

June 2024

## News in Labour law

*On June 28, 2024, the National Congress approved the bill called "Law of Foundations and Starting Points for the Freedom of Argentines" (the "Law"). Only the President's promulgation remains.*

### 1. PROMOTION OF REGISTERED EMPLOYMENT

Under Title IV of the Law, it is established that employers may regularize existing labor relations in the private sector that began before the promulgation date of the law. The regularization may include unregistered labor relations or poorly registered labor relations, and the Executive Power must provide regulations for this purpose, applying:

- a) The extinction of criminal actions and the forgiveness of infractions, fines, and sanctions related to the regularization.
- b) The removal from the Register of Employers with Labor Sanctions (REPSAL).
- c) The forgiveness of debts for principal and interest arising from the non-payment of contributions to various Social Security subsystems, which cannot be less than 70% of the owed sums.

The regularization of labor relations should be completed within 90 days from the entry into force of the regulations. Disputed debts can be included in the regularization regime if the employer unconditionally submits, waives any action and right, and assumes judicial costs.

The Federal Administration of Public Revenues and social security institutions must refrain from determining debts or drawing up infraction records for the same causes covered by the regularization of labor relations.

### 2. LABOR MODERNIZATION

In addition to the registration system mentioned, Title V establishes modifications to the Labor Contract Law, including the abrogation of most provisions regulating special compensation regimes for incorrect or unregistered registration.

#### a. Modifications to Law 24,013

The project establishes that the employment relationship or contract is registered when the worker is enrolled in the forms and conditions established by the regulations, in a simple, immediate manner, and through electronic means. The following guidelines for the registration system are determined:

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- Simplified mechanism for registering companies with up to twelve (12) employees.
- Full validity of registration when conducted according to regulations.
- Possibility for workers to report poor registration to AFIP.
- In the case of an unappealable adverse judgment, the already paid components must be compensated according to the respective regime.

## b. Modifications to the Labor Contract Law (“LCT”)

**Scope of application:** The provisions of the Law expressly exclude the hiring of work, services, agencies, and all those regulated in the Civil and Commercial Code of the Nation.

**Presumption of an employment contract:** A novelty is the presumption of the existence of a labor relationship that will not apply when the relationship involves the hiring of works or professional or trade services, and the corresponding receipts or invoices are issued, or the payment is made according to the banking systems determined by the relevant regulations. This absence of presumption extends to all effects, including Social Security.

**Intermediation:** Correct registration is considered for those who register the worker, even if the hiring is to provide services to a third party, thus limiting the scope of interpretations of Art. 29 of the LCT.

**Trial period:** The trial period is extended to 6 months without the right to compensation for this reason, which can be extended through collective bargaining to 8 or 12 months, depending on the number of workers in the company. It is governed by the following rules:

- The same worker cannot be hired more than once.
- There is the possibility of applying sanctions for abusive use of this type of contract.
- The parties retain rights and obligations inherent to an employment relationship, except as expressly indicated.
- Social security contributions must be paid unless exceptions apply in each case.
- There is a limit to the benefits for illness or accident up to the end of the trial period if the employee terminates the contract. Absolute incapacity during this period is excluded.
- The trial period is considered as service time for legal purposes.
- It is considered a waiver of the trial period if the relationship is not registered.

**Contractors:** Incorporation of withholding by the main contractor not only for debts of salaries or social security contributions of the contractor but also for due compensations. Additionally, the collecting authority must implement a system to allow the payment by the employer on behalf of the non-compliant employer.

**Pregnant Women:** Reduction to 10 days before the expected delivery date, of the time limit within which the pregnant worker cannot continue working, accumulating the rest of the 90 days of unpaid leave to the post-delivery period.

**Discriminatory Dismissal:** Incorporation of increased compensation for acts of discrimination, based on race or ethnicity, religion, nationality, ideology, political or union opinion, sex or gender, sexual orientation, economic status, physical characteristics, or disability, which will amount to 50% of the compensation established by Article 245 of the LCT. Depending on the severity of the acts, judges may increase this compensation up to 100%. In all cases, the dismissal will terminate the employment relationship for all purposes.

**Dismissal with Just Cause:** In addition to the broad determination subject to each case, it is incorporated that serious labor misconduct, as an objective cause for termination of the employment contract, may be configured by active participation in blockades or establishment takeovers. It is presumed that serious misconduct exists when, during a direct action measure: a) The freedom of work of those not adhering to the strike is affected by acts, facts, intimidations, or threats; b) The entry or exit of people and/or goods to the establishment is totally or partially prevented or obstructed; c) Damage is caused to people or property belonging to the company or third parties located in the establishment (facilities, merchandise, supplies, and raw materials, tools, etc.) or is unduly retained.

Before termination, the employer must urge the worker to cease the offending conduct, except in the case of damage to persons or property provided for in item c), where the damage renders the warning ineffective.

### **Severance Fund**

The modification of the fixed compensation regime for unjustified dismissal is allowed, through a collective labor agreement, thus replacing the compensation regime with a labor termination fund or system according to the parameters set by the National Executive Power, or at the employer's option, contracting a private capitalization system at their cost, to cover the compensation provided in this article and/or the sum freely agreed upon by the parties for termination by mutual agreement under Article 241 LCT.

### **Independent Workers with Collaborators**

The figure of the independent worker is created, who may engage up to three (3) other independent workers to carry out a productive venture and may benefit from a special unified regime to be regulated by the National Executive Power, based on the autonomous relationship, without any labor relationship between them or with the contracting parties of the services or works. This system will include for both the independent worker and the collaborating workers, the individual contribution of a monthly fee that includes contributions to the Pension Regime, the National Health Insurance System, and the Work Risk Regime, under the conditions and requirements established by the regulations.

### **Agricultural Work**

In terms of Agricultural Employment, the operation of a job pool managed by workers' trade unions with legal status is allowed, who may propose to employers a list of necessary personnel for temporary tasks in activities contemplated under the resolutions issued by the Agricultural Labor Commission. The employer may hire the suggested person and/or any other they choose.

### **Abrogation of Special Compensation and Fines**

Articles 8 to 17 of Law 24,013 (fines for deficient labor registration, with an immediate impact on the non-application of special compensation such as 25% of unregistered labor values, or the 100% increase in dismissal, notice, and integration compensation) are repealed. Article 120, section a), of Law 24,013 (registration as it was prior to the draft Law) is repealed. Article 9 of Law 25.013 (aggravating factor for non-payment on time) is repealed. Articles 43 to 48 of Law 25,345 (aggravating factors for deficient labor registration and/or delay in delivering work certificates) are repealed. Article 15 of Law 26,727 (prohibition of personnel placement companies for agricultural work) is repealed. Article 50 of Law 26,844 (aggravating factor for deficient registration of domestic workers) is repealed. Law 25,323 (special compensation for deficient labor registration equivalent to 100% of the seniority compensation, or delay in the payment of dismissal compensation, with a 50% increase in the same) is repealed

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