vary based on each individual and financial institution). Moreover, some agencies are offering working credits for small and medium enterprises to offer continuity of work. They are offering a moratorium on payment of loans to a certain extent as well as operating expenses. About 10 million will be made available to entrepreneurs for SMEs. To qualify, companies should meet at least two of three requirements to register in MEIC's database and access the benefits (voluntary): (1) be registered as an employer or independent worker with CCSS; (2) have labor risks insurance with Instituto Nacional de Seguros (INS) (either for independent worker or employers); and (3) be registered to pay taxes.
2. Taxes: Businesses and self-employed persons would be allowed to defer tax payments in VAT, excise taxes, and advanced income tax payments for April, May, and June, with possible extension to July. Taxes must be paid by December (automatic, no application required, Public Law No. 9890).
3. Social security: For at least two months (April and May), the minimum income base to pay social security taxes would be lowered by 70% (automatic, no application required).
4. Paid sick leave: Healthy workers under social security who have to take care of someone with COVID-19 are allowed to receive sick leave benefits (must be approved by social security medical staff).
5. Insurance: Deferred tax payments for commercial insurance from INS for four months (April, May, June, and July). Policies remain valid during that period. Insurance policies must be paid by the end of July.
6. Water service: No one shall experience residential water service interruptions during the emergency period. Payments will still be billed and interest would run.
7. Financial Aid: Employees with suspended labor contracts, reduced work shifts, or terminated contracts may apply for financial support of up to approximately \$200 per month (Bono Proteger). Moreover, they can withdraw part of their complimentary Pension Fund (Fondo de Capitalización Laboral).

**C. *Is there a concept similar to "furlough" in your jurisdiction?***

Employees have the right to request a leave of absence without pay, but it is the employer's right to approve or reject the request. Moreover, Costa Rican labor law (Article 74 of Labor Code and Executive Decree No. 42248-MTSS) foresees the suspension of labor contracts by employers that face a force majeure event. If the labor contract is suspended, the employer is allowed to suspend payment of the wages and the employee can stop performing work activities. Once the contract resumes, all conditions shall remain unaltered. The Minister of Labor will establish the suspension term for the labor contracts. Finally, in light of COVID-19, congress approved a bill that allows for the temporary reduction of working hours and wages. An employer must anticipate a reduction of 20%

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of gross income or more to request a 50% decrease, and an expectation of a 60% reduction or more in gross income to request a 75% decrease in hours and wages. For companies with less than one year of existence, the average of the last three months applies. The law applies to private sector labor relations. Shifts may be reduced for three months, which can be extended for three additional months, twice.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

For the suspension of labor contracts and reduction of work shifts, the Inspection Department of the Ministry of Labor shall approve the request to suspend the contracts. The request can be filed electronically by the employer. For work shift reductions, the request must be filed up to three business days after the reduction has been implemented. For the suspension, the approval must be granted prior to its implementation. In either case, the request can be filed electronically by the employer to the email: [inspeccionlaboral.emergencia@mtss.go.cr](mailto:inspeccionlaboral.emergencia@mtss.go.cr). In both cases, the request should be filed with a sworn statement from the employer confirming that the criteria for application for the reduction or suspension are met.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

N/A

**6. ECUADOR**

**A. *Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

No, employee consent is required. However, the employer is responsible for providing a safe and healthy work environment. Based on the foregoing, in case of an emergency health situation as that derived from COVID-19, the employer may prevent an employee from entering the workplace if such employee does not agree to the screening and medical evaluation.

**B. *Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

No, except for an extension of time for the filing and payment of applicable taxes for the month of April. Additionally, the following taxpayers are able to defer the payment of corporate income tax for fiscal year 2019 and value added tax (VAT) to be declared and paid in April, May, and June 2020:

- Micro-enterprises, understood as those that obtained gross revenues of up to \$300,000 during fiscal year 2019;
- Taxpayers which, before March 27, 2020, have registered the province of Galapagos as their tax residence in their Tax ID (RUC);
- Taxpayers which are regular exporters of goods, or derive 50% of their income from the export of goods; or
- Taxpayers which, before March 27, 2020, have registered one of the following as their

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main economic activity in their Tax ID:

- air transport;
- the provision of accommodation and/or food services; or
- activities of the agricultural sector.

