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Legal

COVID-19 EMPLOYMENT SUBSIDY PLAN.

On September 28, 2020, Decree No. 31 was published in the Official Gazette, which modifies Decree No. 28 of 2011 and set out a new line of action to face the economic consequences caused by Covid-19.





The Deloitte Legal Labor Team has prepared this document in order to summarize the main aspects of the Covid-19 **“Employment Subsidy Plan”**.

This Employment Subsidy is a new line of action of Decree No. 28 of 2011 and has two purposes:

- (i) Encourage the return of employees, whose employment relationship was suspended under the terms of the Employment Protection Law or “LPE” (Return Subsidy or “Línea Regresa”).
- (ii) Encourage the hiring of new employees (Subsidy for Contracting or “Contrata Line”).

Next, we will analyze each of the lines of the Covid-19 Employment Subsidy.

Return Subsidy

It is a subsidy to companies that encourages the return of their employees whose employment relationship was suspended in accordance with the provisions of the "LPE".

Among the novelties of this subsidy, the following stands out:

1. Conditions of application for Companies

Companies that meet the following requirements will be able to access this benefit:

- (1.1) Companies that are taxpayers of the first category tax (including companies that pay taxes under the SME regime, presumed income, individuals and others) or small taxpayers according to Article 22 of the Income Tax Law;
- (1.2) Companies that demonstrate a 20% or more decrease in their sales or gross income accumulated between April and July 2020, compared to the same period in 2019 ("Economic Impact").

2. Requirements that employees must meet to qualify for the benefit.

Employees must meet the following requirements:

- (2.1) +18 years old.
- (2.2) Gross monthly salary equal to or less than three minimum monthly income (today \$ 961,500 Chilean pesos).
- (2.3) The suspended employee (either by act of authority or by agreement) must have been reinstated to his functions on the date of application of the subsidy.
- (2.4) In the event of suspension by act of authority, the suspension must have been in force for at least one day between August 28 and September 28, 2020. For suspension by agreement, it must have been in force on the 28th September 2020.



3. Amount and Term of the Subsidy.

The amount of the subsidy that will be granted to the benefited companies will be \$ 160,000 pesos per month for each reinstated employee and will have a maximum limit of 6 months.

(* Important: If the suspended employee returns to the Company to perform his duties under a “temporary reduction of working hours agreement” in the terms of the “LPE”, the subsidy will be reduced proportionally according to the reduction.

4. Suspension of the subsidy.

The payment of the subsidy is suspended in the following cases:

- (4.1) The employment relationship is suspended by act of authority according to the terms of the “LPE” (payment is resumed once the act or declaration of authority that originated the suspension ceases).
- (4.2) Employee causing the benefit has a Medical Leave (whatever the cause).
- (4.3) Gross compensation of the employee causing the benefit exceeds \$ 961,500 pesos during any month of the benefit (payment is suspended from that month). In this case, the beneficiary company will be obliged to communicate this fact to SENCE.

5. Early termination of the subsidy.

The granting of the subsidy will terminate early, in case any of the following circumstances are verified:

(5.1) General grounds for early termination.

- (i) If the employment relationship of the employee causing the benefit is terminated (whatever the legal ground).
- (ii) If the employee causing the benefit dies;
- (iii) If the beneficiary company agrees with the employee causing the benefit to reduce their gross monthly remuneration at any time after the start of the granting of the subsidy (the beneficiary company is obliged to report this fact to SENCE). If the reduction in the gross monthly remuneration of the employee is the consequence of the signing of a “temporary reduction of working hours agreement” in the terms provided by the “LPE”, the subsidy will not be terminated early, but will be reduced proportionally



- (iv) If the beneficiary company did not declare or did not pay in full the social security contributions of the employees causing the benefit within the legal term.
- (v) If the beneficiary company signs with any of its employees an "agreement on temporary suspension of the employment contract" in the terms provided by the "LPE" after the application.

Cause of early termination

What it is terminated early?

Termination of the employment relationship with the employee that causing the benefit.

The right to receive the bonus associated with that employee will be terminated early.

Termination of the employment relationship with the employee that causing the benefit.

The right to receive the bonus associated with that employee will be terminated early.

If the beneficiary company agrees with the employee causing the benefit to reduce his gross monthly remuneration at any time after the start of the granting of the subsidy.

The right to receive the bonus associated with that employee will be terminated early.

If the beneficiary company did not declare or did not pay in full the social security contributions of the employees causing the benefit within the legal term.

