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**COVID-19
Latin America Employer's Quick Guide**

Week commencing: September 7 2020



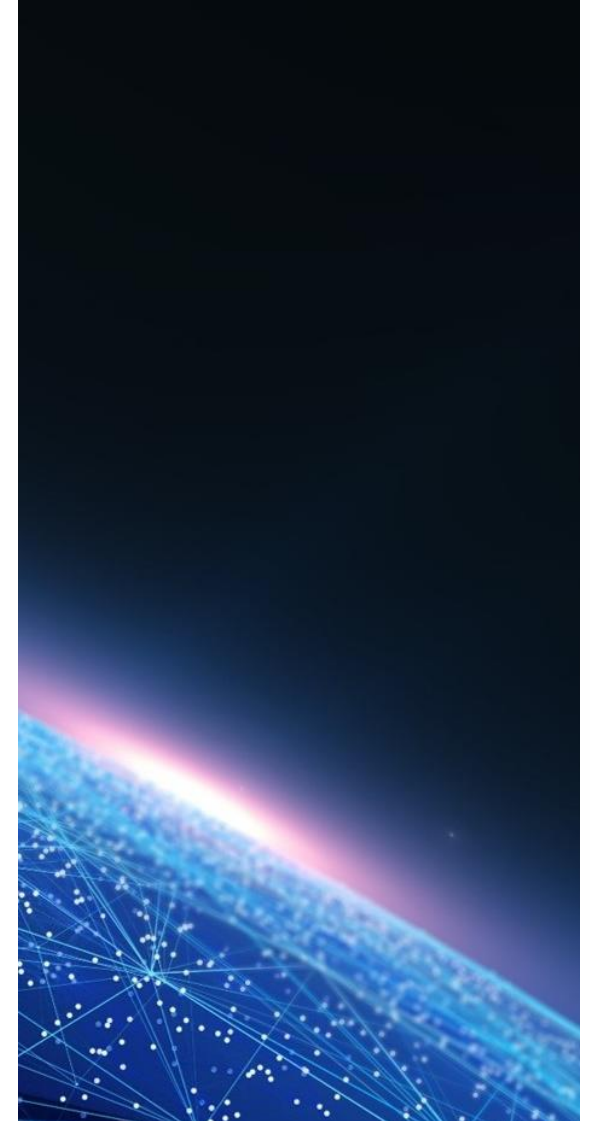
COVID-19 Latin America Employer's Guide

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Governments across Latin America continue to take steps to gradually reduce lockdown measures and re-open their economies, while keeping a close eye on the spread of the virus. Our Latin America Employment and Compensation Team continue to provide you with this quick guide which includes six key topics when planning to reopen the workplace in 7 jurisdictions.

Use this guide to stay informed, but note that as this situation evolves, so too will the guidance and laws affecting employers in each jurisdiction. The information in this document has been compiled over the past few days; please note the date at the beginning of each country section when reading the guidance and please note the high level guidance in this document is not intended to be comprehensive legal advice



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Argentina



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- 1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?**

The Superintendence of Workers' Compensation approved a General Protocol for the prevention of COVID-19 ("the Protocol") that establishes the conditions for the gradual and responsible return to on-site work. The Protocol sets the minimum health and safety standards to be met by all employers upon return to the activities, focused on employees' awareness and employers' safety obligations, such as PPE supply, environment ventilation, social distancing, environment disinfection, controls, mandatory information posters. The measures that are implemented by the employers must be registered and can be audited by the labor authority

In turn, at local level, many provinces' health and labor authorities have issued regulations with employers' obligations for working on site, which also most likely will extend to activities which could resume operations after lockdown.
- 2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?**

The employer must report to the Workers' Compensation insurer the full name of each employee, the address from where he/she will work remotely, time schedule and job description. Other than this, the only specific regulation in Argentina is a Superintendence of Workers' Compensation's resolution which requires employers to provide a kit of safety elements to employees working remotely full or part time (fire extinguisher, ergonomic chair, first aid kit, pad mouse and Superintendence's best-practices manual). This obligation is suspended while the COVID-19 lockdown be in effect. Based on the absence of further regulations, an employer's home-office policy is highly recommended.

