



EMPLOYERS IN EL SALVADOR OBLIGED TO PAY THE FIRST THREE DAYS OF MEDICAL LEAVE

THE ISSUE

Are Salvadoran employers obliged to pay, as a subsidy, the first three days of medical leave?

MEDICAL LEAVE REGULATION AND PRACTICE

Some employers in El Salvador do not consistently pay for the first three days of leave when an employee goes on medical leave. Article 307 of the Salvadoran Labor Code states that when the employment contract is suspended due to an employee's common illness or accident, the employer is obliged to pay the employee until the employee is recovered, an amount equal to 75 percent of the basic contracted wage. A provision in the Salvadoran Constitution¹ establishes that employers are exempt from obligations in favor of workers that are provided by secondary laws if those obligations are covered by the Salvadoran Social Security Institute (ISSS). However, the ISSS daily subsidy for a worker on temporary medical leave does not begin until the fourth day of leave.²

In recent years, the Ministry of Labor and Social Welfare (MOL) has issued several case-by-case legal opinions, as requested by Salvadoran unions or union federations,

¹ Article 50 of the Salvadoran Constitution

² Article 24 of the Regulations for the Application of the Social Security System

FLA CODE ELEMENTS

Employment Relationship Benchmarks

ER.1.1 Employers shall have in place written policies and practices and maintain proper and accurate records governing all aspects of employment from recruitment, hiring and probation, including written terms and conditions of employment, job descriptions, administration of compensation, and working hours for all positions, through to retrenchment and termination processes

ER.22.1 Employers shall provide all legally mandated fringe benefits, including holidays, leave, bonuses, severance payments and 13th month payments to all eligible workers within legally defined time periods.

Hours of Work Benchmark

HOW.16 Employers shall provide workers with sick leave as required under national laws, regulations and procedures.

Compensation Benchmarks

C.1 Employers shall comply with all national laws, regulations and procedures concerning the payment of compensation to workers.

C.5 All payments to workers, including hourly wages, piecework, fringe benefits and other incentives shall be calculated, recorded, and paid accurately.

C.7 Employers shall compensate workers for all hours worked.

which confirmed that the employer is responsible to pay for medical leave, due to common illness, that is three days or less. While some factories have adopted the payment of the first three days of medical leave as an internal policy, others have not. Since 2015, the FLA has deemed the first three days of medical leave a required subsidy by the employer and has documented non-payment of this subsidy as a non-compliance in at least three factory assessment reports.³ In addition, two Third Party Complaints filed by unions on this issue were completed by the FLA and the determination was made that the employer was responsible for payment of these days of leave.

MINISTRY OF LABOR LEGAL OPINION

On May 22, 2018, three FLA-affiliated brands and the FLA's Civil Society Engagement Manager for the Americas met with the Minister of Labor and Social Welfare, Mrs. Sandra Guevara; the General Director of Labor Inspection, Mr. Jorge Bolaños; the General Director of Labor, Mrs. Mayari Merino, and the Sub-Director of the ISSS, Mr. Milton Escobar. The purpose of the meeting was to seek clear guidance from the Ministry regarding employer obligations with regard to Social Security contributions and whether or not employers are obliged to pay the first three days of medical leave.

On July 2, 2018, the FLA received the written general legal opinion from the MOL stating that, "the employer is required to pay the first three days of medical leave for all workers in their employment."⁴

The MOL has the authority to issue legal interpretation of labor regulations in the case of a conflict of law or doubt about the obligation⁵. Therefore, legal opinions issued by the MOL--and specifically the general legal opinion dated June 26, 2018--establish a binding obligation for employers in El Salvador to pay for the first three days of medical leave. As a result, FLA affiliated brands sourcing from El Salvador and suppliers producing in El Salvador, must enforce the implementation of the general legal opinion. The legal opinion is effective immediately.

FLA RECOMMENDATIONS FOR IMPLEMENTATION

- **Notification of MOL's legal opinion.** Affiliates should ensure their supplier or workplace informs all workers regarding the employer's obligation to pay the first three days of medical leave. This should also be incorporated into orientation for new employees during the hiring process, as well as be disseminated to worker's representatives.
- **Update the factory's policies and procedures regarding medical leave.** Affiliates should ensure that the workplace clearly expresses their commitment to ensure the right of all workers to get paid the three or less⁶ days of medical leave and develop a procedure to exercise that right.
- **Training and communication.** Affiliates should ensure that the workplace clearly communicates and trains managers, supervisors, workers, and union officials on the changes in factory policies and procedures regarding medical leave, focusing on the steps for requesting leave, approval by the supervisor or HR manager; calculation of the payment; and method of payment.

³ For reference review the following SCI assessments reports: [Assessment Report 12/8/15](#), [Assessment Report 7/15/15](#) or [Assessment Report 10/25/16](#)

⁴ MOL June 26, 2018 in [Spanish](#) and [English](#).

⁵ Article 8 (j) of the Law of Organization and Functions of the Labor and Social Welfare Sector

⁶ Employers must pay every medical leave even if it is less than three days.

- **Ensure workers receive the seventy-five percent of their basic contracted wage.** Based on Article 307 of the Salvadoran Labor Code, the affiliate should ensure that employers pay, at a minimum, to workers seventy-five percent of their basic contracted wage for the first three days of medical leave. However, the best practice should be to pay the one-hundred percent.
- **Refrain from applying any deduction to a worker’s seventh-day payment or other cash benefits and apply all lawful/applicable deductions and contributions.** The first three days of medical leave are considered a legal absence from work, which means there should be no deduction applied to the seventh-day payment⁷ or other cash benefit in which the worker’s attendance is a factor for the calculation and payment of such benefit.⁸ The amount received by workers in concept of medical leave is subject to the legal deductions corresponding to pension fund⁹ and social security contributions.¹⁰
- **No Discrimination.** The payment of the first three days of medical must be granted to all workers without regard to their performance, seniority, union affiliation, attendance record, etc. The exercise of this right to medical leave by the worker must not be used to discriminate or negatively affect the worker’s employment status, including decisions concerning recruitment, termination, promotion, or assignment of work, “unless such decision is dictated by the inherent requirements of the job, or is a medical necessity to protect the worker and/or other workers.”¹¹

7 Article 171 Salvadoran Labor Code

8 For example, worker’s loss of Christmas bonus for unjustified absences from work. Article 201, Salvadoran Labor Code

9 Article 14 of the Law of the Pension Saving System

10 Article 3 of the Regulations for the Application of the Social Security System

11 ND.9 in [FLA Workplace Code of Conduct and Compliance Benchmarks](#)

About the Fair Labor Association

The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.