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Tax Practice and Labor, Social Security and Immigration Practice Group Joint Newsletter



Extraordinary actions to address the health emergency caused by the SARS-CoV2 virus

Ministry of Health

On March 30, 2020, the General Health Council published in the Official Gazette of the Federation ("DOF") the Agreement declaring the epidemic of COVID-19 as a health emergency due to force majeure. The above is in connection with the increases in confirmed cases to 1,094, in addition to the 28 deaths due the disease.

Such agreement also establishes that the Ministry of Health will determine all actions necessary to address the emergency.

On March 31, 2020, the Ministry of Health published in the DOF the Agreement establishing extraordinary actions to address the health emergency generated by the COVID-19 disease (the "Agreement"), which entered into force on the day of its publication.

The Ministry of Health Agreement establishes as an extraordinary measure in response to the health emergency, that the public, social and private sectors must immediately suspend all non-essential activities from March 30 to April 30, 2020, in order to mitigate the transmission of COVID-19 in the population resident

in Mexico.

The Agreement lists as essential activities the following:

1. Those that are directly necessary to address the health emergency, such as medical, paramedical, administrative and support activities throughout the National Health System.

Also included are those who participate in their supply and services, among which the pharmaceutical sector stands out, both in its production and its distribution (e.g., pharmacies); the manufacture of supplies, medical equipment and technologies for health care; those involved in the proper disposal of biological-infectious hazardous waste, as well as cleaning and sanitizing medical units at different levels of care.

2. Those involved in public safety and citizen protection; in the defense of national integrity and sovereignty; in the justice system; and legislative activity at the federal and state levels.
3. Those of the fundamental sectors of the economy: finance, tax collection, distribution and sale of energy,

gas and gas stations, generation and distribution of potable water, the food and non-alcoholic beverages industry, food markets, supermarkets, shops, grocery and prepared food sales; passenger and cargo transportation services; agricultural, fishing and livestock production, agribusiness; the chemical industry, cleaning products; hardware stores, courier services, private security guards, day-care centers and nurseries, homes for the elderly, shelters and care centers for women victims of violence, and their children, telecommunications and information media, private emergency services, burial and burial services, storage services and cold chain of essential supplies, logistics (airports, ports and railways), and activities whose suspension may have irreversible effects on their later continuation.

4. Those directly related to the operation of government social programs.
5. Those necessary for the conservation, maintenance and repair of the critical infrastructure that ensures the production and distribution of essential services, including: potable water, electricity, gas, oil, gasoline, jet fuel, basic sanitation, public transportation, hospital and medical infrastructure, among others that could be listed in this category.

On the other hand, section III of Article 1 of the Agreement declaring the disease epidemic a health emergency establishes that in the places where the activities described as essential are carried out, the following obligations must be fulfilled:

1. Cannot involve more than 50 people together.
2. People must wash their hands frequently.
3. People must sneeze or cough covering the nose and mouth with a disposable tissue or with the forearm.
4. Do not kiss, shake hands or hug ('remote greeting').
5. Comply with the healthy distance measures in force, issued by the Ministry of Health.

On April 6, 2020, the General Health Council published in the Federal Official Gazette an Agreement establishing the technical guidelines related to the activities described in paragraphs c) and e) of section II of Article 1 of the Agreement establishing extraordinary actions to address the health emergency, published on March 31, 2020.

This agreement published on April 6th, categorizes as essential activities the production of steel, cement and glass; courier companies; and companies necessary for the conservation, maintenance and repair of critical infrastructure that ensures the production and distribution of essential services: electricity.

- a. Steel, cement and glass production companies

In relation to these companies, it establishes that they will maintain a minimum of activity that avoids irreversible effects on their operation; complying with the practices indicated in section III of Article 1 of the Agreement that establishes extraordinary actions to address the current health emergency generated by the SARS-CoV2 virus.

However, it points out that steel, cement and glass production companies that have contracts with the Federal Government will continue the activities that allow them to comply with the short-term commitments exclusively for the Dos Bocas, Tren Maya, Felipe Ángeles Airport and Corredor Transístico projects; as well as the existing contracts considered as essential for Petróleos Mexicanos and the Federal Electricity Commission.