The right to receive bonuses for all employees causing the benefit will be terminated early.

If the beneficiary company signs with any of its employees an " agreement on temporary suspension of the employment contract " in the terms provided by the "LPE" after the application.

The right to receive bonuses for all employees causing the benefit will be terminated early.



(5.2) Specific causes of early termination for Large Companies (200 or more employees with a contract in force during the month of July 2020) verified after the application for the subsidy.

- (i) If the Large Company does not maintain the “Economic Impact”. It will be understood that the “Economic Impact” is not maintained when the total sales of the business or its gross income expressed in UF and recorded during the last 12 months in the IRS, exceed the total sales of the business or its gross income expressed in UF, registered by said company between the months of January and December 2018.
- (ii) If the Large Company distributes liquid profits above the minimum percentage of 30% established in Article 79 of Law 18,046, during the business year in which it receives bonuses. Regarding this limitation, we note that it will apply to Publicly Held Corporation and, with respect to the Closely Held Corporations, it will be required to analyze in each case whether or not the rules of Law 18,046 are additionally applied in accordance with its statutes.

Special Cause for Early Termination for Large Companies

That the Large Company does not maintain the “Economic Impact”.

That the Large Company distributes liquid profits over the minimum percentage of 30% established in Article 79 of Law 18,046, during the business year in which it receives bonuses

What it is terminated early?

The right to receive the remaining bonuses will terminate early. In addition, this Company will not be able to reapply for other bonuses on this line.

In this case, in addition to the early termination, the amounts received must be reimbursed.

Subsidy for Hiring

It is a subsidy to companies, which aims to encourage the hiring of “new employees” provided that they effectively increase the size of the “Reference Payroll”, which and according to Ruling No. 625 of the Ministry of Labor, is understood as the number of employees who made up the payroll of employees with a current contract in the beneficiary company, during the month of July 2020.

The main aspects of this subsidy are:

1. Conditions of application for Companies.

To access this subsidy, companies must meet the following requirement:

- (1.1) Be a first category taxpayer company (including companies that pay taxes under the SME regime, presumed income, individuals and others) or small taxpayers according to Article 22 of the Income Tax Law.
- (1.2) Be a company that increases the “Reference Payroll”, that is, that the company maintains an increase in the number of employees hired with respect to its “Reference Payroll”, during the months after the benefit was granted, the same or higher than the number of current Contract Bonuses.
In the event that this is not fulfilled, the number of Contract Bonuses to be paid will be reduced, adjusting to the effective size of the contract increase. If the effective size of said increase is null or negative, no benefit will be paid upon hiring.
- (1.3) **Additional requirement for “Large Companies”.** For Large Companies, it is required that in addition to increasing their “Reference Payroll”, they must maintain, at least, 80% of the identity of the employees that make up their “Contrast Payroll”. By “Contrast Payroll” is understood that sheet that contains the number and identity of employees with a current contract of the beneficiary company on the date of their first application to the contracted line.

2. Requirements that employees must meet to qualify for the benefit.

The requirements that the employees applying for the benefit must meet are:



- (2.1) +18 years old.
- (2.2) That the gross monthly remuneration of the employee causing the benefit does not exceed three minimum monthly earnings (today \$ 961,500 Chilean pesos).
- (2.3) Be “new hires” in addition to the “Reference Payroll”.
By “new hires” is understood those who:
 - (i) Have been hired by the company after September 28, 2020; Y
 - (ii) That they have not worked in a company that is part of the same business group as the company that makes their application, after September 28,

(* Important: The Company will not be able to apply for employees who have been dismissed after September 28, 2020 (for any legal ground). Likewise, the application relating to the new employee may be submitted up to 30 calendar days after the date of hiring.

3. Amount and Term of the subsidy

The amount of the subsidy will depend on the person being hired and, in both groups, it will have a maximum duration of 6 months from when it is granted.

For purposes of the amount, two groups are distinguished;

- (3.1) Group A:** Hiring of women, people with disabilities (qualified and certified) and men over 18 and under 24 years of age, the amount of the subsidy will be equivalent to 60% of the gross monthly remuneration of the employee causing the benefit, with a maximum limit of \$ 270,000 Chilean pesos per month.
- (3.2) Group B:** Hiring men from 24 years of age and without disabilities, the amount of the subsidy will be equivalent to 50% of the gross monthly remuneration of the employee causing the benefit, with a maximum limit of \$ 250,000 Chilean pesos per month.