**C. *Is there a concept similar to "furlough" in your jurisdiction?***

Under Ecuador law, employers do not have the alternative to temporarily and unilaterally grant an unpaid leave or reduce the employee's benefits/salary. Any unpaid leave or salary reduction would require an agreement between employer and employee. If the employer unilaterally mandates unpaid leave or reduces the employee's benefits, the employee may consider such action as termination without cause entitling the employee to the corresponding severance (generally 1.25 monthly salaries per each year of work). Under the current unpaid leave structure, employees would not be covered by social security during the suspension period and notice will need to be given to the Social Security Institute.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

N/A, please see answer to question C.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

Closing of activities ordered by health authorities due to sanitary emergency is considered a suspension of work activities, with the following effects: (i) employers must pay employees' salary during the suspension period; (ii) once the state of emergency ends, employers are entitled to make up shutdown time by increasing the daily work time from Monday to Friday by up to three hours and on Saturdays by up to four hours, without any additional payment; and (iii) if the employee does not comply with recovery time, employers may deduct from any future salary payments the payments that the employee had received during the suspension period.

"Force majeure" ground for employment termination would apply in some cases where the effect of the pandemic on the employer's business and its connection with the employment relationship can be legally established. Each case must be individually analyzed.

Regarding unpaid leave, even with employee's consent, considering the employee would not receive any labor benefit, there is a minor risk that the employee would request the Ministry of Labor authorization for employment termination with cause due to salary reduction, under the constitutional principle that guarantees that labor rights are not dispositive. In which case the employee would be entitled to severance generally equivalent to 1.25 times the monthly salary per each year of work with a minimum of 3.25 times the monthly salary.



## 7. MEXICO

### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes, on March 26, 2020, the Secretary of Labor issued employee guidelines where it clarified that employees must submit to medical examinations under sub-paragraph X of article 134 of the Mexican Federal Employment Act (FEA), which provides that the employee is obligated to submit to the medical examination so long as the employee's obligation to undertake employer-mandated medical examinations is included in the employer's internal regulation (which needs to be properly registered with the Labor Board) "and other norms in effect at the work site or company [...] to evidence that he/she is not incapacitated or under the influence of work-related, contagious or incurable sickness."

Also, a recently enacted Official Mexican Standard (NOM-035-STPS-2018) dealing with the Identification and Prevention of Psychosocial Risk Factors at the workplace imposes an obligation on employers to (aside from creating a policy and program to identify those risks) take all necessary steps to identify unsafe or dangerous conditions at the workplace. Further, under sub-paragraph II of art. 504 of the FEA, any worksite with over 100 employees in Mexico should have a doctor and medical facility on site.

### B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

No, the Mexican government has been reluctant to adopt and implement any economic or tax incentive that would meaningfully help companies mitigate the economic impact of the COVID-19 pandemic.

### C. ***Is there a concept similar to "furlough" in your jurisdiction?***

Yes, but it requires an official government declaration of a general sanitary emergency (health contingency), which has not officially occurred yet (albeit some employers have taken an aggressive interpretation of the law and claimed it has "de facto" occurred). In the event that the Ministry of Health issues a general sanitary emergency declaration due to COVID-19, the employment relations between employers and employees must be suspended, and employees must refrain from reporting to work during the declaration. Under those circumstances, although the employment relationship would be suspended, employers will have the obligation to provide employees with compensation equivalent to one day of current general minimum wage (MXN\$185.56 for the municipalities that are in the border strip of the north of the country and MXN\$123.22 for the rest of the country), for each day the suspension lasts, without exceeding 30 days.

Alternatively, Mexican law allows for the temporary closure of worksites if there is a force majeure event not attributable to the employer and such suspension is approved by the Mexican labor authority. That said, for the time being, this alternative is not realistic as the Labor Boards are closed due to the health contingency.

