



HR UPDATE

LEGAL DEVELOPMENTS IN HUMAN RESOURCES IN ARGENTINA

SPECIAL REGIME FOR THE TAX REGULARIZATION, PROMOTION AND PROTECTION OF LABOR RELATIONS

Aimed at avoiding the negative effects of the international crisis, the Argentine Congress has recently enacted National Law 26,476, published in the Official Gazette on December 24th 2008 (hereinafter, the "Law"). The Law contains a regularization regime for tax and social security obligations and for unregistered labor relations, together with a system for the promotion and protection of registered labor relations. Likewise, the law provides for a promotional regime for repatriation of capital of Argentine residents.

Although the Law is pending of regulation by the Executive Power, we herein bellow summarize the most relevant provisions of the law affecting labor relations, consisting on:

1. Regularization regime for tax and social security obligations.
2. Regularization regime for unregistered labor relations.
3. Promotion and protection of registered labor relations.

1. Regularization regime for tax and social security obligations.

a. Benefits.

The Law sets forth a forgiveness of fines and other sanctions as long as they are not definite. Likewise, it provides for important discounts for applicable interests by means of a progressive reduction system according to the time of adherence to the regime.

The term for the adherence to the regime is of six months as from the first month after the Title I of the Law is regulated by the National Executive Power.

b. Included and Excluded Obligations.

The law applies to any and all unfulfilled tax and social security obligations due on December 31, 2007.

The following obligations, are excluded for the regime: (i) obligations and infractions related to tax promotional regimes; (ii) interests for withhold and unpaid social security payments; (iii) payments and contributions to medical care services; and (iv) interests and fines derived from payments to the ART (*Aseguradoras de Riesgos de Trabajo* or Labor Risk Insurers).

c. Administrative and judicial proceedings.

Benefits set forth in the Law also comprise obligations currently under administrative or judicial proceeding up to December 24, 2008 provided the defendant voluntary dismisses the claim and assumes the costs of the proceeding.

Likewise, criminal actions against tax evaders related to those obligations included in the Law (as long as there is no definite sentence) are suspended during the time of the payment installment plan provided by the Law and are extinguished when the total amount due is paid.

2. Regularization regime for unregistered labor relations.

a. Benefits.

The Law sets forth important benefits to employers that register unregistered labor relations or that rectify the real remuneration and/or date of entry of its employees existing as of December 24, 2008. Such benefits are only applicable

provided the employer carries out the regularization of the situation of all of its employees. The benefits for the first 10 employees are higher than for the rest of the employees.

The benefits are as follows:

- The forgiveness of unpaid or unfulfilled infractions, fines and sanctions (definite or not) as of December 24, 2008.
- The extinction of debts originated in the lack of fulfillment of payments and contributions to the social security system and to union dues in relation to the first ten regularized employees. In relation to debts for the remaining employees, employers are entitled to a financing plan according to a special procedure to be established. Debts subject to administrative or judicial proceeding can also be included provided the employer dismisses the claim and assumes the costs of the proceeding.
- All payments made to unregistered employees prior to December 24, 2008 will not be considered net income, expense or sales for the determination of the tax base of the employer regarding income and VAT tax.

b. Term for the regularization.

Regularization of labor relations must be carried out within 180 consecutive days as from the entry into force of Title II of the Law.

3. Promotion and protection of registered labor relations.

a. Benefits.

The regime grants employers with special reductions in its contributions to the social security system for a period of 24 months as from the beginning of a new labor relation or as from the regularization of existing labor relations.

The reductions are of 50% in contributions during the first 12 months and of 25% for the remaining 12 months.

b. Excluded employees.

The following employees are excluded from the regime: (i) those registered before December 24, 2008; (ii) those terminated and reincorporated by same employer within the following 12 months and; (iii) those hired within 12 months as from the termination without cause of another employee.

c. Loose of the benefit.

Employers shall be automatically excluded from the promotional regime in case of: (i) continue having some unregistered employees prior or after December 24, 2008 and up to two years after the expiration of the term of the promotional regime; (ii) existence of employees in violation to Point b. hereinabove (Excluded employees).

d. Term of the benefit.

Benefits shall be applicable for a period of 12 months as from the entry into force of the Law and may be extended by the National Executive Power.

4. General Provisions.

In all cases, the following individuals are excluded from the benefits of the Law: (i) bankrupts; (ii) those prosecuted –by definite sentence- for criminal offense for tax reasons; and (iii) those that are or have been public agents.

Likewise, according to the Law, employers are allowed to keep the benefits granted by the law as long as they do not reduce the total staff of the company for a period of two years.

As soon as the National Executive Power regulates the Laws and the corresponding public entities enact their resolutions, we will provide with a more detailed description of the law.

ALFARO-ABOGADOS

We will keep you informed of further developments on this issue. Nevertheless, if you are interested in exploring this or other Human Resources issues, please do not hesitate to contact Mr. Carlos E. Alfaro (cealfaro@alfarolaw.com) or Ms. María Paola Trigiani (ptrigiani@alfarolaw.com)

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