LABOR NEWS
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Dear Clients,

This informational bulletin provides new developments in labor matters that we believe are useful and relevant. We remain at your disposal in the event of requiring additional information in this regard.

Upon termination of the employment relation, the employee must be tended to by the EPS for 30 additional days. Dependent employees, as well as members of the family group of the same, are entitled to receive service from the EPS for up to thirty (30) additional days counted from the date of disaffiliation, provided the employee had been affiliated to the system at least during the preceding twelve (12) months; the above is known as **labor protection**. This term will be extended to three (3) months if such person has been uninterruptedly affiliated for five (5) years or more to the same EPS.

During the aforesaid period, those diseases under treatment will continue to be treated as well as those arising from any emergency. The above is according to the provisions under Articles 75 and 76 of Decree 806 of 1998. (Opinion from the Ministry of Health dated 23 April 2015).

Change in term for registration of intermediaries of the Labor Risk System. The term provided under Article 2.2.4.10.5 of Decree 1072 of 2015, Sole Regulatory Decree (DUR) of the Work Sector has been amended under Decree 1507 of 2015 and now insurance brokers, insurance agents and agencies have been granted until 1 July 2016 to evidence fulfillment of professional suitability and human and operating infrastructure requirements and become registered in the Sole Intermediary Register.

Supreme Court of Justice. Change of stance in case law regarding maternity immunity in fixed term contracts. Under a ruling dated 15 April 2015, the Labor Cassation Division of the Supreme Court of Justice stated that before such sentence, its stance was to prioritize fulfillment of the term agreed under fixed term contracts over the pregnancy of any female worker. Hence, in light of the existence of a meeting of minds for agreeing the term of a contractual relationship, it was not feasible to liken such termination due to expiration of a preset term to a unilateral termination by the Employer and consequently under such circumstance it was not necessary to request authorization from the Ministry of Labor.

However, the Court has considered that it was its duty to moderate its current stance and align its case law toward a broader coverage of pregnant employees as subjects of special protection during the gestation period and upon giving birth in order to protect their pregnancy rights allowing the same to maintain their positions as employees and thus receive income that will assist in covering the expenses of their unborn children and additionally access healthcare services.

Consequently, the Supreme Court of Justice now shares the focus adopted by the Constitutional Court under Sentence SU-070 of 2013 in regard to the reinforced labor stability of any pregnant employee hired under a fixed term employment contract and in this regard it has stated:

- The fixed term employment contract shall be extended throughout the term of pregnancy and during the maternity leave as provided under Article 236 of the Substantive Labor Code, amended by Article 1 of law 1468 of 2011.

- Upon expiration of the aforesaid term, the employment relation may be subject to no further extension without any kind of additional formality, provided the Employer ratifies such decision by giving at least 30 advance notice as provided under the Law.

In regard to this stance of the higher courts, it is advisable in the event of extending a fixed term employment contract on account of the employee's pregnancy to enter into an "addendum" in order to agree that the contract has been extended due to such reason only up to the date of termination of the maternity leave and consequently the protection arising from the respective immunity.

It is not possible to pay simultaneously financial benefits arising from maternity leave and incapacity due to common disease. Even though payment of the maternity leave and general incapacity are made out of different subaccounts, they both are made out of a sole Integral Social Security System, which prevents concurrent settlement of these two events. Accordingly the higher and most favorable of the same – which is the maternity leave as it pays 100% the base income for calculation – subsumes the incapacity of common origin as it may encompass the same in terms of temporality. Only in the event the incapacity for a disease exceeds the time limit of a maternity leave will the same be paid over the remaining time period under the percentages established under Labor Law (Opinion from the Ministry of Health dated 2 March 2015).

Resolution 2851 of 28 July 2015 – Amends Article 3 of Resolution 156 of 2005. The Ministry of Labor has further added under this resolution that in case of occurrence of any work related accident or a professional disease, the employer is required to give notice of the same to the Territorial Direction or the Special Office of the Ministry of Labor at the place where such events transpired. Likewise, healthcare promoting entities or healthcare providing institutions are required to provide these same entities with information obtained in connection with any request made on account of the occurrence of a work-related accident or labor disease.

Sincerely yours,

LABOR & MIGRATORY GROUP
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