### D. ***If it exists, what is the procedure and legal terms for its exercise?***

Upon a governmental declaration of a general sanitary emergency (health contingency), the effects described in answer to question (C) are automatic. Further, Mexican law does not currently allow the temporary closure of worksites unless there is a force majeure

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event not attributable to the employer AND such suspension is approved by the Mexican labor authority. That said, for the time being, this alternative is not realistic as the Labor Boards are closed due to the health contingency.

On March 24, 2020 the Ministry of Health issued a decree in response to the COVID-19 pandemic (the 3/24 Decree). The 3/24 Decree, among other things, requires "at-risk" employees to stay at home (e.g., adults over 65 years of age or older and groups at risk of developing severe diseases and/or dying from such diseases, including pregnant or breastfeeding mothers, people with disabilities, people with chronic non-transmittable diseases - i.e., people with high blood pressure, lung deficiency, kidney failure, lupus, cancer, diabetes, obesity, liver or metabolic failure, heart disease), or anyone with diseases or pharmacological treatment that causes a suppression of the immune system.

Further, the 3/24 Decree provides that the activities of the public, social and private sectors that involve physical gatherings, displacements or movement of individuals must be temporarily suspended. Further, on March 26, 2020, the Ministry of Labor issued certain guidelines for employees answering frequently asked questions (the 3/26 Guidelines). In the 3/26 Guidelines, the Mexican labor authority made it clear that (i) no general sanitary emergency has been officially declared, and (ii) any suspension of activities must be as paid leave or an advance in vacation time, opening the door to mutual agreements (that protect the employee and the source of work) depending on the type of activity; however, it does not go any further than that. Local courts seem unlikely to allow furlough-type arrangements unless there is an official declaration of a sanitary emergency or further clarification on the above is issued either by the Mexican Ministry of Labor or the Mexican Ministry of Health; however, it is unclear at this point how Federal courts will rule on constitutional appeals (amparos) where employers have claim a "de facto" declaration of sanitary emergency.

The Mexican Ministry of Health issued yet [another decree](#) on March 31, 2020, mandating all employers that perform nonessential activities to shut down until April 30, 2020 (The 3-31 Decree). The 3-31 Decree was [amended](#) on April 21, 2020 to, among other things, expand the nonessential activities shut down until May 30, 2020. Further and more importantly, the office of the Presidency has very much underlined that employees should continue to receive pay while the shelter-in-place order is in effect, but has called for people to "look for reasonable solutions and agreements" to protect employees and the work source. There has been no further clarification from the authorities.

Decree 3-31 further provides that: (a) in those places and venues where the activities defined as essential are carried out, the following practices must be observed: (i) no meetings or congregations of more than 50 people may be held; (ii) people should wash their hands frequently; (iii) people should sneeze or cough applying the respiratory label (covering the nose and mouth with a disposable tissue or with the forearm); (iv) people should not greet with a kiss, a handshake, or a hug (remote greeting), and (v) all other health distance measures in force issued by the Ministry of Health should be observed; and (b) the shelter-in-place obligations are mandatory for anyone over 60 years of age, pregnant, or an immediate state of puerperium, or with a diagnosis of hypertension, diabetes mellitus, chronic heart or lung disease, immunosuppression (acquired or provoked), kidney or liver insufficiency, regardless of whether the work activity is considered essential; however, essential public interest personnel may voluntarily report to work.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

Any salary reduction or suspension strategy will carry some risk of triggering claims of unlawful termination (and payment of mandatory severance – please see description below). That said, some of the strategies implemented (other than those currently suggested by the authority – e.g., work from home, paid leave, or advancement in vacation time) involve the following:

1. First, if an active union is present, the execution of a technical suspension agreement between the employer and the union reducing shifts (and therefore, salary) for the unionized employees;
2. Second, asking employees to provide a letter to the employer voluntarily asking for (i) a temporary but limited unjustified and unpaid leave, or (ii) a reduction in the work shift (and therefore, salary); and
3. Third, a consented letter or agreement temporarily modifying the terms of employment.

