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Global Tax Alert

News from EY Americas Tax

Ecuador's National Assembly to consider proposed measures to safeguard employment due to uncertain economic situations triggered by COVID-19

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Ecuador's President, Lenin Moreno, submitted a bill to Ecuador's National Assembly to safeguard employment, which has been affected by the COVID-19 pandemic.

The bill would allow companies to enter into new employment agreements, which would be submitted to the Ministry of Labor to ensure contractual compliance. The agreements may be for the company's incidental needs, reduced work hours for employees and the use of advanced annual leave.

The National Assembly will analyze the bill and, once approved, will send it to the President for his signature. The bill will then have to be published in the *Official Gazette* to be enacted.

Requirements for new employment agreements to be valid

To enter into one of the new employment agreements, a company would have to present its complete financial statements to its workers. The bill would not allow the company to use its resources for luxury or unnecessary expenses. The company also would not be able to distribute dividends or reduce its capital while the agreements are effective.

The company and most of its employees would have to approve the new agreement. The agreement's provisions would be mandatory for everyone, including those who did not approve the agreement.

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If the agreement is essential to the company's survival, and the company and employees do not reach a consensus, the company could initiate the liquidation process to terminate its legal existence.

The bill would treat the company's improper use of its resources in favor of its shareholders/administrators as fraudulent bankruptcy. The same treatment would apply for payroll evasion.

While an agreement is valid, the company could not distribute dividends or dismiss its workers.

A company that fails to comply with the agreement would be subject to fines of 3 to 20 minimum wages (US$400 per month is the minimum wage for fiscal year 2020).

Contract for incidental needs

A contract for incidental needs would allow the company to invest, create new lines of business, modify existing lines of business, increase its offer of goods and services, or maximize the sustainability of its production and sources of income in emerging situations.

The contract would have to include a specific work period and could be valid for a maximum of two years. The contract could be renewed once.

The bill would require the company to justify its motives for hiring new staff for new lines of service, products or business growth projects. In addition, companies with economic issues would have to justify the need for new staff to increase production or fulfill pending obligations.

Reduced work hours for employees

For duly justified events of force majeure or an act of God, the company could request the Ministry of Labor to authorize a reduction in work hours for its employees. The Ministry of Labor's approval would result in a new contract with employees. The salaries would be proportionate to the new work hours, taking into consideration each employee's salary before the reduction in work hours.

The contribution to the Ecuadorian Social Security Institute would be proportionate to the modified work hours. A company that dismisses employees would have to pay severance equal to three months of salary, in addition to the regular severance stated in the Labor Code.

The bill would allow the new contract for reduced work hours to be in effect for up to two years and would allow the contract to be renewed once.

Advanced annual leave

The bill would allow a company to enter into a contract with employees, granting advanced annual leave for a maximum of two vacation periods. The vacation periods would start on the date of enactment.

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