On July 30th, Congress passed Law Nr. 27,555, which regulated the telework contract. However, the law has not yet been enacted by the Executive and it will become effective 90 days after the end of the social isolation measures.
- 3. Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?**

Yes, there is a mandatory lockdown in place until September 20. Several activities considered essential during the emergency were exempted and authorized to operate, and they vary depending on the jurisdiction where they may be located. Jurisdictions with low population density have more lenient restrictions, and instead of having a strict lockdown, they are governed by social-distancing rules.



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4. **Can employers require employees to use PPE (E.g.: masks) at work?** Yes. The use of masks is mandatory to circulate, and also at workplace, together with the PPE pertaining to each activity in the pandemic context.
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5. **Is there any obligation to supply PPE to employees (E.g.: masks)?** Yes. Eye and facial protectors for every task where the employee must be fewer than 2 meters (6.56 ft.) from any other person. Also, mouth-and-nose masks with minimum technical requirements, unless the employer sets a physical barrier which limits the distance between the employee and any other person.
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6. **Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?** Yes, although the Ministries of Health and Labor recently issued a joint Resolution that prevents employers from requiring employees to take COVID-19 tests against their will and submit medical certifications in that regard.
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- 1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?**

Yes, in certain locations. In the State of Sao Paulo, for instance, the Government is adopting a phased approach to the return to work. The municipality of Sao Paulo is also consulting with different sectors of the economy to establish the general guidelines for the return to work. Specific requirements vary per location and activity.
- 2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?**

Remote work is regulated by Brazilian Legislation as the work developed predominantly from home. There are no specific obligations to provide assets, although the general rule is that business expenses shall be borne by the employer. The employer can be deemed as responsible for on-the-job diseases or accidents happened at home. The employer must (i) require employees to sign a specific form clarifying the specific occupational risks of the work from home and (ii) adjust the work from home in an amendment of the employment agreement.
- 3. Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?**

Yes, defined by each state/municipality. Only essential activities were allowed to continue operating with no interruptions (E.g.: health services, pharmacies, supermarkets).
- 4. Can employers require employees to use PPE (E.g.: masks) at work?**

Yes, employers can and shall require employees to use PPE (E.g.: masks) at work, unless the use is incompatible with other PPE.



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- 5. Is there any obligation to supply PPE to employees (E.g.: masks)?**

If the employer is requiring employees to work at the company's premises, masks and alcohol should be provided as part of PPE.

 - 6. Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?**

Although possible from an employment law perspective with the employee's consent, this can trigger privacy related concerns.
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1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?

To date there are no new laws enacted that regulate the return to work.

Employers are under a general statutory obligation to take all measures necessary to protect effectively the lives and health of employees; inform employees of possible risks; and provide adequate hygiene and safety conditions at work, and the equipment necessary to prevent occupational injuries and illnesses.

In this context, government authorities have made certain recommendations which will need to be adapted to the reality of each company, among them keep 1 meter of distance, wash the hands, clean the work place, agreeing on measures to avoid crowding in workplaces, etc. Currently, the only obligatory measure is the mandatory use of facemask in places where 10 or more persons meet (closed work space).

The Government launched the "Step by Step Return to Work" plan, which includes seven stages that will help employees and employers to ensure an adequate return to their work activities in those districts that are no longer in quarantine. The steps are the following:

1. Be informed
2. Organizing and Agreeing
3. Socializing and Training
4. Adapting and Implementing
5. Prioritizing Mental Health
6. Providing information on Traceability
7. Evaluating and Updating

The plan includes protocols and material developed by the Institute of Occupational Safety.

2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?

Yes on April 1, 2020 come into effect the remote work and telework law.

The law provides obligations to the employers such as delivering the tools and materials to carry out this type of employment, regulating it in an annex which includes certain minimum required clauses, bearing the costs of operation, maintenance and repair of the equipment, among others. However, the law provides three months to adapt to the new rules in cases where employers already had telework in place when the law came into effect. The three-month period ends on July 1, 2020, so companies must be fully compliant with this law.



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3. Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?

Yes, currently part of metropolitan region of Santiago is in quarantine. However, this could change at any moment.