A unilateral change in terms of employment seems to be the one that carries most risk but also one currently implemented by a number of employers in Mexico based on what appears to be an aggressive interpretation of some of the decrees and guidelines issued by the authorities. Notwithstanding, the reality is that there is no bulletproof option yet. Unfortunately, the Mexican authorities have not officially declared a general health contingency triggering mandatory furloughs under the Federal Labor Law and have left little room for employers to react to pressing economic conditions. As suggested above, some employers have adopted the position that a "de facto" declaration of a general health contingency has occurred despite the government's efforts to assert the opposite.

The generic formula for mandatory severance in Mexico is as follows (Mandatory Severance): (a) accrued benefits as of the date of termination (including OT); (b) three months' integrated salary (i.e., the salary resulting from integrating all payments and benefits received by the employee during the 12-month period preceding the termination); and (c) seniority premium (prima de antigüedad) equal to 12 days' pay per year of service - capped at twice the rate of the relevant statutory minimum wage (this seniority must be paid even if the employee voluntarily terminates the relationship (quits) when he or she has been employed by the company for 15 years or more).

Under the Federal Mexican Labor Act, employees dismissed without cause are entitled to reinstatement. If an employee prevails in a lawsuit for wrongful dismissal, in addition to reinstatement, the employer will be liable for back pay from the date of the dismissal, with a one-year cap (plus a 2% monthly surcharge thereafter). The employer may avoid reinstatement by making a severance payment in lieu of it for an amount equivalent to 20-days' salary per year of employment. The reinstatement severance is commonly paid to employees who are terminated without cause in exchange for a full release.

## 8. PANAMA

### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Generally no, as it is considered private and sensitive information of the employee. The only test generally allowed is for the detection of drug consumption or psychiatric tests. Under the current COVID-19 situation, employers are taking temperature of their employees, not as a means to keep a registry of medical history of employees, but rather to determine whether an employee is a risk factor and should be let into the workplace. As fever is one of the COVID-19 symptoms, a high fever (combined or not with any other COVID-19 symptom) should cause the employer to request the employee to seek medical attention. Suspicious symptoms assessed by the employer (mainly visual as no medical test can be performed by the employer) should be alerted to the sanitary and health authorities.

### B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

No for companies, yes for persons who live in precarious conditions, or employees who either: (i) have lost their jobs, or (ii) had their employment contracts suspended. Those employees are eligible for a monthly bonus of \$80 for grocery and/or pharmacy shopping. This program is called Panama Solidario.

### C. ***Is there a concept similar to "furlough" in your jurisdiction?***

Yes, in Panama there is a concept similar to furlough, which is a suspension of employment contract under some specific conditions. The suspension of an employment contract means that (a) the employee will not render any services; and (b) the employer will not pay any compensation.

### D. ***If it exists, what is the procedure and legal terms for its exercise?***

Under the current COVID-19 situation, there are three viable furlough options:

1. Furloughs due to force majeure: Article 199 (8) of the labor code establishes that, upon a cause of force majeure, a company whose operations become paralyzed (necessarily have to close operations) are allowed to furlough impacted employees. Under the current situation in Panama, the cause of force majeure has been the government orders to close operations of companies within certain industries and certain activities. To formalize the furloughs, the affected company must file a petition of furlough before the Department of Labor (DOL) in Panama, that will verify that the force majeure (orders to close) do impact the petitioner. The furlough begins on the date that the force majeure event occurred, and will be available for the employers for 30-day periods, until a maximum of four months (if the force majeure continues to exist).
2. Furloughs due to economic hardship: Article 199 (9) of the Labor Code establishes that, due to economic hardship that impairs the possibility to conduct business as usual, an employer may request authorization from the DOL to furlough employees. In this case, the DOL reviews the economic hardship and, after evaluating the evidence, proceeds to authorize or not authorize the furlough of employees. In this case, the suspension only starts once the DOL issues authorization. Although this is a legally viable option,

currently it is not available in practice due to the following reasons: (a) the DOL is not open to the public, thus there are no available channels to request the furlough under Article 199 (9); and (b) even if filed, it appears that the DOL will, more likely than not, delay its response or not respond at all to the request. In the meantime, all employment contracts will remain valid and result in payment of the regular salary.

