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Mexico: Work Centers Ordered to Close? – Part 2

Legal Update

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On March 25, 2020, we published an article about the accord published by Mexico's Ministry of Health. Since then, the Mexican government has taken several additional actions to combat SARS-CoV2 (COVID-19), including a presidential decree published on March 27, 2020, whereby the executive ordered various extraordinary actions and authorized the Ministry of Health to implement further actions. On March 31, 2020, the Ministry of Health published another accord ordering the immediate suspension, from March 30 to April 30, 2020, of all non-essential activities. The following activities are considered essential:

Activities directly necessary to address the health emergency, such as:

- - medical, paramedical, administrative and support activities for the National Health System and those that provide them supply and services, including the pharmaceutical sector, both in production and distribution (drugstores);
 - manufacture of supplies, medical equipment and technologies for health care; and
 - those needed for the proper disposal of infectious/biological hazardous waste and cleaning and sanitation of medical units.

Activities related to public safety, national defense, justice system, and legislative activities at the federal and state levels.

Activities related to the fundamental sectors of the economy: financing; tax collection; distribution and sale of energy, fuel and gas; generation and distribution of drinking water; food and non-alcoholic beverages industry; food markets, supermarkets, convenience and grocery stores; sale of prepared food; passenger and cargo transportation services; agricultural, fishing and livestock production; agribusiness; chemical industry; cleaning products; hardware stores; courier services; guards at private security services; nurseries and childcares; senior homes and assisting living for older adults; shelters and care centers for women victims of violence and their children; telecommunications and media services; private emergency services; funeral and burial services; storage services for essential

supplies; logistics (airports, ports and railways); and activities which suspension may have irreversible effects for their continuity.

Activities directly related to the operation of governmental social programs.

Activities necessary for the conservation, maintenance and repair of critical infrastructure that ensures the production and distribution of the following essential services: drinking water, electric power, gas, oil, gasoline, fuel, jet fuel, basic sanitation, public transportation, hospital and medical infrastructure, among others that could be listed in this category.

Essential businesses that remain open must observe additional measures, including avoiding meetings or congregations of more than 50 people and observing social distancing. It is unclear what constitutes a "congregation", but if the social distancing requirements cannot be met, that would likely be considered a congregation.

Except for the provisions related to high-risk employees contained in the accord published on March 24, 2020, none of the decrees or accords expressly state what are the employers' obligations regarding salaries and benefits. However, the different documents have been very careful to avoid declaring a health contingency, which would limit employers' obligations to pay one minimum salary for up to 30 days.

Mexico's government has publicized that employees will receive their full salaries and benefits. It is doubtful that the Mexican government has the authority to require employers to pay full salaries and benefits, particularly in the form they seem to be doing it. However, given the level of publicity and current status of things in Mexico, we expect that most business will pay them. One likely exception may be for those payments that require some action by the employees or are subject to other condition precedent, like attendance or punctuality bonuses, transportation assistance, etc. The argument is that these payments do NOT have to be made because the condition precedent that triggers them (i.e. employee showing up for work) is not met. Also, employers that reached an agreement with their employees to pay them reduced salaries and benefits during their voluntary shutdowns likely will only make the agreed upon payments.

These decrees and accords continue to be vague and there are questions about their legality and enforceability. But because of the risks associated with COVID-19, we expect that most companies will close, unless they are considered essential.