

Work after COVID-19: Preparing for the New Dynamic

LEGAL UPDATE

Labor

The COVID-19 has resulted in an unprecedented global situation that has deeply affected the means of production in the labor sphere paralyzing a large number of activities and modifying the way of providing subordinated service, causing generalized changes in daily life, business activity and in the activity of its workers.

The COVID-19 has resulted in an unprecedented global situation that has deeply affected the means of production in the labor sphere paralyzing a large number of activities and modifying the way of providing subordinated service, causing generalized changes in daily life, business activity and in the activity of its workers.

Through tweet from 05/04/2020, the National Institute of Prevention, Health and Safety at the Workplace ("INPSASEL", for its acronym in Spanish), @inpsasel_vzla, informed that a Technical Regulation for Prevention of Covid-19 is under preparation. Likewise, some companies that carry out excepted activities have been inspected, aspects such as the supply of protective equipment, sanitation and a prevention plan have been reviewed to avoid infections in the workplace.

On 06/01/2020 the Ministry of Health Office issued Administrative Resolution No. 90, which establishes the Sanitary Regulations of Social Responsibility to attenuate COVID-19 Pandemic, to mitigate and eradicate infections of the virus in the national territory, which contains, among others, sanitary measures that must be applied for returning to work. The above-mentioned Administrative Resolution was published in the Official Gazette No. 41,891 of the same date. ("Sanitary Regulations of Social Responsibility to attenuate COVID-19 Pandemic").

Employers must prepare for the new dynamic and, in Venezuela, the Sanitary Regulations of Social Responsibility to attenuate COVID-19 Pandemic is the only health and safety specific regulation issued to cope with the COVID-19 pandemic. Thereupon, we present to you a review that can be used as a guide to structuring your return to the workplace protocols after the pandemic.



Background: Declaratory of Alertness State, initial suspension of activities and the new phase of flexibility and relative normality

1. On 03/13/2020, Nicolas Maduro issued Decree No. 4,160, whereby a state of alertness is decreed throughout the national territory, published in the Special Official Gazette No. 6,528 (“Decree of Alertness State”), effective for 30 days.
2. On 03/17/2020, Maduro through announces declared a mandatory quarantine throughout the whole national territory, except for vehicular and pedestrian circulation to acquire essential goods, such as food, medicines, medical products; transportation to healthcare centers, movement of medical doctors, nurses and other health care workers, as well as other essential activities. Even though the Decree of Alertness State gives power to the Executive to suspend activities, the suspension was not established through a normative act.
3. First extension 04/12/2020, Decree No. 4,186 Alertness State Special Official Gazette No. 6,528 for 30 days.
4. Second extension 05/12/2020, Decree No. 4,198 Alertness State Special Official Gazette No. 6,535 for 30 days.
5. On 05/30/2020 Maduro announced that as of Monday 06/01/2020, the country is entering a new phase of relative and supervised dynamic, which consists of 5 days of work with flexibility and 10 days of quarantine. The Sectors included in this stage were the following: (i) Banking agencies, mechanical workshops and auto parts sales, hours from 9:00 am to 1:00 pm; (ii) hardware stores, hours from 11:00 am

to 4:00 pm; (iii) medical and dental clinics, hours from 7:00 am to 2:00 pm; (iii) construction sector, hours from 8:00 am to 1:00 pm; (iv) hairdressing salons, the raw material and chemical, textile and shoe industries, from 10:00 am to 4:00 pm; (v) plumbing and refrigeration services, hours from 9:00 am to 2:00 pm; and (vi) public transportation, from 7:00 am to 5:00 pm.

As of June 8, 2020, a new flexibilization schedule called 7x7 is being applied. It consists of 7 days of work with flexibility and 7 days of quarantine.

These measures do not apply to the border municipalities of Táchira, Apure and Amazonas States, or in Santa Elena de Uairen in Bolívar State, or in the Maracaibo and San Francisco municipalities of Zulia State.

