

› Regulation of Chilean Labor Inclusion Law is modified

On November 3rd, the Ministry of Labor and Social Security published Decree No. 36 (the "New Decree") in the Official Gazette. This decree amends Supreme Decree No. 64 of 2017, issued by the Ministry of Labor and Social Security (the "Decree No. 64"), which approves the Regulation of Chapter II of Law No. 20.015 "on the Labor Inclusion of Persons with Disabilities" (hereinafter the "Labor Inclusion Law"), in Title III of Book I of the Labor Code.

The New Decree encompasses several amendments regarding compliance with the obligations introduced by the Labor Inclusion Law, among which we highlight the following:

- 1 New way of counting employees:** Pursuant to Article 157 bis of the Labor Code, companies with 100 or more employees must hire or maintain, as applicable, at least 1% of individuals with disabilities or recipients of a disability pension from any pension system, in relation to their total workforce.

To determine the company's number of employees the annual average must be considered, calculated as follows:

- a** It must be considered the period of the 12 months prior to October 31 of the year preceding the submission of the mandatory electronic communication to the Labor Board (the "Electronic Communication");
- b** To determine the average number of employees for each month, it must be considered the same quantity as reported in the contribution payment form to the Administrator of the Insurance under Law No. 16.744 on occupational accidents and professional diseases; and
- c** To calculate the annual average, it must be added the number of employees for each month of the period indicated in point (a) above and divide it by the number of months in the period.

- 2 Content of the electronic communication:** Companies obligated under the Labor Inclusion Law must, in January of each year, submit the Electronic Communication, providing information such as: (a) the number of employees for each month; (b) the annual average of company employees; (c) the number of valid contracts with persons with disabilities or recipients of a disability pension; (d) if there are well-founded reasons preventing the company from meeting the obligation to hire persons with disabilities or recipients of a disability pension; and (e) the identification of the employee responsible for human resources functions with specific knowledge in matters promoting labor inclusion (the "Inclusion Manager"), among other mentions.

- 3 Reconfiguration of "well-founded reasons" for alternative compliance:** The New Decree specifies the concept of "*well-founded reasons*" by which a company may not directly comply with the established hiring percentage and may opt for one of the alternative methods established by Article 157 ter of the Labor Code:

- a** In this regard, concerning the "*nature of the functions performed by the company*", the mere invocation of the company's business will not be considered a well-founded reason. Employers wishing to avail themselves of this well-founded reason must prepare a report signed by the company's legal representative and the Inclusion Manager.

La información contenida en esta alerta fue preparada por Carey y Cía. Ltda. sólo para fines educativos e informativos y no constituye asesoría legal.

Carey y Cía. Ltda.
Isidora Goyenechea 2800, Piso 43
Las Condes, Santiago, Chile.
www.carey.cl

- b Regarding the "*lack of interest of these individuals in job offers made by the company*", this circumstance will be deemed to occur when the employer has published its job offers through the National Employment Exchange (*Bolsa Nacional de Empleo* or "BNE") for at least thirty consecutive days and has not received applications from persons with disabilities or recipients of disability pensions meeting the required criteria. This fact will be certified by the BNE.

4 Incorporation of an "inclusion policy": In order to comply with the obligation of companies subject to the Labor Inclusion Law regarding the promotion of inclusion policies, the New Decree defines these policies as a set of actions carried out by the company aimed at incorporating the rights of persons with disabilities into the company's mission, vision, objectives, and strategic products. The design of these policies should transversally consider the implementation of accessibility measures and necessary adjustments according to the needs of the employee with disabilities.

The policy should include a diagnosis of the state of inclusion of persons with disabilities or recipients of disability pensions in the organization and the identification of environmental and attitudinal barriers, as well as an action plan considering the development of an inclusive organizational culture in the selection, hiring, induction, talent management, and termination processes. It also involves generating periodic training programs for all employees, directors, and managers of the company, as well as ongoing monitoring.

AUTORES: Óscar Aitken, Francisca Corti, Francisco Arce, Carla Karzulovic, Samuel Díaz.