3. Agreed furlough: Employers and employees can mutually agree to suspend employment contracts. If agreed, the suspension will be deemed valid.

E. ***If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

## 9. PERU

A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

A recent regulation of the Ministry of Health has obliged all employers to, among other measures, adopt all preventive actions against the COVID-19 pandemic, taking into account the progressive plan of resuming economic activities in the near future. Those measures include preparing a plan to protect their employees' health and safety, and carrying out tests to identify employees with COVID-19.

B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

- According to Emergency Decree No. 033-2020, employers will be entitled to receive a one-time payment subsidy equal to 35% of all salaries of employees who comply with these requirements: (i) subject to fifth category income tax, (ii) registered in the electronic payroll of January 2020, (iii) with salaries not greater than S/ 1,500.00 and (iv) who did not end their employment relationship before March 15, 2020.
- The employees who have received the abovementioned subsidy could not apply the furlough procedure in the month and for the employees for which this benefit has been granted.
- The government has issued a governmental loan credit guaranties program called REACTIVA PERU.

C. ***Is there a concept similar to "furlough" in your jurisdiction?***

Yes.

1. Peruvian labor law allows employers to apply for the suspension of the employment relationships (which means that the employee stops providing services and the employer stops paying the corresponding remuneration) for up to 90 days, if force majeure or fortuitous events (Acts of God) occur. Pursuant to Article 15 of the Single Revised Text of the Labor Productivity and Competitiveness Law, approved by Supreme Decree No. 003-97-TR, a fortuitous case or force majeure event allows the employer to temporarily and completely suspend the employment relationships with its employees for up to 90 days, without prior authorization, provided this decision is immediately informed to the Administrative Labor Authority." However, if possible, the employer

must grant accrued or advanced vacations and, in general, adopt measures that reasonably avoid aggravating the employees' situation. The Administrative Labor Authority is responsible for verifying, within six days, the existence and validity of the cause invoked by employers. If the suspension is not valid, the authority will order the immediate resumption of work and the payment of the corresponding remunerations during the suspension period. In summary, this provision allows employers to decide for the suspension of the labor agreements of employees affected by a special situation, without prior authorization and their acceptance, but subject to the Labor Authority's subsequent verification.

2. In addition, the Peruvian government has recently enacted Emergency Decree No. 038-2020, approving a special temporary furlough applicable during the COVID-19 crisis. This is a parallel and different furlough than the one provided in Article 15 of the Labor Productivity and Competitiveness Law. This "new" suspension was created on a temporary basis with the specific purpose of facing the current crisis.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

The furlough option applicable to COVID-19 crisis entails the following procedure:

- It only proceeds in two scenarios:
  - When due to the nature of the activities, it is not possible to apply remote work or grant a paid leave; or,
  - When due to the level of economic impact, it is not possible to apply remote work or grant a paid leave.
- Employers must remotely file their suspension request to the Labor Administrative Authority through an [online platform](#) enabled for said purposes, and the submission of documents to justify the measure.
- It is very important to choose the job positions or activities to be suspended in a neutral and nondiscriminatory way, avoiding any potential discriminatory act (particularly antiunion discrimination). The form used to apply for this suspension must include specific information about whether it includes unionized employees or employees' representatives (if there is no union).
- It has been specified that before applying a furlough, it is mandatory to try to adopt previous alternative measures in order to maintain employment relationships and guarantee employees keep receiving their remunerations, such as granting vacation or reducing salaries, among others. This requires informing unions (or affected employees in case there is no union) about the company's situation and bargaining with them about alternative measures. Any information regarding these communications or negotiations must be in writing to be able to prove it.
- The suspension request is subject to a future verification by the Labor Inspection Authority, within 30 business days from the filing of the communication.
- The Administrative Labor Authority will issue a decision within seven business days from carrying out the aforementioned verification. If this decision is not issued, a positive administrative silence applies.
- If there is no relation between the sworn statement filed by the employer and the verification carried out by the Labor Inspective Authority, or a violation of unionization

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rights, the corresponding authority will deny the suspension of employment relationships, in which case the employer will have to pay the remunerations applicable to the suspension time that has elapsed and, when appropriate, the immediate resumption of work. The period during which work stopped will be deemed effective work for all legal purposes.

