NORTON ROSE FULBRIGHT

Legal Update

Several recent labour updates

September 20 , 2018

1. Payment of contributions to the Social Security and Payroll Taxes Systems of independent contractors

Modifications to the Decree 780 of 2016 and the Decree 1072 of 2015.

Through Decree 1273 of 2018 the Ministry of Health and Social Protection modified the Statute of Health and Social Protection, in particular regarding the contributions of the independent contractors to the Social Security and Payroll Taxes Systems. This is what you must bear in mind:

1. The payment of the contributions to the Social Security and Payroll taxes System must be done monthly in arrears, meaning that the payment will be done based on the income received in the last month. Moreover, the payment of the contributions must be done through the Payment Template ("PILA").

Please remember that the Contribution Base Income ("IBC") of independent contractors corresponds at least to the forty percent (40%) of the monthly amount of each contract, without including the Value Added Tax ("IVA"). In any case, the IBC could not be inferior to the Legal Monthly Minimum Wage ("SMLMV"), or superior to 25 times said salary.

2. If the contractor contributes for several incomes, the retention and payment of contributions must be done over the value of each contract, even if the result of the application of the 40% to the monthly value of the contract is lower than one (1) SMLMV

3. The Decree provides that every legal person who is a contracting party, autonomous equity and consortia or temporal unions which has at least one legal person, has the obligation to make retentions and pay contributions to the Social Security and Payroll Taxes System through the PILA, respect to independent contractors.

4. The Decree also establishes that the contractor will be responsible of paying to the administrators of the Social Security System the amounts left to hold or the ones that have been hold for a lower value, and they will also respond for the default interests caused by the breach of the terms established for the payment of those contributions.

Finally, please consider that the payment of these contributions will be effective as from October 1st 2018, reason why it will start with the payment of the correspondent contributions of September 2018.

- http://es.presidencia.gov.co/normativa/normativa/DECRETO%201273%20DEL%2023%20DE%20JULIO%20DE%202018.pdf

2. Practitioners and interns at the work place

Regulation regarding internships at the work place

Resolution 3546 of 2018 regulates the activities performed by interns at the work place, in accordance with Law 1780 of 2016. This is what you must bear in mind:

This Resolution is applicable in the public and the private sectors, in which all natural or legal persons dedicated to activities whit or without profits are also included. The Resolution does not regulate apprenticeship contracts or legal practices.

The Resolution defines a labor internship and the parameters under which it must be understood, including type of activity, subject that develops the activity, scope and duration. These activities could be for free or an economic allowance of a non- salary nature could be agreed with the intern, in order to contribute with the development of said activity. However if an allowance is agreed, it cannot be lower than the equivalent to the SMLMV.

In addition, you must bear in mind that the Educational Institution must also participate in the development of these practices, and is the one that must determinate the time schedule for the said internship.

On the other hand, if the student is between 15 and 17 years old, a previous authorization from the Ministry of Labor must be obtained.

The Resolution establishes the amount of hours per day and week of practice that could have the student, depending of its age range, however interns should not be under 14 years old. The Resolution also foresees the schedules for pregnant students.

As a scenario where the practice is performed, it must be considered that a tutor must be assigned, who will have the obligation to watch over the development of the activities made by the student, review the practice plan and report if there is a violation of the intern’s rights

In case of non-compliance with the obligations contained in the Resolution, the Company can be creditor of sanctions of a general nature that can be imposed by the Ministry of Labor.

Finally, please consider that this Resolution will start to rule as from January 1st, 2019.

- https://www.opinionysalud.com/wp-content/uploads/2018/08/RESOLUCI%C3%93N-N%C3%9AMERO-3546-DE-2018.pdf

3. Payment of medical leaves

Guidelines for the payment of medical leaves above 540 days

The Ministry of Health and Social Protection issued the Resolution 1333 of 2018, which regulates disabilities above 540 days.

Please consider:

1. Since the date of entry into force of the master accounts of collection, the independent workers cannot deduct the values that correspond to the disabilities caused by general sickness and the maternity/paternity licenses. Said payment will have to be done by the Health Promoting Entities (EPS) and the Entities Obliged to Compensate (EOC).

2. The EPS and/or the EOC are responsible to periodically track the disabilities by sickness of common origin, implementing the actions included in the Decree, specially detecting cases in which the disability can be extended, promoting integral treatments and inserting the results in the medical histories of the patients.

3. The Decree includes three cases in which the EPS and/or the EOC must restart paying medical leaves above 540 days: (i) When there is a positive concept of rehabilitation, issued by the treating doctor;(ii) when the patient followed all the recommendations and protocols but still he does not present any recovery, and (iii) when there is a complication in the patient's health condition derived from a concomitant disease.

4. Finally, the Decree established that in those cases in which there is an abuse of the rights by the users, they will have the opportunity to present an excuse of the breach within the next 5 days. If there is no answer or in case of repetition, the economic payment will be suspended, until the subscription of the agreement in which the user commits to follow the instructions made by the health professional.

- http://es.presidencia.gov.co/normativa/normativa/DECRETO%201333%20DEL%2027%20DE%20JULIO%20DE%202018.pdf

4. Implementation of the friendly breastfeeding rooms at the work place

Technical parameters for the application of the friendly breastfeeding rooms at the work place

Through this Resolution, the Ministry of Health and Social Protection, established the strategy for the application of the friendly breastfeeding rooms at the work place (Law 1823 of 2017)

This Resolution establishes the technical parameters for the operation of said rooms, including the implementation of trainings and the adjustment of particular spaces at the work place for the employees in nursing status. This is what you must bear in mind:

1. In the private sector, this Resolution only applies for companies with a capital beyond 1.500 SMLMV or companies with more than 50 female employees.

2. The Company must assign a person responsible of guaranteeing the parameters established in the Resolution. The Company must also provide trainings to the pregnant or nursing employees, containing, at least, the information included therein.

3. The Resolution establishes some specific requirements that must be fulfilled by the company, including infrastructure, equipment, utensils, supplies, control and register requirements.

- http://webcache.googleusercontent.com/search?q=cache:xTyu6lK30C0J:www.colcob.com/noticolcob/index.php/panorama/item/101-resolucion-2423-de-2018-texto-completo+&cd=1&hl=es-419&ct=clnk&gl=co

5. Maternity protection

If the employer does not know about the pregnancy and terminates the employment agreement, the maternity protection does not apply

The Constitutional Court, through Ruling 0-75 of 2018, established a new criteria for cases of dismissal of a pregnant employee, whenever the employer ignores the state of pregnancy. This is what you must bear in mind:

1. If the employer is aware of the pregnancy and wishes to terminate the employment relationship, it must obtain previous authorization from the Labor Inspector.

2. If the employer dismisses the employee without knowledge of the pregnancy, the maternity protection will not apply, since the Constitutional Court considered that in those cases no discrimination would exist.

3. If the employee has maternity protection and has been dismissed, whenever there is a third service provider involved, it should respond jointly and severally with the employer for the constitutional protection.

This Ruling is of high importance, considering that it removes a disproportionate obligation for the employer and promotes the hiring of women.

- http://english.corteconstitucional.gov.co/Decision.php?IdPublicacion=183

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