6. Third extension 06/11/2020, Decree No. 4,230 Alertness State Special Official Gazette No. 6,542 for 30 days.
7. On 06/13/2020 Maduro announced that as of Monday 06/15/2020, 14 new sectors shall be flexibilized which will be incorporated to the 7x7 system. The sectors included in this stage were the following: (i) car washes, hours from 1:00 pm to 5:00 pm; (ii) optical shops, stationery stores, bookshops paper industry, and electric household appliance manufacture and assembly, hours from 7:00 am to 12:00 pm; (iii) electronic repair, textile sector, haberdashery and footwear, laundries and dry-cleaners, electric household appliances repair, hours from 12:00 pm to 5:00 pm; (iv) courier services, hours from 9:00 am to 1:00 pm; (v) Public Registry and Notarial offices, hours from 8:00 am to 12:00 pm only Tuesdays, Wednesdays and Thursdays; (vi) sport events without public and gyms, hours from 7:00 am to 11:00 am; (vii) care services for pets and vets, hours from 1:00 pm to 3:00 pm; and (viii) drive-in-cinema, hours from 7:00 pm to 11:00 pm. Additionally, shopping centers shall begin working between 7:00 am and 5:00 pm.

Employer's Obligations regarding Occupational Health and Safety

As we have already indicated, until now in Venezuela, the Sanitary Regulations of Social Responsibility to attenuate COVID-19 Pandemic has been the only health and safety specific regulation issued to impose responsibilities on employers concerning COVID-19 in the workplace, but it is also important to review the general obligations established in occupational health and safety legislation.

As in many other countries, Venezuelan legislation imposes a duty for employers to guarantee safe working conditions, establishing an employer's strict liability on matters of health and labor safety. This means that workers are protected for work-related incapacity, even if their employer has complied with all laws, and has committed no intentional, negligent or imprudent act. Therefore, employers must ensure that the health of their workers is not affected by the performance of their duties or by workplace processes.



General:

Employers must take care of matters concerning conditions of health, safety, and well-being at work by (i) promoting safe work; (ii) preventing work accidents and occupational diseases; (iii) compensating damages; and (iv) promoting free time, rest, and social tourism.

It is important to take into account that although COVID-19 is a common disease, aggravation of a worker's disease derived from the render of services could be considered an occupational disease. Workers may be concerned about an increased probability of infection in the workplace and may not want to return to work. It is important to understand their concerns, provide information on the measures taken and the assistance available to them to discuss their doubts.

Specifics:

Amongst the specific activities on the subject matter, employers should:

1. Consult workers, their organizations and the Safety and Labor Committee ("CSSL") in advance of the following:
 - a. Measures that imply changes on the means of work that may affect workers; and,
 - b. Important decisions about safety, health, and safety in the work environment.
2. Inform workers in writing:
 - a. Principles of prevention of unsafe or unhealthy conditions.
 - b. Both when starting their work and when there is a change in the labor process or modification of the job.
- c. Instruct and train workers regarding:
 - Promotion of health and safety
 - Prevention of work accidents and occupational diseases
 - Use of personal safety and protection devices
3. Develop and maintain an epidemiological surveillance system for work accidents and occupational diseases in the workplace. To this end, they must collect and record, permanently and systematically, among others, the following information:
 - Common accidents
 - Work Accidents
 - Common diseases
 - Occupational diseases
4. Require workers to give appropriate and correct use, as well as keep in good condition, the personal protective equipment provided to preserve health.
5. Guarantee all the elements of basic sanitation in the workplace.
6. Report to the Ministry of Health the mandatory notifiable diseases that are not occupational in nature.
7. Maintain the confidentiality of the results of workers' medical examinations before third parties, which can only be disclosed with the worker's prior authorization.

Exception: information required by the Prevention Delegates, the judicial and health authorities, and by the inspection officers from the Ministry of Labor Office and the INPSASEL.

Worker's obligations

Amongst the workers' obligations, the following must be taken into account:

1. Provide services subject to the rules of safety and health at work, not only in defense of their safety and health but also concerning other workers and protection of the facilities where they work.
2. Use personal protective equipment correctly and keep it in good condition according to the instructions received.
3. Report the loss, deterioration, expiration, or malfunction of personal protective equipment.
4. Inform the Occupational Safety and Health Service ("SSST", for its acronym in Spanish) or the CSSL when the worker considers that, personal protective equipment provided does not correspond to the objective of protecting against the unsafe conditions to which they have been exposed.
5. Respect and enforce respect of notices, safety and hygiene signs and other indications of warnings posted in various places, facilities and machinery of the workplace, regarding occupational health and safety.
6. Immediately inform when they become aware of the existence of an unsafe condition capable of causing harm to people's health or life. In this sense, workers must be required to notify the employer if they realize that they have any illness, physical or mental impairment that affects the performance of their activities or that may endanger the safety, health, and welfare of others in the workplace.