- b. Courier companies

Courier services, companies and electronic commerce platforms are included, as long as they comply with the practices established in section III, Article 1 of the Agreement that establishes extraordinary actions to address the health emergency.

- c. Necessary companies for the conservation, maintenance and repair of the critical infrastructure that ensures the production and distribution of essential services: electricity

Regarding these companies, it establishes that the coal mines will maintain the minimum activity that satisfies the demand of the Federal Electricity Commission.

Likewise, the coal distribution companies will maintain their transport and logistical activities to satisfy the demand of the Federal Electricity Commission. To this end, they shall employ a minimum number of workers for this purpose and must comply with the practices established in section III of Article 1 of the Agreement that establishes extraordinary actions to address the health emergency generated by the SARS-CoV2 virus.

Ministry of Communications and Transports

On April 8, 2020, the agreement by which the Ministry of Communications and Transport (SCT) establishes their essential activities was published in the DOF, which entered in force on the day of its publication and will remain effective as long as the health emergency situation remains in accordance with the valuations, resolutions or agreements of the federal health authority.

The activities considered as essential by the SCT are the following:

A. Infrastructure:

- i. The conservation of federal toll-free highways;

- ii. The Conservation and Rehabilitation of Rural Roads and Feeders Program, and
- iii. The operation of the Toll Highway Network, toll-free highways, as well as all those roads and bridges left to local governments and counties for their operation, maintenance, conservation and surveillance.

B. Transportation:

I. Air transport:

- i. Safe Flight Certificates.
- ii. Export and airworthiness Certificates
- iii. Issuance of Air Service Operator's Certificate (AOC), Renewal or amendments.
- iv. Validation of the Air Services Operator's Certificate (AOC), issued by a foreign aeronautical authority, its renewal or amendments.
- v. Workshop permits, as well as validation of foreign workshops that provide services to Mexican registered aircrafts, and their amendments.
- vi. Emergency repair or maintenance work authorizations, as well as work to be carried out abroad.
- vii. Overflight authorizations.
- viii. Rescue Flight authorizations.
- ix. Humanitarian Flight authorizations.
- x. Airport Services.
- xi. Complementary services.
- xii. Air navigation assistance services.
- xiii. Assignment and cancellation of public service aircraft registrations.
- xiv. Insurance policy approval.

II. Railways:

- i. The provision of the public service of cargo and passenger rail transport, as well as the auxiliary and support services for it;
- ii. The rehabilitation and maintenance of railway tracks; and
- iii. The conservation and maintenance work for railway equipment.

III. Federal Auto Transportation:

- i. Those related to the chain of services of transport of passengers and cargo, which are listed below:
 - » Federal passenger and cargo auto transport services.
 - » Maintenance services for the vehicle fleet,

spare parts supply and related services.

- » Cleaning and disinfection services for vehicles of all types, passenger terminals, inns, mechanic service stations and diesel and gasoline sale.
- » The operation of loading and unloading centers for all types of goods, as well as inns.
- » Courier services.
- » Towing, rescue and vehicle storage services.

- ii. Passenger terminals and verification units, auxiliaries to federal transportation;
- iii. Work supervision in the main central passenger bus terminals of the country, in charge of the General Direction of Federal Auto Transportation and SCT Centers, currently focused on the application of health measures issued by such administrative units; and
- iv. Issuance of provisional authorizations to circulate without metal plates, so that the units intended for federal motor transport can transit and provide services while the health emergency persists, and while the conditions that led to the establishment of measures for the containment of the aforementioned virus persist.

IV. Maritime:

- i. The granting of permits and authorizations to vessels or naval craft that provide services related to passenger and cargo transportation, as well as to the production and distribution of gas, oil, gasoline or jet fuel:
 - » Temporary permits for coastal navigation to foreign vessels.
 - » Authorizations for foreign naval craft to operate in Mexican marine areas.
 - » Permits for the provision of passenger transport services in navigable waterways.
- ii. Authorizations to act as a general shipping agent or ship consignee.
- iii. Humanitarian convoys.
- iv. Essential port works to ensure the proper functioning of ports, including private sector port projects aimed at creating strategic infrastructure for port operations and stimulating economic activity.

