

labour

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BASIC ISSUES RELATING TO THE CALL FOR A GENERAL STRIKE

In light of the general strike called for March 29, 2012, below is a brief summary of the basic issues to be borne in mind from the standpoint of labor and employment law.

1. WHAT CAN EMPLOYEES DO? EFFECTS

- Striking is a **legitimate right** of workers that is recognized in the Spanish Constitution. Consequently, all workers are free to go out on strike or not, and must respect each other's freedom of choice
- **Workers are not under any obligation to give the company prior notice** of their decision.
- While the workers are on strike, their **employment contract** is considered to be **temporarily interrupted** and, as a result, employers are **not** required to **pay the wages** of workers exercising their right to strike (and their pay slips are reduced accordingly).
- For **social security** purposes, all workers who go out on strike will be subject to **special deregistration**, which removes the obligation for the employer and the workers themselves to make contributions.
- Taking part in a strike does **not** cause a **reduction to vacation time**.
- The simple fact of taking part in a strike **does not attract a penalty** (although the same cannot be said for actions such as refusing to perform maintenance services, failure to meet minimum services, coercion of non-strikers, etc.).
- Strikers cannot enter the workplace under any circumstances, except for members of the Strike Committee who are allowed entry to exercise their rights and obligations. A strike **does not allow workers to occupy the workplace**, or any of its premises, although the necessary meetings of workers to ensure the right to strike are allowed.
- Subject to the restrictions that the labor courts have had occasion to lay out, advertising the strike in a peaceable manner is permitted (meaning pickets are allowed). Pickets may not, however, affect or exert pressure on workers who have chosen not to go out on strike.

2. WHAT CAN EMPLOYERS DO?

- Employers are entitled to adopt **measures to protect the safety of workers and maintain and preserve the facilities in order to resume activities on termination of the strike** (security and maintenance services). Determining these services and the personnel in charge of carrying them out must be performed jointly with the Strike Committee.

As this is a general strike and there is no Strike Committee for workplaces or companies as a whole, authority is delegated in order to negotiate maintenance services. If the stance taken by the Strike Committee prevents a negotiated solution, the Supreme Court has recognized employers' rights to appoint those in charge of providing the security and maintenance services. If there is disagreement, it would be reasonable for employers to determine the services that were assigned at the last general strike by analogy.

- With respect to essential services for the community and establishing **minimum services**: this only applies to certain companies in charge of providing public services or services of acknowledged necessity that cannot be postponed or where particularly serious circumstances arise. As mentioned above, the fact that the strike is a general strike entails the delegation of authority in order to negotiate essential services. The public authorities will decide on these measures by reference to the length of the strike, its size, the existing needs and any offer to maintain services, if one has been made by the strike organizers and the labor union organizations.
- Employers **may not substitute any striking employees in their workforce** with other workers unrelated to the company, save for cases where there is a failure to provide security and maintenance services. Consequently, they may not use the services of temporary employment agencies or outsource services. Moreover, the legal precedents handed down by the labor courts take a restrictive interpretation of the possibility that employees may substitute strikers with their own personnel in certain circumstances (e.g., where the personnel belong to other professional categories or in the case of qualified workers assigned to manual labor). The substitution of strikers is deemed a very serious infringement.
- Closure of the workplace (**lock-out**) is an exceptional measure that may only be implemented where (i) there exists a patent danger of violence to persons or serious damage to property, (ii) the workplace or parts of the workplace are unlawfully occupied or there is a danger of this happening, or (iii) the number of absences or irregularities in the work seriously impede the normal production process. Employers are obliged to inform the labor authorities of the lock-out within 12 hours, and it must be confined to the time absolutely necessary to ensure the resumption of activity or to remedy the grounds for the lock-out.

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