- This specific regulation will be in force until 30 calendar days after the conclusion of the Health Emergency period; that is, until July 9, 2020.
- Employees affected by the suspension of employment relationships will be entitled to benefits and rights expressly provided by Emergency Decree No. 038-2020.
- 

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

Employers can adopt the following alternatives, separate from to furloughs:

- Preferably, remote work.
- If remote work is not possible, grant a paid leave subject to future compensation of work once the State of Emergency concludes.
- Grant pending or agree on advancing vacations.
- Agree upon reductions of working hours and/or salaries.
- Any other measures to maintain the employment relationships and assure that employees receive their remunerations.

Even if a specific temporary furlough has been created, the following risks apply:

- The Labor Administrative Authority may reject the measure, in which case the employer will have to pay the remunerations applicable to the suspension time that has elapsed and, when appropriate, the immediate resumption of work. The period during which work stopped will be deemed as effective work for all legal purposes.
- The employees could characterize this measure as a "hostile act." Each employee can either start a lawsuit to stop the hostile act (obtain payment of the days of the furlough period) or follow the procedure of "constructive dismissal" to subsequently ask the judiciary for the severance for arbitrary dismissal. Said severance equals to 1.5 monthly salary per year of services (for indefinite-term employees) or 1.5 monthly salary per each month until the agreed termination date of the contract (for fixed-term employees). In both cases the severance has a cap of 12 monthly salaries. We note that there is a general tendency of employees to ask for additional payments as moral damages in these cases (for which there is no pre-designated amount under the law).
- The Labor Inspection Authorities (SUNAFIL) could impose fines to the Company if it deems that a hostile act occurred. The amount of the fines could be from PEN 11,309 to PEN 225,879 (depending on the number for employees involved). Additional administrative fines and criminal penalties could apply if the employer submits false information or commits fraud when effecting the furlough. Additional administrative fines and criminal penalties could apply if the employer submits false information or commits fraud when applying the furlough.

## 10. PUERTO RICO

### A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes, subject to certain requirements. Puerto Rico is covered by US federal law, including the Americans with Disabilities Act. See our [Coronavirus COVID-19 resource page](#) for US federal requirements concerning medical screenings.

Puerto Rico Executive Order (EO) 2020-41 of May 21, 2020 includes the latest reopening requirements for the island in response to COVID-19. Section 22 of this EO (as did prior versions of the EO) provides that employers must have a contagion control plan in place and submit a certification concerning same. The Puerto Rico Secretary of Labor issued Opinion Letter (OL) 2020-03 including more details on the requisite contagion control plan and a “self-certification” concerning such plan that must be submitted to the PR Department of Labor and Human Resources (PRDOL). The PRDOL issued a model contagion control plan that provides the following when it comes to screening:

- Employees will have their temperature taken every day while the pandemic remains active. If any employee’s temperature is above 99.5 F, they shall be denied access to the workplace. Access shall also be denied to any employee who refuses to have their temperature taken.
- If thermometers are not available, employees and visitors shall fill in a questionnaire asking whether they have had fever, etc.
- Temperatures will be recorded.
- Employees with temperature above 99.5 F shall be sent home immediately and shall remain in quarantine for 14 days.
- Human Resources (HR) shall maintain a list of employees who did not pass the temperature screening and will follow up with them during the 14-day quarantine.
- Every employee with symptoms of cough, fever, or difficulty breathing must remain home and not come to work.
- Any employee who reports to work and shows symptoms of cough, fever, or difficulty breathing must be sent home and cannot return until after 14 days of quarantine (with HR following up during this period).
- If any such employee does not have transportation to return home, he/she shall be taken to a closed area and stay there until picked up. Maintenance personnel shall disinfect the area once the employee leaves.
- If any employee has been in contact with anyone with symptoms of cough, fever, or difficulty breathing, it is recommended that the employee observe a 14-day quarantine (with HR following up during this period).