Workers' right to refuse to work due to the existence of an unsafe condition

Workers have the right to refuse to work, to walk away from an unsafe condition or to interrupt a task or work activity when, based on their training and experience, they have reasonable grounds to believe that there is an imminent danger to their health or life, which cannot be considered as an abandonment of work. The worker must notify the situation to the Prevention Delegate and immediate supervisor.

Some workers may feel that returning to work involves exposing themselves to an unsafe condition due to fear of infection with COVID-19.

Sanitary Regulations of Social Responsibility to attenuate COVID-19 Pandemic

Obligations applicable to all citizens:

1. Mandatory use of mask:

- Mandatory use of a mask for any transfer outside the place of residence.
- Make the correct use of the mask. It has to cover both, nose and mouth.
- Reusable cloth masks are recommended for the general population, they must be washed and ironed daily, to ensure their effectiveness as a personal protection mechanism.
- Avoid placing the mask on surfaces that could be contaminated.

2. Hand washing and body hygiene:

- The entire population should implement frequent hand washing with soap and water using the appropriate technique, before leaving the house, when arriving at their destination, before and after eating and using the toilet, before returning to home and upon arrival, as well as after coughing, sneezing, and touching potentially contaminated surfaces. In the absence of soap and water, solutions or gels with 70% alcohol can be used.
- Strengthen prevention techniques for diseases transmitted by the respiratory route:
 - a. Cough or sneeze on a tissue or the inside face of the elbow.
 - b. Social distancing of at least 1.5 meters on the streets, public transport where possible, at workplaces and in meetings.
 - c. Avoid meetings of more than 10 people, in any case with a minimum distance of 1.5 meters between each attendee.
 - d. Learn and practice new forms of greeting without physical contact.
 - e. Avoid putting your hands to your face, eyes, nose, mouth, without washing them previously. Avoid activities in closed spaces without ventilation.
 - f. In jobs or activities that require participants to stay overnight, the use of rooms without ventilation and overcrowding should be avoided.

g. Collective work tools should be cleaned regularly.

- Avoid sharing objects for personal use, glasses, plates, cutlery, towels, among others.
- Change of clothing upon entering our homes and before contact with relatives or residents of our homes, as well as shoe disinfection.

3. Ways to handle disease symptoms:

- Avoid leaving the residence if you have symptoms of respiratory illness, fever, cough, malaise, frequent sneezing.
- If flu-like symptoms remain for more than three (3) days or increase or worsen with symptoms such as uncontrolled fever, shortness of breath, chest pain, fainting or loss of smell or taste, it should be reported to 0800VIGILAN, to 0800COVID19 or the nearest ASIC Popular Clinic to have due and timely immediate medical attention.
- Report any personal, family, or social case with health symptoms associated with COVID-19 to 0800VIGILAN or 0800COVID19.

4. Hygiene conditions of the physical contact spaces:

- Work units that are authorized to operate, in the different stages of the COVID-19 flexibilization plan, must carry out periodic cleaning at least two (2) times per working day, with soap and water or with hypochlorite solutions at 0,1%.



- In the workplace, each person should have their exclusive glass or cup, don't ingest liquids directly from the primary container, bottle or jar, as well as avoid sharing objects for personal use, glasses, plates, cutlery, towels, among others.
- Public and private service providers, including work units, must indicate in elevators, if any, the number of people allowed to maintain social distance.
- Minimize face-to-face meetings and implement video conferences.
- Hygiene or disinfection in workplaces must be carried out with soap and water, 0.1% hypochlorite or 70% alcohol solution.

Specific obligations in the work units:

According to the Administrative Resolution, in the public and private work units, in addition to general regulations applicable to all citizens, the following obligations must be fulfilled while the COVID-19 emergency is in force:

1. Workers:

- Consume food and drinks, only in spaces specially designed for such purposes in work units.
- Fulfill any measure that contributes to minimizing the effects of COVID-19 in the work units, by following the guidelines of the governing body in health.

2. Work units:

- Open to the general public, at the schedules and conditions determined, only if it has the authorization to operate in the respective territories and economic sectors, by the Presidential Commission for the emergency of COVID-19.