The activities that are authorized are the following: health, emergency services (such as fire workers, gas distribution, electricity transmission, drinking water), personnel who works in airports, people working in gas stations and fuel distributors, telecommunications, personnel working in nuclear reactors, personnel from banks and financial institutions, Isapres (Chilean health insurance companies) and pension companies (AFP's), cemetery and funeral services staff, workers of companies that collect garbage, service providers in postal companies, people who provide services in residences for children and adolescents, elderly and people with disabilities or homeless, notaries, according to the turn, customs agents and their assistants, services for the maintenance, repair, and operation of public infrastructure, public sector, food and essential trade, transport, private security, press, education (education assistants and teachers who are doing ethical shifts and essential personnel for the technological support and maintenance of educational institutions, be they public or private).

The government established a Step- by- Step plan. The Step-by-Step Plan is a gradual strategy to face the pandemic according to the health situation of each particular area. These are 5 stages or gradual steps, ranging from Lockdown to Advanced Opening, with specific restrictions and obligations. The advance or retreat from one particular step to another is subject to epidemiological indicators, healthcare network and traceability.

Cities which are still in quarantine are in step 1: Lockdown which means limited mobility to decrease to minimal interaction and spread of virus.

Cities that just come out of the quarantine are in step 2: Transition which means decrease of lockdown degree. Avoid abrupt opening to minimize the contagion risk. Lockdown is maintained Saturdays, Sundays and holidays. Displacement is allowed except in curfew hours. Prohibition of travel to holiday's residence.

Step 3: Preparation: lockdown is release for general population (except groups of risk). Curfew compliance and physical distance. Mandatory quarantine for adults over 75. Permitted social and recreational activities and day of the week of maximum 50 persons. Displacement allowed except in curfew hours.

Step 4: Initial opening: retake certain minor activities risk of contagion and minimizing crowds. Curfew compliance (in force until authority determine) and physical distance. Adults over 75 years can leave once a day for 60 minutes.

Step 5: Advanced opening: allowed to increase the number of people in activities permitted in the previous phase, always with self-care measurements. Permission to travel to holidays residences. Free mobility for adults over 75 years.



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4. **Can employers require employees to use PPE (E.g.: masks) at work?** Yes, under their general duty of care employers can require employees to use PPE at work. In fact the use of face mask is mandatory when there are more than 10 employees in a closed workspace.
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5. **Is there any obligation to supply PPE to employees (E.g.: masks)?** The employer is under a general statutory obligation to take all measures necessary to protect effectively the lives and health of employees; inform employees of possible risks; and provide adequate hygiene and safety conditions at work, and the equipment necessary to prevent occupational injuries and illnesses.
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6. **Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?** There is no rule in this regarding. We think that it is possible in the context of the employer's general duty of care of health and life of employees. The employer should bear the cost and maintain confidentiality of the results.
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1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?

Yes. The Ministry of Health issued Resolution 666 of 2020 by which it established the biosafety protocol that employers shall comply with, to prevent contagion of COVID-19 at workplace. This protocol has multiple categories of obligations for employers related to social distance, disinfection, personal protection elements, remote work and reports to authorities, among others.

The Ministry of Health has also issued resolutions on biosafety obligations according to the economic activity of the employer. Employers shall comply with Resolution 666 and the provisions of the Resolution issued for their particular industry or sector.

Additionally, local authorities of each city or department have faculties to establish additional obligations. Local government created virtual platforms to register and / or authorize operations and review the biosafety protocols of employers. Additionally, local governments have established special working schedules for certain activities that employers shall respect.

This means employers have to comply with general obligations on biosafety and specific obligations according to their economic activities and places in which they have facilities, employees and / or operations.

2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?

Yes. Our government establishes that employees that can work remotely from a technical and business perspective shall continue under this modality without this being considered teleworking. Locally, there are minimum percentages of employees under work from home.

Also, employees considered as high risks factor shall work from home.

Regarding obligations from a biosafety standpoint, employers shall request a report of their health and temperatures to employees under remote work on a daily basis (Resolution 666).

