

Information Circular – Decree 472 of 2015 from the Ministry of Labor
It is important to learn about the latest regulations on the causes and possible fines and sanctions due to breach of the standards on health and security at work and on occupational risks

Decree 472 of 2015

The National Government, through the Ministry of Labor, enacted on March 17, 2015 Decree 472 of 2015, which deserves significant attention since it regulates aspects concerning fines and penalties that may entail an employer for not knowing or breaching of Safety and Health Rules at Work and Occupational Risks. Similarly, the decree establishes the criteria to be considered by the competent authorities when imposing and grading the sanction, as will be set out below.

Possible sanctions and authorities that may impose such sanctions

In the first place, it is important to set forth the sanctions that could be imposed and the authorities qualified for such function. The sanctions that may be imposed on an employer who does not know or is not aware of the rules of occupational risks are, besides monetary sanctions, closing of the workplace, and final closing of the company, paralysis and immediate ban on jobs or tasks. Such penalties and fines may be imposed in administrative proceedings to be carried out by Labor Inspectors, Regional Headquarters, and Special Offices of the Ministry of Labor, the Special Investigations Unit and the Directorate of the Ministry of Labor Risks as a result of the breach of safety standards and occupational health and safety at work.

However, upon rating the fines, the labor authority shall fulfill the criteria mentioned below: (i) repeated commission of the offense; (ii) reluctance to research work and supervision of the Ministry of Labor; (iii) use of fraudulent means to conceal an infringement; (iv) the degree of prudence and diligence with which legal rules are applied; (v) recognition or acceptance of the commission of the offense; (vi) the harm or danger generated to the protected interests; (vii) lack or deficiency in the estimation; (viii) the economic benefit obtained by the offender; (ix) the proportionality and reasonableness of the fine according to the number of employees and company assets; (x) failure to comply with the recommendations of the Management of Occupational Risks and (xi) the worker's death.

Fines per number of employees and company assets

There is a table in the decree, which should be used by the authorities when establishing the amount of the penalty to the offending employers. This table takes into account both the size of the company and the value of assets, but if the number of employees does not accord with the total value of assets, the fine will be imposed according to the total amount of assets.

Size of the Company	Number of Employees	Total Assets in Monthly legal salaries in force ("SMMLV")	Breach of occupational health regulations and obligations of the employer in SMMLV)	Omission of work accident and work sickness report in (SMMLV)	Accident that causes employee's death due to non-fulfillment of the standards in (SMMLV)
Micro-enterprise	Up to 10	<500	From 1 to 5	From 1 to 20	From 20 to 24
Small Enterprise	From 11 to 50	501 a <5000	From 6 up to 20	From 21 to 50	From 25 to 150
Medium Enterprise	From 51 to 200	100000 a 610000 UVT	From 21 up to 100	From 51 to 100	From 151 to 400
Big Enterprise	From 201 or more	610000 UVT	From 1001 up to 500	From 101 to 1000	From 401 to 1000

Improvement plans

On the other hand, the Decree sets forth improvement plans, which will be imposed by the labor authorities, referred to above in order to set some corrective and overcome the irregular situations, for which concrete activities should be developed. However, it should be clarified that the improvement plan at no time will be an impediment for the authorities to carry out the respective punitive administrative process.

Closing or closure of the company

As for the possibility of decommissioning or closure of the company that an employer or company may face, it should be taken into account that this penalty can be imposed when there are conditions that endanger life, integrity and personal security. The closing or closure may be from three to ten business days or ten to thirty working days. As a consequence, it may lead to a closure for 120 days or final closing in case the facts of the first temporary closure persist. When enforcing the closure or suspension of activities, the ministry officers will make use of official seals.

Paralysis or prohibition of work

Furthermore, the decree sets forth that the labor authorities may impose as sanction, the suspension or immediate prohibition of work if the employer does not comply or does not observe the regulation of occupational risks, or if there is a serious and imminent risk to the safety or health of workers.

Finally, it is extremely important to mention that during the time the suspension or closure of the place lasts, must be taken into account as time worked for purposes of payment of wages, bonuses, vacation and other fringe benefits to which workers are entitled.

Similarly, the decree states that the labor authorities may impose a sanction the suspension or immediate prohibition of work if the employer does not comply or do not observe the regulation of occupational hazards, or there is a serious and imminent risk to the safety or health of workers.

Finally, it is extremely important to mention that during the duration of the suspension or closure of the place, this should be taken as time worked for purposes of payment of wages, bonuses, vacation and other benefits to which workers are entitled.

Legal Advisory Offer

We in Sanclemente Fernández Abogados S.A. look forward to any questions or comments you may have. Also we will be awaiting any decisions, decrees or opinions that labor authorities may issue regarding this matter, as well as any others that may be of interest to your company.

SFA Labor & Migration Area

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