**B. *Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

On March 3, 2020, the Puerto Rico Financial Oversight and Management Board made an initial \$5 million of Emergency Reserve funds available to the Government of Puerto Rico to contain and mitigate COVID-19. On March 13, 2020, the Oversight Board made the full remaining \$160 million (inclusive of the previous \$5 million) of Emergency Reserve Funds available to respond to the pandemic. On March 23, 2020, the Puerto Rico Government and the Oversight Board agreed to provide \$787 million in unprecedented financial support (Emergency Measures Support Package) to those on the frontline of the COVID-19 pandemic and those most affected by the emergency measures that have resulted. Generally, there have been disbursements from the Emergency Measures Support Package for direct payments to self-employed persons, small businesses, municipal firefighters and police, public safety investments, and materials for the Department of Education, among others.

The most significant support comes from the multiple laws adopted by the federal government, including the \$2 trillion CARES Act, which provides the deepest and broadest set of measures, of which Puerto Rico, its residents, businesses, and government are eligible for approximately \$10 billion. See our [Coronavirus COVID-19 resource page](#).

**C. *Is there a concept similar to "furlough" in your jurisdiction?***

Yes. Puerto Rico Law 80 (the Unjust Dismissal Act) requires that covered employees be terminated for "just cause," as defined by Law 80, or be paid severance (per statutory formula). A dismissal for purposes of Law 80 occurs when, *inter alia*, the employer suspends the employee for a term exceeding three months. A separation from employment/suspension of less than three months does not trigger Law 80 obligations.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

In the case of business necessities reasons recognized as "just cause" under Law 80, if not all employees will be terminated, then employees must be discharged in order of seniority per occupational classification (subject to certain limited exceptions) – this is called "order of retention analysis" – or be paid statutory severance. However, in the case of separation from employment/suspension of three months or less, the employer does not have to follow the order of seniority to furlough workers since such a suspension of less than three months is not a dismissal under Law 80.

With that said, the employer must recall furloughed employees by order of seniority if positions reopen within the occupational classifications that they performed when suspended. In the event that the employer does not observe this rule, the worker will be deemed dismissed and shall have the right to claim Law 80 severance.

If the furlough extends to more than three months, then workers originally suspended will be considered dismissed. In this case, the furloughed employees may require their employer to reinstate them by replacing less senior workers who were not furloughed and occupy positions within the same occupational classification (again, subject to limited exceptions). In these circumstances, if the employer does not reinstate the more senior worker, the worker will be deemed dismissed and entitled to Law 80 severance.

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The employer has the obligation to take the initiative and notify employees if the employer is recalling positions within their occupational classification. Once the employer notifies the employees, they must give them a reasonable period of time to join the job or to notify them that they are available for work. The employer cannot depend on the worker taking the initiative and appearing to apply for work.

- E. ***If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

N/A.

## 11. URUGUAY

- A. ***Are employer mandatory screenings and medical evaluations enforceable in your jurisdiction?***

Yes. In the context of the national health emergency declared by the government and in pursuit of the best interests of the nation, certain noninvasive tests can be mandatorily applied (such as measuring the employees' fever before starting work), if the following requirements are met:

- The control will be performed by the health services hired by the company.
- No record or general disclosure of the information should be made.
- The health personnel will only inform the results to the relevant subjects of the employer (for example, HR).

Additionally, it is possible for the employer to ask the employees to inform whether they are a confirmed COVID-19 case, have been in contact with one, suffer from any associated symptoms, and/or have any pathology risk. This is for the employer to adopt the necessary preventive measures, and safeguard the health and safety of others in the workplace. In any case, the request for data cannot be excessive in relation to the purpose.