Also, on a local level in Bogota, as of July 27, 2020, three new measures will apply:

- A single positive case of COVID-19 in the family implies that the whole family shall be under quarantine.
- Positive cases shall be registered before "Bogota Cuidadora" virtual platform and register the information requested by the platform.
- Hypertensive, obese and/or diabetic people shall stay home. This also applies for individuals 60 years old or older. Employer shall promote work from home for these employees (if possible).



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3. **Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?**
- Through Decree 1168 of August 25 of 2020, our government established that from September 1, 2020 to September 30, 2020 Colombia will be under selective isolation with individual responsible distancing. This means that individuals within the Colombian territory shall comply with biosafety protocols regarding citizen behavior in public spaces. Likewise, all individuals shall adopt the instructions of the authorities to mitigate and avoid contagion, comply with measures of selective isolation and favor self-isolation.
- Local measures will vary between high, moderate, low and without affectation areas or municipalities.
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4. **Can employers require employees to use PPE (E.g.: masks) at work?**
- Yes. The use of personal protection elements determined by the employer and sanitary authorities is mandatory. It is an employee's obligation.
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5. **Is there any obligation to supply PPE to employees (E.g.: masks)?**
- Yes. Personal protection elements for employment activities have to be delivered by the employer.
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6. **Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?**
- Employers cannot perform tests of COVID-19 if they have not been authorized for such purpose. Test require that the ones who performs the test comply with special requirements (i.e. profession). However, employers can send employees to specialized laboratories for them to take the test. It is also legally viable that the cost of the test is assumed by the employer.
- The employee's prior consent shall be required for the performance of the test.
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1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?

On May 29, 2020, Mexican Federal Government issued the Technical Guidelines for the Reopening of Economic activities. Companies must grant health security measures to their employee and public, to resume or continue their activities, observing the following:

Principles for return to work:

- Privilege health and life.
- Solidarity and non-discrimination.
- Moral economy and productive efficiency.
- Shared responsibility (public, private and social).

Relevant aspects:

Companies must identify:

- a) If they are an essential activity, or not.
- b) Size of the workplace: micro, small, medium or large, in order to implement essential and recommended measures, considering the size and economic sector.
- c) Health alert level according to the epidemiological traffic light, of state or municipal application, which refers to maximum, high, medium and low levels, dictated weekly by the federal authority.
- d) Identification of physical spaces, vulnerable personnel or personnel in charge of vulnerable people.
- e) Incorporate a committee for establishing special measures for vulnerable personnel care.
- f) Implement strategies to promote health and safety in the workplace, such as health promotion (health behavioural training) and measures to prevent contagion in the workplace.

Self-evaluation of health protocols online: www.nuevanormalidad.gob.mx

- Essential activity: compulsory.
- Non-essential activity: voluntary.

As of June 1, 2020, it will not be necessary to obtain any prior permission to restart or continue operations. Companies must demonstrate that they comply with the measures in case of inspection.

The construction, mining and transportation equipment manufacturing sectors that have obtained IMSS approval do not require a new self-assessment.

In addition, some States have issued local guidelines that need to be followed by the employer depending on the location of the working center.

On July 27 and 28, 2020, the Federal Government issued new Guidelines to modify the group of vulnerable employees. The Guidelines shall be followed by companies already operating as well as those that will reinstate activities according to the epidemiological traffic light. Employees excluded from the vulnerable group category in terms of the new guidelines shall return to work. Those who are still considered as vulnerable individuals, will return on Yellow light.



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2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?

Work under the home office modality is defined (article 311 of the Federal Labor Law) but not specifically regulated and therefore the general obligations established in the Law are applicable. The employer may establish a policy to regulate home office, execute an agreement with the employee or include a section in the individual employment agreement to regulate work under this modality.

Employees performing activities from home are entitled to the same compensation than other performing work in the employer's premises. Employment conditions may not be modified because employees are performing work from home. The employer has the obligation to provide the employee the working tools as well as to pay for the associated costs (electric power, telephone and internet).

In addition, the labor authorities issued in June 2020, the Guide for the Implementation of Remote Work in the context of the actions to face the COVID-19 that establish the definition and principles of remote work and the processes for its implementation, among others, to perform a diagnose, to establish a communication process, define the capabilities and working tools, targets and results, supervision and working hours as well as evaluations and family related aspects.

3. Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?

Essential activities are not restricted. For other activities, as of June 1, 2020, the restrictions are established depending on the epidemiological risk level as follows:

Maximum level	High level	Intermediate level	Daily
Only essential activities.	Essential with 100% personnel and non-essential with 30% personnel.	Essential and non-essential with 100% personnel.	Essential and non-essential with 100% personnel.
Vulnerable personnel must work from home.	Vulnerable personnel with permanent attention; attending to workplace.	Vulnerable personnel with permanent attention; attending to workplace.	Resumption of all activities with health protection measures. Presence of all staff in the workplace. Vulnerable personnel with permanent attention.



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- 4. Can employers require employees to use PPE (E.g.: masks) at work?** Yes, employers shall require employees to use PPE, to mitigate contagion risks.

 - 5. Is there any obligation to supply PPE to employees (E.g.: masks)?** Employers are obliged to provide employees with the adequate PPE, according to the size the working center and the activities performed by the employees.

 - 6. Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?** Yes, it is lawful to carry out COVID-19 tests on periodical basis.
Some States have established the obligation to perform COVID-19 Tests to the employees when specific conditions are met.
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1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?

Yes. According to the Protocol for the Prevention of COVID-19 Spread in the Workplace, issued by the Health Ministry (Ministerial Resolution No. 448-2020-MINSA), employers are obliged to implement health and safety obligations in order to prevent COVID-19 spread in the workplace.

Among the main obligations, employers must:

- Implementing a "Plan for the surveillance, prevention and control of COVID-19 at work".
- Identifying the risk of personal exposure.
- Taking the temperature to employees (randomly).
- Before restarting work, serological or molecular tests must be carried out on all personnel whose risk of exposure is Very High or High.
- Providing the mandatory use of masks during the working day for all personnel.
- The regulation includes any person who provides services for the company, including: contractors, independent personnel, training modalities, etc.
- Companies must have mandatory health personnel (Doctors and/or nurses) according to their size and their qualification as a company dedicated to high-risk activities.

2. Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?

Yes. According to Supreme Decree No. 010-2020-TR employers may implement remote work as an alternative during the Health Emergency period.

Here the main regulations about this matter:

- The nature of the employment relationship, remuneration, and other economic conditions cannot be affected, except those that are subject to attendance at the workplace.
- The communication of the implementation of remote work is done through any physical or digital medium (written document, institutional email, intranet, extranet, instant messaging applications, social networks, or others.)
- The employer must communicate the health and safety recommendations regarding remote work. As well as the person who will canalize every information about health and safety.
- Employers must provide training on the use of new technologies.



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- 3. Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?**
- No, except for some regions within the country, such as Arequipa, Ica and Cajamarca.
In addition, it continues the mandatory immobilization from 10:00 pm to 4:00 am nationwide.
Some economic activities remain restricted, as international air transport, gyms and bars. Also, social gatherings are still restricted.
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- 4. Is it lawful to carry out regular (e.g. weekly) COVID-19 tests (to test whether employees have the virus)?**
- Yes. The use of mask is mandatory in the workplace and in public areas.
Employees are obliged to use any PPE required by the employer, and related to the prevention of the virus.
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- 5. Is there any obligation to supply PPE to employees (E.g.: masks)?**
- Yes, employers are required to provide the PPE necessary to guarantee the worker's health.
-
- 6. Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?**
- Yes. According to the Ministry of Health latest provisions, employers are entitled to establish the periodicity of the COVID-19 test taking.
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1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?

Yes, recently the Ministry of the People's Power for Health issued Resolution N° 090 dated June 1, 2020 (the "Resolution"), published in Official Gazette N° 41,891 of the same date, containing sanitary rules of social responsibility for addressing the COVID-19 pandemic.

In addition, the National Executive has resolved that, as of June 1, 2020, an initial phase of return to work at the regular work locations be implemented, under a five working days followed by ten quarantine days schedule (later, the National Executive resolved that it would be seven days of work followed by seven days of quarantine -7x7 system-), within certain restricted hours, in the following sectors: (i) construction; (ii) medical and dental consultation; (iii) barber shops; (iv) chemical raw materials; (v) personalized services such as plumbing, refrigeration and the like; (vi) banking offices; (vii) hardware stores; (viii) textile and shoe sector; (ix) mechanic repair shops; and (x) transportation.

