

# Payet Rey Cauvi Pérez

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### **Emergency Decree 038-2020, that establishes complementary measures to mitigate the economic effects on employees and employers caused by COVID-19**

In the last few weeks, our government enacted diverse measures to mitigate and reduce COVID's-19 economic and social impact. However, companies felt that there was a lack of labor measures intended to preserve employment and that the government was taking too long to issue measures aimed at avoiding an economic crisis throughout the different industries. On April 14, the Peruvian government passed Emergency Decree 038-2020 that provides certain labor alternatives and measures for employees and employers. Nevertheless, specialists agree that this decree is not very clear and could lead to misunderstandings of some of the measures. In the following days, additional detailed regulations that clarify the measures in the emergency decree are expected.

- a. Furlough:** Companies that have not been able to (i) implement remote working or (ii) grant paid leave to their employees, due to the nature and characteristics of their activities or due to an economic or financial crisis faced by the company, are allowed to (i) adopt other measures aimed at keeping the labor relationship with the employees (e.g. granting vacations) or (ii) exceptionally, furloughing their employees, following a procedure established by the Labor Authority. A company that decides to furlough employees must upload an affidavit to the virtual platform created by the Labor Authority, explaining the reasons that support this decision and the employees affected by the measure. The Labor Authority is entitled to verify the authenticity of the information declared and the validity of the measure adopted by the Company within 30 business days of the presentation of the affidavit. Once verified, the Labor Authority has 7 business days to approve or deny the request. If the Labor Authority does not provide a response within the 7-day period, the affidavit would be considered approved. The unpaid furlough could be in force up until July 9, 2020.
- b. Health coverage:** During the unpaid furlough, Social Security (EsSalud) will continue providing health coverage to these employees. The health coverage includes previously declared relatives of employees.
- c. CTS:** Employees on unpaid furlough, are entitled to withdraw an amount of up to 1 month's salary for each month of furlough period

from their CTS fund. CTS is a form of unemployment insurance where the employer pays the equivalent of 1 month's salary to a fund in two equal installments in May and November of each calendar year. In the following days, a virtual platform will be implemented by the Labor Authority to process such requests.

- d. Advance payment:** If employees do not have enough money in their CTS fund to withdraw the amount indicated in part (c), they are entitled to request from the employer (i) an advance payment of the May 2020 CTS and (ii) an advance payment of the legal bonus to be paid in July 2020.
- e. Public Pension System:** Employees on unpaid furlough that (i) are part of the Public Pension System (ONP) and (ii) that could have applied for a pension if they continued working are exempted from paying their contributions to the ONP during the furlough (up to 3 months) and can request their retirement.
- f. Private Pension System:** Employees on unpaid furlough that are part of the Private Pension System (AFP), can withdraw an amount equivalent up to PEN 2,000.00 (aprox. USD 600.00) from their pension fund starting April 30th, 2020.

Employees that have not contributed to their pension fund (PPS) during February and March of this year are also entitled to withdraw an amount equivalent up to PEN 2,000.00 starting April 20th, 2020. Employees that have contributed to their pension fund (PPS) during February and March of this year but whose salary is equivalent to or less than PEN 2,400.00 (USD 715.00 approx.) are also entitled to withdraw said amount.

- g. Possibility to postpone CTS payment:** Employers can postpone the May 2020 CTS payment until November 2020, unless (i) the salary of the employee is equivalent to or less than PEN 2,400.00 or (ii) the employee is on unpaid furlough.

In the following days, more specific regulations will be issued to complement the referred Decree.

Note: This article is intended to be a general summary of the law and does not constitute legal advice. You should consult with counsel to determine applicable legal requirements in a specific situation.

### **About Payet, Rey, Cauvi, Pérez Abogados**

Founded in 1996, Payet, Rey, Cauvi, Pérez Abogados is one of the preeminent law firms in Peru, with extensive experience in providing high value-added services for all types of business activities.

Our full-service practice covers all areas of business law, including mergers & acquisitions, banking and finance, capital markets, project financing, real estate, foreign investments and privatizations, competition & antitrust, natural resources, environment, administrative and regulatory law, intellectual property, tax law, labor law, dispute resolution and economic criminal law.