

AGREEMENT No. 1035 dated 29 October 2015 from the SPECIAL ADMINISTRATIVE UNIT OF PENSION MANAGEMENT AND PAYROLL CONTRIBUTIONS OF THE SOCIAL PROTECTION - UGPP-

“Whereby the Special Administrative Unit of Pension Management and Payroll Contributions of the Social Protection – UGPP – defines, formulates and adopts the continual improvement policy in the determination process, calculation and payment of contributions to the Protection System.”

Dear Clients,

UGPP agreements are instruments whereby such entity determines its internal operations and the guidelines to be followed by its officers in performing their duties.

Under Agreement 1035 dated October 29, 2015, the UGPP has defined specific criteria for auditing purposes in special cases. In this Agreement the UGPP has defined its stance regarding how contributions to the Integral Social Security System should be made by the employers.

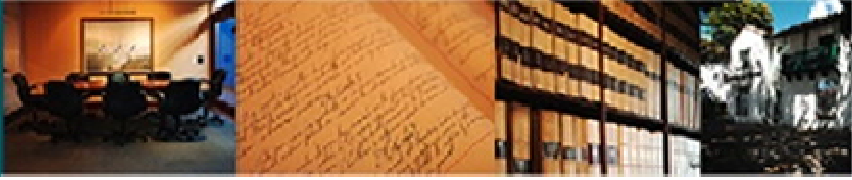
1. CONTRIBUTION TO THE INTEGRAL SOCIAL SECURITY SYSTEM UNDER A MINIMUM INTEGRAL SALARY

The minimum integral salary is comprised of thirteen (13) effective minimum legal monthly salaries of which ten (10) are the salary factor and three (3) are the fringe benefit factor. According to Article 49 of Law 789 of 2002, the basis for calculating payment of contributions is seventy percent (70%) of the integral salary.

The aforesaid Agreement further ratifies such stance by clearly stating that even if such basis turns out to be less than ten (10) minimum salaries, it should always be of seventy percent (70%).

*“The Unit of Pension Management and Payroll Contributions to the Social Security, UGPP in Spanish, will verify that payment of contributions to the Social Protection System of those employees whose remuneration is agreed under the integral salary scheme **are calculated over 70% of the same, even if the contribution base salary turns out to be less than 10 Effective Minimum Legal Monthly Salaries as provided under Article 132(2) of the Substantive Labor Code.**”*

Based on the above, the criteria according to which contributions to the General Social Security System must be made over 70% of the integral salary.



2. NON-SALARY PAYMENTS NOT CONSIDERED AS BASIS FOR PURPOSES OF PAYMENT OF CONTRIBUTIONS TO THE GENERAL SOCIAL SECURITY SYSTEM, SENA, ICBF AND FAMILY SUBSIDY.

In this regard, the UGPP provided a list describing those payments the UGPP does not consider salary related and which consequently are not a salary factor:

- a. Social benefits described under Titles VII and IX of the Substantive Labor Code.
- b. Representation, transportation, work elements and all other expenses not intended to increase the net worth of the employee but which are destined to assist the same in performing his duties.
- c. Regular travel allowances other than those destined to provide grub and lodging.
- d. Occasional travel allowances.
- e. Statutory transportation allowance.
- f. Any amount received by the employee on occasional basis and out of the free will of the employer.
- g. Customary or regular benefits or allowances agreed under a bargaining agreement or under a contract or granted extra-legally by the employer, when the parties have expressly decided that the same do not comprise the salary.
- h. Contributions by sponsoring entities to voluntary pension funds.

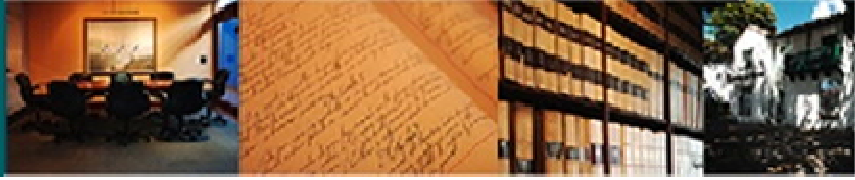
In this regard any non-salary payment policy should be consulted against this list in order to establish whether in the opinion of the UGPP the same contains or not a payment that could be considered as salary.

3. APPLICATION OF ART. 30 OF LAW 1393 OF 2010.

In this regard it is necessary to bear in mind that Law 1393 is a legal provision devised for purposes of Healthcare contributions. Notwithstanding the above, the UGPP has stated in the aforesaid Agreement that Article 30 of Law 1393 is in fact applicable to payment of healthcare, pension and professional risk contributions.

Article 30 of Law 1393 establishes that notwithstanding the provisions for other purposes, non-salary payments may not exceed forty percent (40%) of total remuneration, which means for practical purposes:

- Total remuneration amounts to the total revenues received by the employee on occasion of the employment relationship.
- Payments described under section two of this communication may not exceed in the aggregate forty percent (40%) of all amounts earned by the employee – for contribution payment purposes-



- In case of exceeding the forty percent (40%) limit provided under the law, contributions to the Social Security System should nevertheless be made considering as basis sixty percent (60%) of all amounts earned by the employee.

4. PAYMENTS OUT OF FREE WILL AND OCCASIONALLY MADE FOR PURPOSES OF DETERMINING THE BASIS OF CONTRIBUTION PAYMENTS TO THE SOCIAL PROTECTION SYSTEM.

Non-salary payments out of free will must be occasional in nature, while not constituting salary as provided under the contract, bargaining agreement or pact. Such occasionality does not mean that this payment may not be made several times a year provided such payments arise from varying events.

Notwithstanding the above, the basic conditions are free will and occasionality.

Sincerely yours,

SANCLEMENTE FERNÁNDEZ ABOGADOS
LABORAL AREA

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