C. Port Operations:

- i. The operation of entry and exit of ships, loading and unloading of goods and passengers necessary for the continuity of supplying, as well as the minimum/basic port services required for attending to the ships and their crew, with

- the observance of established health protocols;
- ii. The provision of pilotage services and those activities inherent in the operation of vessels in port that require immediate attention by the Merchant Marine Service Offices; and
 - iii. Amendment maneuvers and the anchoring of vessels in ports, authorized by the Merchant Marine Service Offices.

D. Communications:

- i. Actions to guarantee the continuity of the telecommunications and broadcasting networks so that the population can have access to information media and telecommunications services;
- ii. Actions to safeguard the security of critical infrastructure;
- iii. Continuity of social coverage projects;
- iv. Dissemination of information to the people on the rational use of telecommunications and broadcasting technologies;
- v. Postal and courier services provided by the Mexican Postal Service;
- vi. Satellite services for social coverage by TELECOMM;
- vii. TELECOMM office services and services for the scattering of resources for social welfare programs by TELECOMM;
- viii. Maintaining the operation of the Federal Government's private network; and
- ix. Evaluation of technological development projects.

Based on the above, companies that consider that their activity could be included in the list of essential activities and that wish to continue operating on a regular basis, should analyze in depth the characteristics of their own operations according to the industry considered as essential, in order to determine whether they actually carry out essential activities in accordance to the aforementioned agreements.

We also believe that the list of essential activities could include the activities of certain companies that are part of supply chains.

Therefore, in the event that the activity of any company is within this supply chain and/or the production of necessary elements so that an essential activity can take place, according to the in-depth analysis of the activity, it might be considered as an essential activity.

In this regard, our Labor and Administrative Law practices are at your disposal to support you in determining whether the activities carried out by your company can be considered essential, and for the creation of defense files that may serve as a basis to conclude

that the activities they carry out are essential, and that it may operate on a regular basis considering the above guidelines.

Likewise, we are at your service to support you in addressing labor inspections that could be initiated for companies due to the described health regulations, as well as in your defense, if necessary.

This bulletin was jointly prepared by Alfredo Kupfer Domínguez (akupfer@sanchezdevanny.com), David Puente Tostado (dpt@sanchezdevanny.com), Guillermo Villaseñor Tadeo (gvillasenor@sanchezdevanny.com), Emilio García Vargas (egarcia@sanchezdevanny.com), and Yamile Pérez Moreno Chiapa (yperez@sanchezdevanny.com).

We are at your service for any question or additional clarification you may require in relation to the foregoing.

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Contact

Labor

Alfredo Kupfer Domínguez
akupfer@sanchezdevanny.com

David Puente Tostado
dpt@sanchezdevanny.com

Tax

Abel Francisco Mejía-Cosenza
amejia@sanchezdevanny.com

Emilio García-Vargas
egarcia@sanchezdevanny.com

Guillermo Villaseñor-Tadeo
gvillasenor@sanchezdevanny.com

José Ángel Eseverri-Ahuja
jae@sanchezdevanny.com

José Ricardo Ibarra-Córdova
jribarra@sanchezdevanny.com

Luis Antonio Gonzalez-Flores
luis.gonzalez@sanchezdevanny.com

Mariana Eguarte-Morett
meguarte@sanchezdevanny.com

Pedro Angel Palma-Cruz
ppalma@sanchezdevanny.com

Ricardo León-Santacruz
rls@sanchezdevanny.com

Mexico City:

Av. Paseo de las Palmas #525 Piso 6
Col. Lomas de Chapultepec, 11000
Ciudad de México
T. +52 (55) 5029 8500

Monterrey:

José Clemente Orozco #335 Piso 4
Despacho 401 Col. Valle Oriente, 66269
San Pedro Garza García N.L.
T. +52 (81) 8153 3900

Querétaro:

Blvd. Bernardo Quintana #7001
Torre 1 Oficina 1109 Col. Centro Sur, 76090
Querétaro, Qro.
T. +52 (442) 296 6400



Sánchez Devanny Eseverri S.C.



@SanchezDevanny



/sanchezdevannymx

www.sanchezdevanny.com

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