

**MINISTRY
OF LABOR
AND SOCIAL
SECURITY**

GOVERNMENT OF EL SALVADOR

Ministerial Office

DM UJ 315/2018
San Salvador, June 26, 2018

Ms. Sharon L. Waxman
President and CEO
Fair Labor Association

I hereby would like to send you my regards and to wish you success in your important work as President and CEO of Fair Labor Association (FLA).

In this opportunity, I am writing with regard to the note received on the fifth day of the current month and year, which requests the opinion of this Secretary of State on the application of article 307 of the Labor Code, in relation to article 50 of the Constitution of the Republic and 24 of the Regulations for the Application of the Social Security System regarding the responsibility of Salvadoran employers to pay, as a subsidy, within the first three days of medical leave.

In that respect, it is essential to consider that social security, in its broadest sense, is a system which aims to provide to all the population the means and resources required in order to have access to and maintain a life with dignity and, for that reason, every employer is required to register all workers in the social security system (article 3 of the Social Security Law).

In addition to the above, and in the event of any doubt on the mandatory nature of the payment of the first three days of medical leave on the part of the employer, the regulations shall be verified in light of Labor Law as a social right, which is based on the protectionist principle, with regard to its application and interpretation pursuant to what is regulated in article 14 of the Labor Code, which states: *"In the event of a conflict or doubt on the application of labor regulations, shall prevail the one most favorable to the worker. The regulation adopted shall be applied in its totality"*.

As a result, by the integration of the regulations is determined that the first three days of medical leave are financially covered by the employer, and as of the fourth day the medical leave is covered by the ISSS (Salvadoran Social Security Institute), and the employer may, pursuant to its internal regulations, set forth the guidelines for the submission of said permits and their payment during the corresponding pay period.

In addition, it is worth mentioning that every worker pays a percentage of the social security total payment by means of discounts made to their salary; in that sense, the worker cannot be financially unprotected during the first three

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days of medical leave, as provided by the aforementioned regulations that the Social Security coverage starts on the fourth day, and that the exception provided by the primary law applies only in those cases in which it is covered by the social security, reason for which the employer is required to pay the first three days of medical leave of the workers in his or her employment.

Work and health are basic human rights which must be guaranteed and, for that reason, no worker can be left without protection, in particular when they pay a percentage of social security through their work in order to receive medical care and sickness benefits, as provided by the national law and ILO Convention 130.

To require that the workers cover the payment of those non-worked days would be to impose them a double burden or suffering, in the sense that they have lost three work days (which entails the non-compliance of goals in order to get bonuses, delays in their work, workload accumulation, among others), as well as the financial burden of not receiving the payment of those medical leave days, which is generated involuntarily, that is to say, an act of God.

Everything set forth in similar fashion shall be in accordance with what is regulated by the ILO Conventions with their corresponding recommendations:

- 102 on Social Security.
- 130 on Medical Care and Sickness Benefits.

The labor inspection for this five-year period is focused on the individuals (PEI 2014-2019), reason for which the services provided are focused on the restoration of rights which are reported as violated, which per se implies the provision of social justice in the workplace as required by PQD 2014 - 2019, as well as finding the way to comply with the U.N. Sustainable Development Goals 2015 - 2030, in relation to decent work, the reduction of inequality, among others.

With nothing further to add at this time, I leave you my warmest greetings.

GOD, UNITY, FREEDOM

[Signed]

Ms. SANDRA EDIBEL GUEVARA PÉREZ
Ministry of Labor and Social Security

Rubber stamp:
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REPUBLIC OF EL SALVADOR, CENTRAL AMERICA