

Ius Laboris Webinar

Coronavirus impact update – Latin America

Monday 14 December 2020

10:00 (Colombia) / 12:00 (Argentina) / 16:00 (CET)



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MOBILITY

COLOMBIA

PROTOCOL FOR TRAVELERS

- With the opening of Colombian international air borders, the immigration authorities have adopted a Biosafety Protocol for entering and leaving the country.
- The Protocol includes the following requirements (amongst others):
 - Travelers must fill out the electronic 'Check-Mig' form before entering or leaving Colombia. This can be done between 24 hours and one hour before the trip.
 - Travelers must comply with distancing and hand disinfection rules.
 - Automatic Migration and/or 'Bio-Mig' services have been enabled for the use of previously registered travelers.
 - While a negative PCR test was initially mandatory, this requirement was recently lifted. Currently there is debate around this requirement, and it is uncertain if it will be implemented again.

COLOMBIA

INTERNATIONAL AIR TRANSPORT

- International air transport has restarted operations gradually, in compliance with biosafety protocols.
- The Ministry of Transport has stated publicly that the first routes to reactivate will be with the US, Ecuador, Mexico, Bolivia, Brazil, the Dominican Republic and Guatemala.
- Nevertheless, additional routes have been silently reactivated based on reciprocity and bilateral agreements.

IMMIGRATION

- Most immigration processes have been reactivated.
- A foreign national can request an electronic visa, either through a consulate abroad or via the Ministry of Foreign Relations.
- Even so, immigration institutions are operating at only 30% capacity and so there are substantial delays in obtaining appointments.

ARGENTINA

TRAVEL RESTRICTIONS

- **TEMPORARY FLIGHT SUSPENSIONS**

- Domestic flights: suspended from 20 March to 15 October 2020. Currently limited to essential workers and for medical treatments.
- International flights: currently limited to repatriation flights and flights with special authorisation from the National Civil Aviation Administration.

- **GENERAL RESTRICTION ON FOREIGN TRAVELERS:** Argentina has closed its borders to non-resident foreign nationals until 20 December 2020.

Exemptions:

- Foreign nationals with specific authorisation from the Immigration Office
- Tourism from neighbouring countries
- Family members

ARGENTINA

NEW AIRLINE PROTOCOLS

- Implemented as of 15 September 2020.

NEW ENTRY REQUIREMENTS

- Since 6 December 2020, the following are required for entry:
 - Electronic affidavit
 - PCR test
 - Covid-19 app ('CUIDAR')
 - Health insurance for non-residents
 - Additional provincial authorisations and requirements.

CHILE

NEW MEASURES FOR ENTERING CHILE

- **GENERAL MEASURES:**

- Complete a Sworn affidavit
- 14-day 'Period of Vigilance for Travellers'

- **NON-RESIDENT FOREIGNERS:**

- Negative PCR test
- Travel insurance (minimum coverage of USD 30,000)

- **CHILEANS AND REGULAR FOREIGN RESIDENTS:**

- 14-day quarantine, unless they have a Negative PCR test

- Any person who enters from abroad may be randomly selected by the Health Authority at the time of entry, to submit to a Covid-19 test.

PERU

CLOSURE OF BORDERS

- The Government ordered the closure of borders on 16 March.
- The entry and exit of passengers to and from the country by any mode of transportation (air, sea and land) was suspended.
- Only humanitarian flights to Peru were permitted.
- Passengers who entered Peru before 16 March, and those who enter on humanitarian flights, must comply with mandatory social isolation (quarantine) for 15 calendar days.

PARTIAL RE-OPENING OF BORDERS

- Since 5 October: flights of up to four hours to selected locations in South and Central America.
- Since 1 November: flights of up to eight hours to selected locations in the Americas and the Caribbean.
- Starting 15 December: flights of more than eight hours to selected locations in Europe.

PERU

COVID-19 MOBILITY REQUIREMENTS

- All people flying from and to Peru must:
 - Present a health affidavit
 - Have a PCR negative test within 72 hours of travel
 - Comply with the use of masks and/or face shields during the flight



WORKING FROM HOME

COLOMBIA

WORK FROM HOME VS. TELEWORK DURING THE COVID-19 PANDEMIC

WORK FROM HOME

- Since it is an occasional, temporary, and exceptional situation, employers may authorize work from home in any sector of the economy.
- This temporary work from home is considered to be different from telework, and as such does not require the fulfilment of the conditions established for teleworking.
- For the adoption of a work from home arrangement, there must be an agreement between the employer and the employee.

