

## **Creel Insights on COVID-19 for Mexico.**

According to mathematical models, the phase of community transmission in Mexico of COVID-19 is expected to commence on or about March the 20th. To date, social distancing measures adopted by Governmental authorities in Mexico have been limited to orders deriving from ordinary regulatory functions, namely, closure of schools and establishments and banning of large gatherings.

More forceful measures, such as stringent social distancing and relief actions will probably flow from the broad emergency Constitutional powers of the President together with the General Health Council (Consejo de Salubridad General). If published, a Presidential Decree -similar to the one issued on April 25, 2009 amidst the H1N1 virus outbreak- will have myriad legal implications for business in Mexico. Most immediately such a Decree will have an impact on labor and employment, on performance of contracts and the triggering of force majeure principles and on corporate governance involving crisis management decisions. Other legal issues and challenges particular to the Mexican legal framework will follow shortly after.

With the aim of keeping our clients and friends informed about the legal issues that will surely arise from the COVID-19 outbreak in Mexico, our Firm will be sharing analysis on specific topics, starting with implications relating to labor and employment matters which will be distributed shortly.

## **Some lessons learned**

Looking back to the H1N1 virus experience of 2009 -of which Mexico was the epicenter- the Presidential Decree then issued gave way to an Accord issued by the Minister of Health suspending all work and labor both in the public and private sector, with the exception of essential utilities and activities indispensable to fight the outbreak. The issue of such an Accord in the backdrop of COVID-19 would automatically trigger a temporary suspension of the employment relationships, in accordance to article 427, section VII of the Federal Labor Law. Among other effects, the suspension would allow employers to pay the minimum daily wage to their employees during the suspension period. In 2009 the suspension lasted 5 days including two holidays -from May 1 through May 5-; in the case of COVID-19, the suspension could be much lengthier.

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A Presidential Decree along the lines described above would facilitate the use of the fortuitous case and force majeure doctrine (caso fortuito y fuerza mayor) as a defense to contractual performance. The Decree itself would probably meet the definition of fortuitous case and force majeure as contemplated in Mexico's civil codes and applicable case law (jurisprudencia) as it would be a government action of general effects. The Decree would also provide official recognition in Mexico of the underlying natural phenomena of COVID-19, which as a pandemic would be a classical example of fortuitous case and force majeure. The Federal and State Civil Codes contemplate the effects of the fortuitous case and force majeure doctrine on certain types of contracts, such as donations, transportation contracts and lease agreements. Legal prescriptions on how to interpret the factual variations of fortuitous case and force majeure situations are generally absent from Mexican statutes and case law, hence the importance of the case by case analysis of contractual language in Mexico.

If issued, the immediate effect of a Presidential Decree such as the one described herein will require quick and insightful action by directors and the management of companies handling the COVID-19 crisis' ramifications. The safety and well-being of the company's employees, business partners and the public in general, should continue be top of mind for governance bodies and officers. Of course, compliance with the fast changing legal and regulatory environment as a consequence of COVID-19 and potential enforcement actions will be almost as crucial.

It is not yet clear if the Mexican Government will follow a similar legal and regulatory path for COVID-19 as it did back in 2009 to tackle the H1N1. What is clear is that similar and novel legal issues will arise, and our Firm looks forward to sharing our views and analysis with our clients and friends.