

## Labor Alert: Legality of the PCR testing in employees and labor risk of obtaining movement permits in quarantine for contracting companies' employees



07 April, 2021 / By [Luis Parada](#), [Gabriela Andrade](#) and [Diego González](#).

Recently, the Labor Directorate ("LD") has referred to the **legality of requiring PCR tests to the company's employees** (opinions No. 1124/10 of March 30 and 1189/011 of April 1st).

In these opinions, the LD has indicated the following:

- As a **general rule**, it is considered **discriminatory** requiring a negative Covid-19 PCR test, as a condition for granting the work agreed in the employment agreement, to all kind of employees, new or old staff, and whether to start or to continue working for the company.
- On the contrary, a PCR test **can be requested** as a requisite for granting the work agreed, to the extent that **there is a reasonable suspicion of contact of the employee that requires** going to a medical center to be tested with a PCR, in accordance with the current criteria of the health authorities.
- Notwithstanding the above, in compliance with the mandate to protect the life and health of employees, **the company may require its personnel to take a PCR test** (without conditioning the granting of the agreed work), to the extent that this **test is financed by the company**. Obviously, if the result is positive for the virus, the employee will have to stop providing services and will be entitled to medical leave and the corresponding subsidy of his/her remunerations, for the period determined in accordance with the health criteria in force.
- In addition, if such an examination is required by the employer, this measure must be **included in the company's Internal Regulations on Order, Hygiene and Safety**. As part of the regulation to be incorporated in this document, it will be necessary to include the mechanism that ensures that this measure will be adopted in an impersonal manner, either universally or randomly, in order to avoid the risk of discrimination through this means.

Questions remain opened regarding the lawfulness of conditioning work to the existence of a negative PCR, for services that require forced coexistence of employees (e.g., those who spend the night in camps) or for those employees who must directly work with groups at high risk of suffering the coronavirus disease, who even though, they may have been vaccinated, have a remaining risk of contracting the disease.

As we have seen, these rulings clarify important aspects of the company's powers and **require the company to update its internal regulations**. It is also important to consider, in the application of these measures, the convenience of **reaching agreements with employees and unions** when the examinations are to be carried out outside working hours and/or in places other than the usual workplace.

Finally, in the recent opinion issued by the LD, dated April 1st, 2021 (No. 1190/012), this Government department has clarified that if, in compliance of the Rules of Movement Permits in Quarantine, a company (principal) requests permits for employees of a contracting company that provides services to the former, that cannot be interpreted as a sign of an employment relationship between the employee and the principal.

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