TELEWORK

- The Ministry of Labour deems telework a valid measure if certain prescribed legal requirements are fulfilled.
- To implement teleworking, Colombian employers must comply with the following requirements:
 - Written agreement
 - Voluntary and reversible
 - Internal rules
 - Adequate working tools
 - Limits on working hours
 - Registration

ARGENTINA

WORKING FROM HOME IN RESPONSE TO COVID-19

- Working from home is permitted as a temporary public health measure.
- Ministry of Labour recommendation
- Lockdown: from 19 March to 8 November 2020 (Buenos Aires City and Metropolitan Area).
- New teleworking law passed 30 July 2020. Main principles:
 - Voluntary agreement in writing
 - Working time and 'digital disconnection'
 - Revocability
 - Provision of tools, equipment, supplies, and technology
 - Reimbursement of expenses
 - Regulation by the Ministry of Labour

CHILE

LAW ON REMOTE WORKING AND FLEXIBLE WORKING CONDITIONS

MAIN ASPECTS:

- Remote work must be agreed between the parties by execution of an employment contract or annex.
- Disconnection time must be at least 12 consecutive hours.
- Employees will be covered by the work accidents and professional diseases statutory insurance.
- The employer must inform employees about the health and safety conditions associated to the work.
- All tools, equipment, office supplies, elements and costs associated with performance of services must be provided/paid by the employer.
- If agreed after the start of the employment relationship, either party may unilaterally decide to return to the previous working conditions on a minimum 30 days' notice.

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REMOTE WORK

WHAT DOES IT CONSIST OF?

- Provision of services in the home or place of isolation
- Use of computers, telecommunications or similar means or equipment (e.g. internet or phones)
- Not applicable to workers confirmed with COVID-19 or those on medical leave (in these cases, paid leave is granted)
- Valid until 31 July 2021

MAIN OBLIGATIONS ON THE EMPLOYER:

- No effect on the nature of the employment relationship, remuneration or other economic conditions
- Must inform the worker about measures (including health and safety at work rules) that must be observed during remote work
- Must communicate to workers about, for example, the implementation of remote work, its duration, means of development, and the persons responsible for providing it
- Must respect the right of workers to disconnect
- Must observe the rules on maximum working hours
- Must prioritise workers who are considered to be in a risk group by age and clinical factors, and ensure they are set up to work remotely

PERU

TELEWORKING

WHAT DOES IT CONSIST OF?

- Provision of services without the physical presence of the worker
- Use of IT equipment

FORMAL REQUIREMENTS:

- Agreements that establish teleworking or a change from face-to-face working must be in writing and must set out certain minimum provisions (e.g. IT equipment to be used)

FORMS OF TELEWORK:

- **Complete:** the teleworker provides services entirely outside the workplace, with possible occasional office working to facilitate coordination
- **Mixed:** the teleworker provides services alternately inside and outside the workplace

Note that someone who occasionally provides services outside the workplace is not considered a teleworker.



RESTRICTIONS ON TERMINATION

COLOMBIA

TERMINATION AND SUSPENSION RULES CONTINUE IN FORCE

- Termination without cause with payment of statutory severance
 - Special considerations in cases of violation of fundamental rights
- Termination with cause following a disciplinary procedure and respecting all rights of the employee
- Collective dismissals:
 - Could require authorisation from the Ministry of Labour (authorisations are currently suspended)
 - Companies may opt for termination plans offering separation packages to employees

ARGENTINA

LEGAL TOOLS IN THE FACE OF ECONOMIC CRISIS OR FORCE MAJEURE

- Employment law regulations regarding unfair dismissal and dismissal/suspension on economic or force majeure grounds.
- Prohibition of unfair dismissals and dismissals/suspensions on economic or force majeure grounds from 31 March 2020 until 24 January 2021
- Aggravated severance payment for unfair dismissals or dismissals without just cause from 13 December 2019 until 25 January 2021
- Alternatives during this complex legal framework

CHILE

RESTRICTIONS ON TERMINATION

NOT ALLOWED:

- To terminate an employment contract due to force majeure or fortuitous event until the State of Catastrophe is still in force.
- To terminate an employment contract due to Company needs or termination at will only if the employment contract is temporary suspended.

ALLOWED:

- The Employer is able to dismiss an employee for any cause related to misbehavior, misconduct or breach of the labor contract obligations.
- Mutual agreement of the parties, employee's resignation, etc.
- To terminate an employment contract due to Company needs or termination at will if the employment contract is not temporary suspended.