- Restrict access to the company for people with any symptoms of respiratory illness, such as fever, cough, frequent sneezing, malaise, or diarrhea.
- Prepare a registry of workers with chronic diseases through the SSST.
- Guarantee the functioning of the CSSL, and its articulation with the respective Community Integral Health Area.
- Restrict visits to institutions and companies.
- Provide the workplace with hygiene supplies, such as liquid soap, disposable towels, disinfectants, gel alcohol, and / or liquid alcohol; as well as closed containers or bags for the disposal of towels and tissues.
- Ensure the availability of masks for workers and, if necessary, promote collective processes for their preparation.
- Adapt the spaces to guarantee social distancing, and with it the working hours to adjust the density of occupation of the institutions, create special shifts, if applicable.
- Promote teleworking and organize in a special way their work considering the national emergency, to reduce unnecessary or substitutable affluence with the above-mentioned remote work modality.
- Promote, as far as possible, the "territorialization" of its workers, facilitating the transfer to subsidiary headquarters near their places of residence, to reduce unnecessary movements.
- Organize enough spaces for the dining room function, with the conditions of hygiene and social distancing, as well as defining schedules, if necessary, to guarantee compliance with social distancing.
- Any other measure that contributes to minimizing the effects of COVID-19 in the work units, by following the guidelines of the governing body in health.

Return to Work Protocol: premises to return

Employers are required to review their risk assessment when there is a change in the work process and to take into account all risks, including those affecting mental health. It is important to have the participation of the workers and their representatives in the review of the risk assessment and to have the participation of the SSST, which has amongst its functions, identifying, evaluating and proposing the corrective measures that allow controlling the conditions and environment of work that can affect both the physical and mental health of workers. Likewise, review the advisability of informing the measures to be implemented to the Workers' Councils.

Once the risk assessment has been updated, the next step is to develop an action plan with appropriate measures. Below you will find a list of various aspects related to COVID-19 that should be taken into account when preparing this action plan.

Planning for return to work:

The following measures should be taken into account before returning to work:

- Organizational restructuring: Organizing work to reduce contact between people, preserving social distancing in the workplace or resorting to remote working mechanisms, and only return key essential positions within the organization. In this sense:
 - Implement flexible working hours.
 - Further teleworking when possible.

- Minimize on-site presence at the workplace.
- Establish shifts in each area to ensure safe activity and distance.
- Progressive reincorporation: Evaluate the option to resume work in stages so that the necessary adaptations can be made.
- Previous sanitizing: Apply deep disinfection to the workplace before resuming activities.
- Cleaning and protection equipment: Acquire masks, cleaning and protection supplies in advance.
- Frequent hand washing: Provide soap and water or an appropriate hand sanitizer in practical places and ask your workers to wash their hands frequently.
- Distribution of spaces: Adapt the distribution of the workplace and the organization of work to reduce the transmission of COVID-19 before fully resuming the activity.
- Changes and online training before returning: Inform workers about changes and new procedures and training, if possible, before they return to work, through online courses on protective measures applicable to return to work.
- Risk notifications: Prepare risk notifications with applicable security measures and changes for return to work.
- Workers with symptoms: Confirm symptoms upon the return of each worker (fever, cough, shortness of breath, fatigue). Guide workers to stay home or work from home if they have "flu-like symptoms" (for example, fever, cough, etc.).
- Vulnerable workers: require vulnerable workers, such as the elderly or the chronically ill (for example, people with hypertension, lung or heart problems, diabetes or who are undergoing cancer or other immunosuppressive treatment) and pregnant workers, to work from home.

Premises for the return

The following recommendations should be implemented:

i. Protection and cleaning:

- Establish a continuous cleaning and sanitation plan, hiring more personnel if necessary and without overloading or excessively exposing current maintenance personnel.
- Make protection tools available in the workplace and train personnel in their correct use.
- Place gel dispensers at the entrance and throughout the workplace, as well as soap to reinforce cleaning with containers for waste management.
- Reinforcement of cleaning and disinfection.
- Encourage recurrent handwashing in the workplace.
- Do not share the use of work tools by several workers, asking for their continuous disinfection.
- Strengthening and monitoring of conservation and maintenance of extraction/ventilation systems.

ii. Social distancing measures:

- Application of flexible working modalities (for example, teleworking) when possible.
- Limit on-site presence meetings and reduce the number of participants to no more than 10 people or less if space allows maintaining social distance.
- Establish flexible meeting formulas and the provision of remote services (for example, meetings by videoconference or by telephone or considering the possibility of rescheduling, staging or canceling large meetings).
- Incorporation of changes in the culture of the workplace, ceasing to shake hands, each having lunch at their desk or restricting the use of common spaces, according to the safety distance.

