

COVID-19 Effects on Annual Paid Vacations.

Advance of annual paid vacation generated or to be generated in 2020.

Labor and Social Security Ministry Resolution - March 20th, 2020

The Labor and Social Security Ministry, by resolution dated March 20th, 2020, provided companies in agreement with their workers, the possibility to advance the annual paid vacation already generated or the one to be generated in 2020.

The annual paid vacation advance must be sustained in the country's health emergency caused by pandemic COVID-19- and the impact in the employment market.

1. Areas included in the Resolution:

Differently to the Resolution dated March 18th, 2020, regarding the flexibilization of the unemployment benefit which expressly limited its application to certain activities area (general commerce, grocery retail, hotels, restaurants and bars, cultural and entertainment services and travel agencies) in the new regime, this Resolution referred to the possibility to advance the annual paid vacation already generated or the one to be generated in 2020, comprehends the industrial, commerce and services area, with no limitations. It does not establish if the provisions of this Resolution include the rural area.

2. Main regulated aspects:

- a) The advance of the annual paid vacation already generated or the one to be generated in 2020 must be agreed between the employer and the employee.
- b) As a consequence of the aforementioned, the employer and the employee must jointly document the advance of the annual paid vacation (hereinafter "Agreement").



- c) The Agreement must be motivated in the sanitary emergency – COVID-19 enacted by the Uruguayan government.
- d) The Agreement must be presented to the Labor and Social Security General Inspection, for it to become aware about it.
- e) The term of the advanced annual paid vacation must be the equivalent to the total of it - and which could be generated - and must never be less than 10 days.
- f) The annual paid vacation and the vacation bonus must be paid at the moment the current legislation indicates. For so, for daily workers, the annual paid vacation must be paid before they leave on vacation. Same happens with the vacation bonus in every work case.

3. Observations regarding the Resolution:

It is our understanding that the Resolution expresses certain aspects which must be analyzed and commented; as well as portraying some uncertainties which will generate juridical uncertainty in the future.

- a) The Resolution does not require the agreements to be collective but may be individual. In such case, it must be contemplated what will happen in those areas which have established the annual paid vacations by collective agreements either internally at the company or by the branch. A clear example is the Decree approved Construction branch collective agreement which already has its annual paid vacation periods regulated. The modifications to the regime must also be regulated by a Decree for the sector.
- b) At the *Considering IV*, the Resolution uses the term “*invoking*” and in Num. 1, the Resolution uses the term “*motivating*”. We understand it is not the same to invoke a cause or to motivate a request. The sanitary emergency forces this system of prompt responses. For which it is reasonable to deduce the employer and the employee only need to invoke for the celebration of their Agreement the sanitary emergency.

- c) The Resolution does not require the approval of the Agreement of the Labor and Social Security General Inspection, but only the presentation of it to become aware. This contributes to the agility the sanitary emergency must have. As if any approval is required, such must necessarily have a prior study. This disposition enforces the appointed in the abovementioned paragraph, regarding the invoking the sanitary emergency and not the motivation of it.
- d) Probably the first great uncertainty raised by this annual paid vacation advance is regarding the annual paid vacation to be generated in 2020. What happens if the employee is fired by the company, for example by August 2020? Let's suppose the company agrees with the employee to advance 20 days corresponding to the total 2020 annual paid vacation. If this is done by March 31st, 2020, the employee would have generated 4,98 days of annual paid vacation. Consequently, would generate in the following 9 months the other 15 days which will be advanced. But, if the Company fires the employee on August 31st, 2020, the employee would not have generated 4 months of annual paid vacation which would have already enjoyed.
- e) The Resolution determines the annual paid vacation and the annual bonus must be paid at the moment the current legislation indicates. For so, for daily workers, the annual paid vacation must be paid before they leave on vacation. Same happens with the vacation bonus in every work case. The annual bonus is to be paid before the employee enjoys its annual paid vacation, which was not generated and if is then fired (as the example portrayed in the abovementioned paragraph), the company would have paid for more days that the employee never generated. The question is what would happen if the sanitary emergency culminates previously to the finalization of the annual paid vacation and the vacation bonus, both effectively paid.
- f) Lastly, it seems this system contemplates (although it is not expressly portrayed) a regime for those works who up to the date do not reach the right for unemployment benefit (either general or special regime contemplated in the Resolution of the Labor and Social Security Ministry, March 18th, 2020), allowing the company to give a solution to a potential labor place loss.

4. Final Conclusions:

Clearly, the current sanitary emergency obliges us, as a society, to search for prompt responses giving solutions to urgent matters; specially for the suffering workers. Not only because of their salaries but due to the permanency of their jobs.

The present Resolution evidences stability of jobs is the priority of our Government.

We understand that in calmer time, the juridical operators must analyze and solve the uncertainties which these urgent measures may generate taking into account its exceptional characteristics and applying the reasonability as a main principle.