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SUSPENSION OF WORK DURING THE COVID-19 PANDEMIC

REQUIREMENTS FOR SUSPENSION

- Alternative measures must be first exhausted
- The worker's obligation to provide the service and the employer's obligation to pay the worker temporarily cease, but the employment relationship is not terminated
- Not applicable to pregnant women; people with disabilities; those diagnosed with COVID-19; those at risk by age or clinical factors

ASSUMPTIONS

- The work cannot be done remotely due to the nature of the activities
- It is not possible to put the worker on paid leave due to the nature of the activities
- Remote work or paid leave are not possible due to the level of economic impact (based on a comparison of the wages/sales ratio for the same month in 2019)

VALIDITY

- Up to 30 days after the expiration of the Health Emergency (7 March 2021)

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TERMINATION OF EMPLOYMENT

- Valid reasons for individual dismissal include:
 - serious offences
 - criminal conviction for fraud
 - disability of the employee to work
- Valid reasons for collective dismissals include:
 - force majeure
 - economic, technical, structural or similar reasons
 - the dissolution, liquidation or insolvency of the company
 - equity restructuring



IN PROSPECT FOR 2021

COLOMBIA

WHAT TO EXPECT DURING 2021

REFORMS TO CURRENT LABOUR REGULATIONS ARE DEMANDED AND REQUIRED:

- Working time regulations should be more flexible.
- Minimum salary and fringe benefits should be adapted to the industry, size of employer and region.
- Gig economy and other forms of work should be regulated.

ARGENTINA

WHAT TO EXPECT DURING 2021

- **MOBILITY RESTRICTIONS:**

- New measures by March 2021 at the end of the summer season, depending on the COVID-19 situation
- Lockdown measures

- **TELEWORKING:**

- Potential new legal conflicts related to the return to the workplace, reimbursement of expenses, health and safety claims, discrimination, data protection and security issues
- Ministry of Labour regulation

- **RESTRICTIONS ON TERMINATIONS:**

- Mass layoffs due to company insolvencies and bankruptcy
- New working practices and internal policies

CHILE

WHAT TO EXPECT DURING 2021

- Continue with the “Step by Step, Chile recovers plan” which main objectives are:
 - Employment incentives
 - Investment
 - Support to small and medium-sized companies
 - Speed and simplification of permits
- Immigration Bill discussion
- Chile prepares to Write a New Constitution