As of June 15, 2020, the National Executive added other sectors to this flexible system, within certain restricted hours: (i) sport events and gyms (without public); (ii) veterinary attention; (iii) drive-in cinema; (iv) stationery items and bookstores; (v) ice cream shops and cafeterias (only to carry out); (vi) manufacturing of electric household appliances; (vii) laundry and dry cleaning services; (viii) postal services; (ix) registries and notaries (only Tuesdays, Wednesdays and Thursdays); (x) car wash services; (xi) optical services; and (xii) electronic repairs.

As of July 13, 2020, the National Executive resolved that compliance with the quarantine would be organized in three (3) levels. The first level was the strict quarantine, where only the essential activities set forth in the Decree of State of Alarm were authorized. In the second level, the activities specified in the quarantine flexibility that started as of June 1, 2020 were also authorized. And in the third level, besides the activities authorized in levels 1 and 2, the activities specified in the quarantine flexibility that started as of June 15, 2020 were also authorized. Flexibility allowing certain non-essential activities for levels 2 and 3 continued to be administered under the 7x7 system. Finally, levels were adjudicated to each state or federal entity based on the COVID-19 situation in each of them.

As of August 10, 2020, the National Executive resolved that compliance with the quarantine will be organized in two (2) levels. The first level, where besides the essential activities set forth in the Decree of State of Alarm, the activities specified in the quarantine flexibility that started as of June 1, 2020 are also authorized. And in the second level, besides the activities authorized in level one, the activities specified in the quarantine flexibility that started as of June 15, 2020 are also authorized. Flexibility will continue to be administered under the 7x7 system, and the levels are adjudicated to each state or federal entity based on the COVID-19 situation in each of them.



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- 1. Has the government issued any new laws or guidance addressing employers' obligations as employees return to work on site (E.g.: obligation to provide personal protective equipment, social distancing at the workplace, new workplace posters, obligation to disinfect the office after each shift, etc.)?**

More recently as of September 7, 2020, the National Executive resolved to unify compliance with the 7x7 system, so that all the country, with very few exceptions, may enjoy a week of ample flexibility (level 2).

Among other obligations, the Resolution requires employers to: (i) issue a registry of employees suffering from chronic illnesses; (ii) provide hygiene materials (e.g.: liquid soap, disposable towels); (iii) guarantee the availability of masks for the employees and, if it is the case, promote collective processes for their manufacture; (iv) arrange work posts to guarantee social distancing; (v) arrange work schedules in order to obtain an adequate occupation density, establishing special work shifts if advisable; and (vi) promote remote working.



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2. **Do employers have specific obligations with respect to employees working remotely from a home office? Is there specific legislation covering this?** There are special legal rules applicable to work at domicile, although a special Law that must regulate work at domicile in more detail has not yet been enacted. The existing legal provisions establish certain obligations employers must comply with (e.g.: the obligation to maintain a registry of employees at domicile, failing which the employees' assertions about the data arising from employment relationship are deemed accepted).
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3. **Are there currently general shelter-in-place / quarantine restrictions? What types of activities are authorized?** Currently the mandatory social quarantine that commenced on March 16 and 17, 2020, is still in place. However, certain essential activities were excluded from the beginning of this mandatory quarantine and, more recently, as of June 1, 2020, and further as of June 15, 2020, certain additional activities may go back to work at their regular work locations, within certain limitations and conditions, some of which were summarized in our answer to the first question. As of August 10, 2020, compliance with the quarantine was organized in two (2) levels, explained in the response to the first question.
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4. **Can employers require employees to use PPE (E.g.: masks) at work?** Employees are required to use masks at the workplace.
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5. **Is there any obligation to supply PPE to employees (E.g.: masks)?** Please see the answer to the first question.
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6. **Is it lawful to carry out regular (E.g. weekly) COVID-19 tests (to test whether employees have the virus)?** At this time, COVID-19 tests are administered by the personnel and the organism designated by the National Executive.
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