- In case of having a dining room service, implement staggering schedules that avoid crowding of personnel.
- Eliminate non-essential professional trips.
- Eliminate or reduce work trips.
- Reduce visits from people outside the workplace.
- Establish limitations on the number of people per floor and minimum separation between workstations
- Limit the capacity of people in elevators
- Close small meeting rooms and limit capacity

iii. Health protection:

- Confirm symptoms upon the return of each worker (fever, cough, shortness of breath, fatigue).
- In case the employer decides to take workers' body temperature before they enter their workstation or ask them to undergo a medical examination as part of the return to work measures, take into account that consent must be requested from the workers. According to the Constitution, no one can undergo a medical examination without her/his consent.
- Require workers to wash their hands frequently during their working day with soap and water. It is recommended that each worker wash their hands when they arrive at the office and every time, they return from the street
- Provide workers with masks.
- Require workers to use masks correctly.
- Deliver updated risk notice and demand compliance with protection measures to prevent the spread of COVID-19.



iv. Centralize the information:

- Designate a coordinator or a team to take the initiative in the communication on COVID-19.
- Regularly provide updated and reliable information to workers, which must contain recommendations on workplace hygiene and the practice of social distancing.
- Inform and communicate the procedures and policies of the company, including for flexible working modalities, remote work, among other aspects.

v. Mental Health Programs: Workers returning to work after a period of isolation are likely to be concerned, especially about the risk of infection. These concerns, especially if there have been changes at work, can lead to stress and mental health problems.

- There is a risk that workers feel isolated and under pressure, which, in the absence of support, can lead to mental health problems. Effective communication and support from the supervisor and colleagues, as well as the possibility of informal contact with colleagues, are important.

- Plan regular online staff or team meetings.

vi. Control of workers who provide services from home:

Employer's obligations:

- Compensation or reimbursement for related expenses
- Public services (electricity, internet)
- Maintenance of machines and work equipment
- Health and safety conditions at work (at home)
- Keep a record with the following data:
 - Name, nationality, marital status and identity card of the worker.
 - First and last names, employer identification, address.
 - Date of entry to work.
 - Form, amount and date of payment of wages and benefits.
 - Compensation for related expenses paid to workers.

- Days and hours for delivery and receipt of work.
- Family members of the worker who work with him.
- Vacations are taken.
- Indication of weekly rest days.
- Class, nature and modalities of the service provided by the worker.
- Notebook. The employer must provide the worker with a notebook, sealed and signed by the Labor Inspector Officer containing the following information:
 - First and last name, identity card, sex, age, marital status of the worker and address where the work is performed.
 - Identification of the employer and address.
 - Days and hours for delivery and receipt of work.
 - Form, amount and date of salary payment.

Recommendations:

- Perform a job risk assessment.
- Provide workers with guidelines on how to set up a workstation at home with good ergonomic

measures, such as good posture and frequent movement, whenever possible.

- Encourage workers to take regular breaks to get up, move, and stretch.
- Try to include people who work from home in all communications. This ranges strategic information provided by senior management to the duties of direct supervisors, without forgetting the importance of regular social interaction between colleagues.
- Establish strict monitoring of the work-schedule.

vii. Management of absenteeism: Take into account that staff may be absent due to illness, fear, or because they have sick family members under their care, or because they have no one to leave their children with.

- The absence of a significant number of workers, even if only temporary, can put an overload on ongoing activities. While available workers must be flexible, they mustn't be in a situation that puts their health or safety at risk.
- Keep the additional workload as low as possible and make sure it does not last too long.

Key contacts



Yanet C. Aguiar
Caracas
D +58 212.276.0011
yanet.aguiar@dentons.com



Esther Cecilia Blondet
Caracas
D +58 212.276.0018
esthercecilia.blondet@dentons.com



Eirys Mata Marcano
Caracas
D +58 212.276.0026
eirys.mata@dentons.com



Juan Carlos Pró-Rísquez
Caracas
D +58 212.276.0008
juancarlos.pro@dentons.com

ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

dentons.com

© 2020 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.