4. Limits applicable to the first benefit payment.

Regardless of the number of applications made by the company in the first month of application, there are the following limitations depending on the number of employees that the company has in its "Reference Payroll":

- (4.1) 25 employees (or more) with a current contract in their "Reference Payroll": A maximum number of benefits equivalent to 20% of that Payroll will be paid.
- (4.2) Less than 25 employees with a current contract in their "Reference Payroll": A maximum of 5 bonuses will be paid.

5. Suspension of the subsidy.

The payment of the subsidy is suspended in the following cases:

- (5.1) If the employment relationship is suspended by an act of authority according to the terms of the "LPE" (payment is resumed once the act or declaration of authority that originated the suspension ceases);
- (5.2) If the employee causing the benefit has a Medical Leave (whatever the cause);
- (5.3) If the gross compensation of the employee causing the benefit exceeds \$ 961,500.- pesos during any month of the benefit (payment is suspended from that month). In this case, the beneficiary company will be obliged to communicate this fact to SENCE.

6. Early termination of the subsidy.

The granting of the subsidy will terminate early if any of the following circumstances are verified

(6.1) General grounds for early termination.

- (i) If the employment relationship of the employee causing the benefit is terminated (whatever the legal ground).
- (ii) If the employee causing the benefit dies;
- (iii) If the beneficiary company agrees with the employee causing the benefit to reduce their gross monthly remuneration at any time after the start of the granting of the subsidy (the beneficiary company is obliged to report this fact to SENCE). Unlike the return subsidy, if the beneficiary company signs a "temporary reduction of working hours agreement" with the employee causing the benefit (in accordance with the "LPE"), the right to receive this subsidy will end in advance.



- (iv) If the beneficiary company did not declare or did not pay in full the social security contributions of the employees causing the benefit within the legal term.
- (v) If the beneficiary company signs with any of its employees a "temporary suspension of the employment contract" in the terms provided by the "LPE" after the application.

Cause for Early Termination

What it is terminated early?

Termination of the employment relationship with the employee causing the benefit.

The right to receive the bonus associated with that employee will be terminated early.

If the employee causing the benefit dies.

The right to receive the bonus associated with that employee will be terminated early.

If the beneficiary company agrees with the employee causing the benefit to reduce his gross monthly remuneration at any time after the start of the granting of the subsidy.

The right to receive the bonus associated with that employee will be terminated early.

If the beneficiary company did not declare or did not pay in full the social security contributions of the employees causing the benefit within the legal term

The right to receive bonuses for all employees causing the benefit will be terminated early.

If the beneficiary company signs with any of its employees a " temporary suspension of the employment contract" in accordance with the "LPE", after the application.

The right to receive bonuses for all employees causing the benefit will be terminated early.

6.2) Specific Cause for early termination for Large Companies (200 or more employees with a contract in force during the month of July 2020) verified after the application for the subsidy.

- (i) In the event that the Large Company does not maintain, at least, 80% of the identity (ID's) of the employees that make up its "Contrast Payroll", that is, those employees with a current contract of the beneficiary company to the date of the first application to the contract line. The SENCE will verify this cause every 3 months from the first grant of this bonus.
- (ii) If the Large Company distributes liquid profits above the minimum percentage of 30% established in Article 79 of Law 18,046, during the business year in which it receives bonuses. Regarding this limitation, we note that it will apply to Publicly Held Corporations and with respect to Closed Held Corporations, it is required to analyze in each case whether or not the rules of Law 18.046 are applied in a complementary manner in accordance with their statutes.

Special Cause for Early Termination for Large Companies

Not maintaining, at least, 80% of the identity of the employees who are part of their "Contrast Payroll"

That the Large Company distributes liquid profits over the minimum percentage of 30% established in Article 79 of Law 18,046, during the business year in which it receives bonuses

What it is terminated early?

The right to receive bonuses on this line will be terminated early.

In this case, in addition to the early termination, the amounts received must be reimbursed.





Practical Aspects

6. How to apply?.

The application can only be made by companies (with their tax ID) on the website www.subsidioempleo.cl

7. Deadline for application.

The process to access the payment (on both lines) is available, from September 28, 2020 until March 31, 2020.

8. Which institution makes the payment and when it is paid.

SENCE will be the institution in charge of making the subsidy payments, the first payment being within 30 days after verifying compliance with the application requirements and conditions. For more information, you can visit the website www.subsidioempleo.cl

CONTACTO



- **Nancy Ibaceta Muñoz**
Director
Labor Area
Deloitte
Email: nibacetam@deloitte.com

Deloitte.

www.deloitte.cl

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