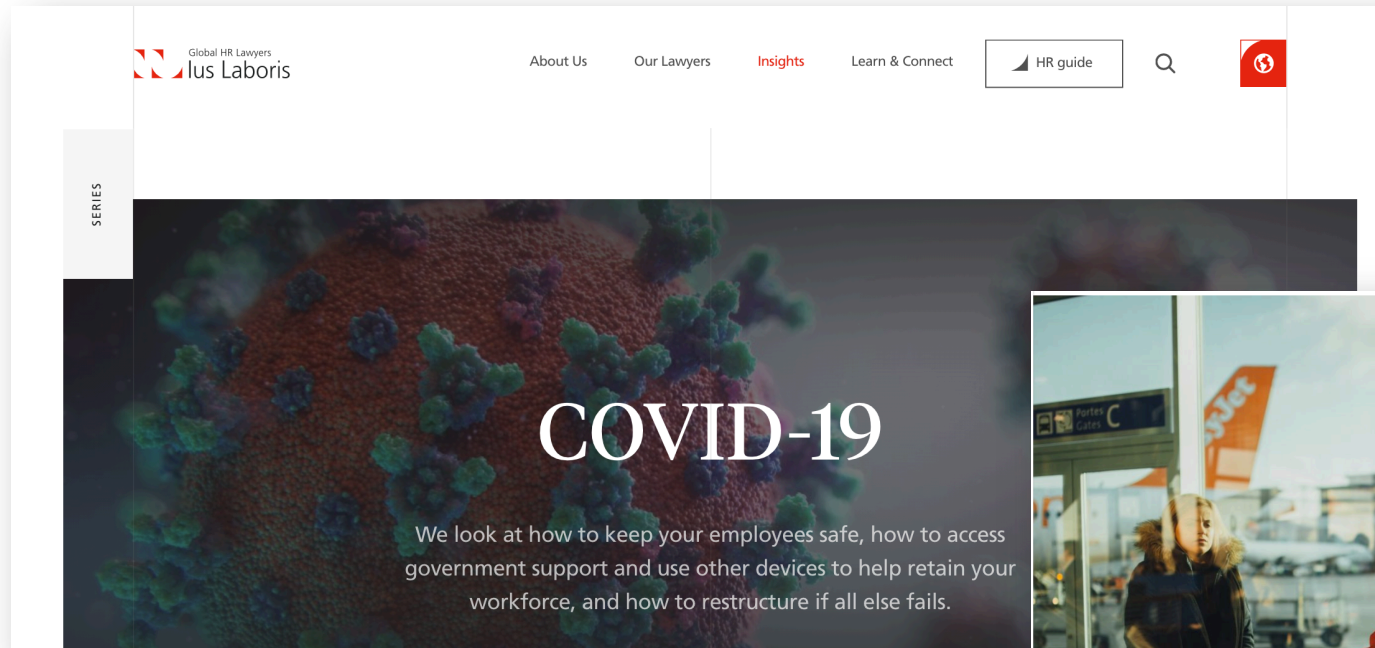
PERU

WHAT TO EXPECT DURING 2021

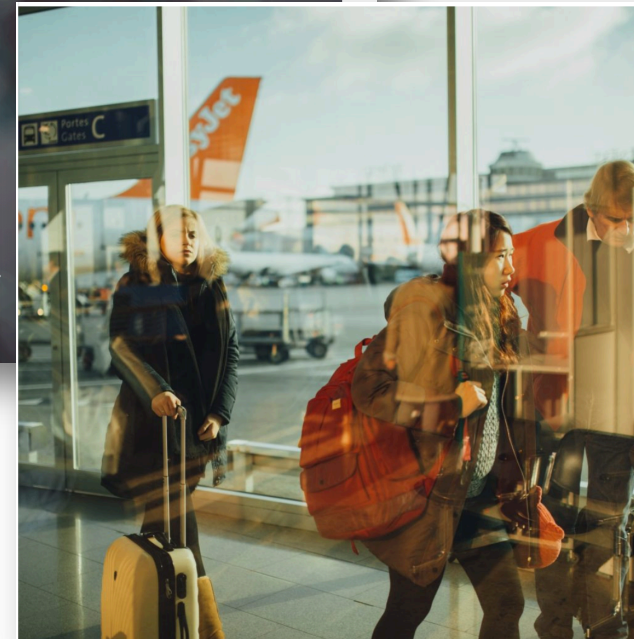
- **LABOUR INSPECTIONS:** regarding health and safety at work
- **LABOUR CLAIMS:** as consequence of measures adopted by employers (e.g. claims for reduction of salary and termination of labour contracts)
- **WORKING FROM HOME:** as a means of averting the further spread of COVID-19

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Every 2 months, our experts from around the world put together an Update on the law on immigration & global mobility, setting out recent changes to the law. See our Update for December 2020, with new rules for 25 countries.

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8 OCT 2020

Working from home: a solution for the long term

Working from home is fast becoming more than just a tool for crisis management. More and more companies are now considering it as a sustainable option for the longer term. Many employees view it as a valuable benefit and employers too, can start to see cost-savings on the horizon in...

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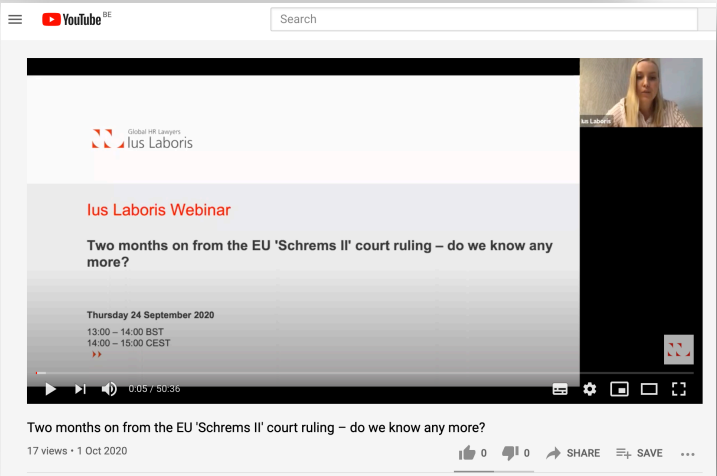
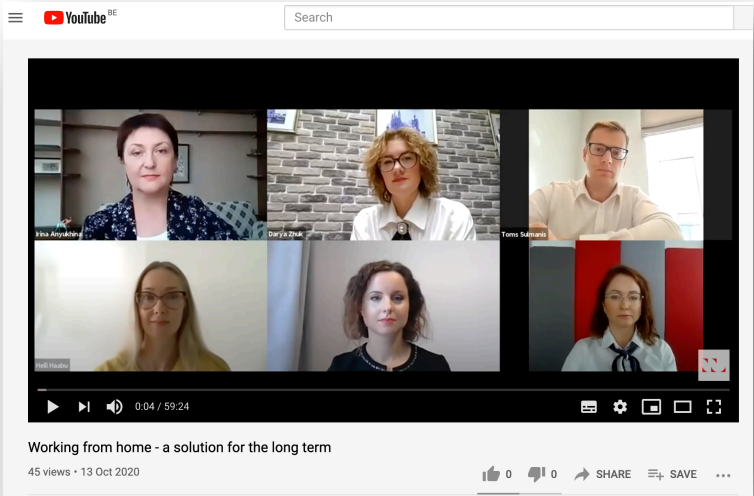
24 SEP 2020

Two months on from the EU 'Schrems II' court ruling – do we know any more??

In this informal panel discussion, experts from the UK, Germany, France and the Netherlands will discuss the European Court of Justice decision in the case of Schrems II handed down in July, and its impact on workplace data transfers. The Court ruled the EU-US Privacy Shield invalid, and although model...

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