

New draft laws could affect employment contracts



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Introduction

On April 25 2016 President Mauricio Macri announced the publication of the Promotion of First Jobs and Work Formalisation, a draft law which would introduce benefits for employees regarding:

- the recruitment of workers aged between 16 and 24; and
- the regularisation of non-registered employees.

Further, on April 27 2016 the Senate approved a draft law that proposes a temporary ban on dismissals without just cause in the public and private sectors for 180 days. This update examines the implications that these draft laws could have for employment contracts.

Registered employment contracts

The Promotion of First Jobs and Work Formalisation aims to promote registered employment contracts and includes the following benefits in that regard:

- Employers will receive an exemption from payment of social security contributions for:
 - employees aged between 16 and 24 who start their first registered job or who have made less than three years of social security contributions; and
 - workers who hold a disability certificate.

The exemption will be calculated according to an employee's social security contributions and the number of employees that a company registers, and could potentially result in a 100% exemption from social security contributions. It will be applied only to gross remuneration not exceeding one and a half times the official minimum wage.

- Employers will be eligible for financial compensation for recruiting employees. When hiring a new employee, an employer will receive a lump sum in proportion to the new employee's social security

contributions and the company's payroll of up to 8% of the employee's salary and not exceeding one and a half times the official minimum wage.

- Employers may have debts and fines written off through the regularisation of unregistered employees. The registration of up to 10 employees and the disclosure of remuneration rates and the actual start date of a labour relationship will result in the following benefits:
 - Any potential penalties for the non-registration of the employees in question or outstanding social security contributions, including capital and interest, will be written off;
 - Outlays made before the regularisation of the labor relationships in question, such as net earnings, expenses or sales, will be exempt from retrospective taxation; and
 - Any employees registered as part of this process will have the right to use up to 60 months of previous service towards their pension provisions and unemployment benefits.

After registering 11 employees and paying the required social security contributions, the employer will be entitled to receive the remaining benefits. The draft law will remain in force for one year after it has been passed.

Temporary ban on dismissals

The draft law which the Senate approved on April 27 2016 proposes placing a temporary ban on dismissals without just cause in the public and private sectors for 180 days after it comes into force. During this period employers will be unable to dismiss employees without just cause, but employees will be entitled to accept dismissal and receive a bonus severance payment or request reinstatement.

In summary, the draft law provides as follows:

- Dismissals without just cause or suspensions of employees are forbidden in the public and private sectors for 180 days after the law comes into force. This provision is applicable to all employees.
- If a dismissal takes place, the affected employee can:
 - request reinstatement to his or her job and payment of his or her salary until his or her reinstatement; or
 - accept termination of the employment relationship. In that case, employers must pay any outstanding social security contributions for the employee in question.
- An employee who requests reinstatement will promptly resume his or her role according to Section 498 of the Civil and Commercial Code.
- If an employee accepts the termination of an employment relationship, he or she will be entitled to a bonus severance payment in addition to his or her statutory severance payment.
- Fixed-term employment contracts in the public sector that were due to expire in the 180 days following the draft law's introduction will be automatically renewed.

The draft law will not apply to new employment contracts entered into after it comes into force.

Comment

If both draft laws are passed, they will directly affect employment contracts through the creation of new jobs and the temporary ban on dismissing employees without just cause for 180 days. Although the new government does not agree with the introduction of a temporary ban on dismissals and has the option of rejecting the draft law, Parliament is set to decide whether to approve this provision in the near future.

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