Finally, once the COVID-19 situation ends, the employer should delete all health information records

- B. ***Generally speaking, has any economic package (e.g., government sponsor loans, tax incentives) been adopted in your jurisdiction?***

Yes. For example and among others:

1. Extensions of time for tax payments: VAT payments corresponding to February and March are automatically extended to May and will then be payable in six monthly instalments starting in May, without interest. This is only for taxpayers with an annual income not exceeding UYU 1,331,600 (approx. \$30,000).
2. Subsidies and extensions of time for social security contributions: social security contributions corresponding to March and April owed by small companies and certain individuals will be subsidized for up to 40% and the remaining 60% will be due in June, and payable in up to six equal and monthly installments, without interest.

3. Flexible credit facilities: the Ministry of Economy and Finance announced on March 19, 2020 that it had instructed the state-owned commercial bank "Bank of the Republic of Uruguay" (BROU), to grant flexible credit facilities to small and medium companies for up to a total of \$50 million.
4. Authorization to private banks to extend repayment terms: the Ministry of Economy and Finance announced on March 19, 2020, that the Central Bank of Uruguay will authorize private banks and other financial institutions to extend the terms for repayment of loans (including both principal and interests) granted to certain "non-financial customers" (i.e., clients that are not banks or financial institutions) for up to 180 days.
5. Increase of budget assignment to guarantee fund and extensions of time for payment: the Ministry of Economy and Finance announced on March 19, 2020 that it had instructed the National Agency for Development (ANDE) to increase the budget of its guarantee fund in order to guarantee additional loans with a preferred interest rate for up to \$2.5 billion to small and medium companies.

**C. *Is there a concept similar to "furlough" in your jurisdiction?***

There are no labor regulations regarding "furlough" or a similar concept in Uruguay. Following general law principles, it is understood that the labor relationship could be considered "suspended" if there is a proven cause of force majeure, Acts of God, or a sovereign act that prevents the employer from providing any type of work to the employee. That would be the case of the closure of the workplace for sanitary reasons, without any kind of responsibility of the employer and with an impossibility of the employees to perform their tasks from their homes. However, in said case, the first option of the employer should be sending the employees to unemployment insurance, which is covered by Uruguay's Social Security Entity, so that the employees receive a monetary subsidy during such period releasing the employer from bearing any cost.

**D. *If it exists, what is the procedure and legal terms for its exercise?***

N/A, please see answer to question C.

**E. *If it does not exist, what options would the employer have before Acts of God (or extreme circumstances such as those we are experiencing), and what are the risks of implementing furlough-type strategies in the jurisdiction?***

(i) Agree with the employees on a temporary and extraordinary reduction of their work time and salary, signing a written agreement; (ii) review the basket of fringe benefits the company grants, in order to determine if certain benefits could be removed without giving rise to a relevant legal contingency or payment of associated indemnification (which would be the case if the employees' main remuneration benefits were eliminated) - to determine which ones could be eliminated or suspended, it is important to identify the level of sensitivity among personnel, for example, in this COVID-19 context any reduction of health coverage benefits would be discouraged; (iii) sending the employees to unemployment insurance which is covered by the Uruguayan Social Security Entity; (iv) agree with the employees the enjoyment of the vacations generated during year 2019 and also, based on a recent Labor Ministry's Resolution, advance the enjoyment of the vacations generated and to be generated during year 2020 that under regular circumstances would be enjoyed in 2021.

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The risks of implementing "furlough" type strategies in this jurisdiction are that the employee could (a) consider himself/herself indirectly dismissed; or (b) continue working and afterwards claim salaries and salary differences for the period the labor relationship was considered "suspended." The statute of limitations for labor claims under Uruguayan law is five years from the date on which they become demandable.

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Morgan Lewis is recognized for exceptional client service, legal innovation, and commitment to its communities. Our global depth reaches across North America, Asia, Europe, and the Middle East with the collaboration of more than 2,200 lawyers and specialists who provide elite legal services across industry sectors for multinational corporations to startups around the world. For more information about us, please visit [www.morganlewis.com](http://www.morganlewis.com).