

Legal Update

Newsletter regarding labor stability of pregnant and breastfeeding women

October 10, 2018

Cases in which it is considered that there is an affectation of the labor stability of pregnant and breastfeeding women

The Constitutional Court, through Ruling T-395 of 2018, recalled the different scenarios in which the rights of pregnant and breastfeeding women may be violated. The following should be bear in mind:

- It will not be possible to terminate the contract of an independent contractor -without previous authorization from the Labor Inspector- when a woman is linked through a continuous services agreement of periodic renewal and the contracting party acknowledges her pregnancy. Moreover, if the scope of the contract persists. Otherwise, the termination of the contract will not be valid.
 - When a woman is linked through an apprenticeship contract and she communicates her pregnancy, she cannot be terminated by the sponsoring company, considering that in such case, she will be entitled to the same labor stability of pregnant women hired through labor agreements. Also, the sponsoring company must keep assuming the health contributions of the apprentice, regardless the stage of the contract, as well as the correspondent monthly allowance payment.
 - Transactional agreements that formalize the termination of the labor relationship between the employer and the pregnant employee, would not be valid without previous approval of the Ministry of Labor, even if the employee agrees, considering that it is not possible to affect certain and indisputable rights.
 - Finally, the Ruling establishes that in case of specific project contracts, it is necessary to report the situation to the Labor Inspector, before the finalization of the project, so that the labor authority is able to decide if the objective grounds that gave origin to the contract persist or not. Depending on the Labor Inspector's decision, the employer will be able to end the contract of the pregnant employee or must extend the term of the contract until the end of the breastfeeding period.
- <http://www.corteconstitucional.gov.co/relatoria/2018/t-395-18.htm>

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