



Labornet No. 1499

Enforcement of Act No. 27742 [*Ley Bases*], repealing fines in labor disputes

Dear All,

RECENT PRECEDENTS ON THE REPEAL OF FINES IN EMPLOYMENT MATTERS AND ENFORCEMENT OF ACT No. 27742 [*Ley Bases*]

The rules in question - Section 80 LCT (Employment Contract Act), Section 8 Act No. 24013 and Sections 1 and 2 of Act No. 25323 - have been repealed by Act No. 27742, which took effect on July 9, 2024.

Reference: Case File No. 128781/2018 - "Alves Ramón Alejandro v Bernardi Juan Manuel on/Labor Dispute - LOWER COURT in Civil, Commercial, Labor and Family Matters in PUERTO IGUAZÚ (Misiones) - August 1, 2024 (The court decision is not final).

"FINES UNDER A LAW THAT IS NOT EFFECTIVE AT THE TIME OF THE COURT DECISION CANNOT BE APPLICABLE"

This is a novel court decision in a case where an employee claimed incorrect registration based on his termination in 2016 (back then the aforementioned fines were valid). Even though his complaint was partially sustained, whereby the Defendant was ordered to pay ARS 550,932.87 -plus interest totaling ARS 35,099,626.31-, the Court found that the fines repealed by the *Ley Bases* were not applicable.

Specifically speaking, when analyzing compensation under Section 80 of the Employment Contract Act (LCT, for its acronym in Spanish) and/or Section 45 of Act No. 25345, for failure to deliver employment certificates, the Court emphasized that such fines had been repealed by Section 99 of Act No. 27742 in force at that time, and ruled that, although the Plaintiff was terminated in 2016, as the fine was intended as reparation and the goal was to prevent tax evasion, it should not be applicable in this case.

The Court based its decision on the grounds that *"it is not about applying a law retroactively but avoiding the imposition of fines under a law (Section 45 of Act No. 25345) that was specifically repealed when a subsequent law became effective (Section 99 of Act No. 27742)"*.

The same applies to fines under Section 8 of Act No. 24013, and Sections 1 and 2 of Act No. 25323. That is why the Court held that *"these fines should not be applied because they were repealed when Sections 99 and 100 of Act 27742 became effective"*.

Finally, in regard to the widely debated issue of interest capitalization since the publication of Resolution No. 2783/2784 by the National Labor Court of Appeals, the Court ruled that the CER (Reference Stabilization Coefficient) should be applied plus interest according to Section 770 of the Civil and Commercial Code of Argentina, subsection C, if this judgment becomes final, and the Defendant fails to pay the judgment amount in a timely manner.

However, using a completely different criterion, the Court in Corrientes rendered the following decision in the matter of "CORREA BAIER MIGUEL ANGEL FRANCISCO v GALLO JULIAN; ELVIL S.R.L. on Severance Pay, Case File No. 214588/21, dated August 1, 2024:

*"It is worth mentioning that a legal situation comes to an end when the acts from which it originates have been performed with all the related consequences, leaving no action or effect pending by operation of the previously existing law."*

Legal foundation for the Court Ruling:

"IX-) PRELIMINARY ISSUES: At this stage of the analysis, the Court cannot help but deal with the admissibility of the Plaintiff's claim for increased compensation, which has been recently repealed by the lawmaker when enacting Act No. 27742.

To begin with, this Court will address the question of the legal nature of these institutions, and then analyze their application when a law repeals them.

The rule in question expressly establishes: Act No. 27742 - Chapter VI. Repeal. Section 99: "Repeal Sections 8 to 17 and 120, paragraph a), of Act No. 24013; Section 9 of Act No. 25013; Sections 43 to 48 of Act No. 25345; Section 15 of Act No. 26727 and Section 50 of

Act No. 26844." Section 100: "Act No. 25323 and any regulations that oppose or are incompatible with the content of this title are repealed."

Now, when analyzing a law, whatever its nature, the first source of interpretation is the letter of the law (Supreme Court of Justice of Argentina, Judgments, 316:1247; Supreme Court of Justice of Argentina, Judgments, 314:1018; Supreme Court of Justice of Argentina, Judgments, 324:2780). Therefore, it is essential to cite the text of these repealed rules, which reveals their true legal essence.

Section 8 of Act No. 24013 established "Those employers who fail to register their employees shall pay the employees involved compensation equal to..." Section 9: "Those employers who enter different start dates on their employment records shall pay the employees involved compensation equal to..." Section 10: "Those employers who enter lower salaries than those actually paid on their employment records shall pay the employees involved compensation..." Section 15: "If an employer terminates an employee without fair cause within two (2) years ... the employee terminated shall be entitled to receive double severance pay..."

Section 45 of Act No. 25345 also established: "...Compensation shall accrue..." Section 47: "Compensation under Sections 8, 9 and 10 shall be applicable when...", as well as Section 1 of Act No. 25323: "Compensation under Acts No. 20744, Section 245 and 25,013, Section 7, or those that may supersede them in the future, shall be increased..." Section 2: "Whenever an employer,... fails to pay compensation under Sections 232, 233 and 245 of Act No. 20744 (consolidated text in 1976) and Sections 6 and 7 of Act No. 25013,... so the employee involved is obligated to initiate legal actions or take any other mandatory step to get paid, compensation shall be increased by 50%."

Naturally, over the years lawmakers passed different laws and classified these payments as severance pay, so no further comments.

This criterion for interpretation - considering the legal nature of such institutions as severance pay - is followed by the Supreme Court of Justice of Argentina in its precedents: "Di Mauro"; Judgments: 328:1745 and Espinosa, Gustavo Carlos v Marítima Maruba SA et al on Termination, August 29, 2019.

As to jurists' opinions on this matter, Mario Ackerman follows this line of argument and states that "fines under Section 80 LCT, Acts No. 24013, 25323 and 25325 are special reparations" (ACKERMAN, *Las indemnizaciones debidas como consecuencia de la extinción de la relación de trabajo, en Tratado de Derecho del Trabajo, Vol. IV, p. 407, note 330*). Grisolia agrees on that "Act No. 24013 provides for a true remedy to those employees whose employment contract has not been duly reported." (GRISOLÍA, Julio A. and AHUAD, Ernesto J., *La reparación del daño ante la falta de registración del contrato de trabajo, in J. A. 2006-I-1058/1065*).

In addition, it is worth mentioning that in the field of Labor and Employment Law, the law establishes how to calculate severance pay but there is no specific rate for damage

*quantification. Therefore, this Court found that the repealed regulations afforded a specific remedy to employees in case of unreported or under-reported employment.*

*As a result, this Court found without a shadow of a doubt that the legal nature of the repealed rules was severance pay for employees. This means compensation in case of unreported employment and the subsequent damage because the employer failed to meet the respective reporting obligations.*

*Having said this, it is worth mentioning that Section 237 of Act No. 27742 establishes: "The provisions of this law shall become effective the day after their publication in the Official Gazette of Argentina, except where it is otherwise stated." As the law was published in the Official Gazette on July 8, 2024, it became effective on July 9, 2024.*

*The validity of the provisions reforming the labor and employment law of Argentina should be assessed taking into account this effective date in light of the transitory law described below.*

*First, Section 7 CCC (Civil and Commercial Code) contains the general principle according to which as from its effective date the law applies to determine the consequences of the legal relationships in force with no retroactive effects - whether public order or not - except as otherwise provided.*

*This line of reasoning is based on one of the fundamental principles that govern the conflict of laws over time, meaning laws are not retroactive. This topic is explained in great detail by Paul Roubier. For him, the key is to distinguish at what specific moment the "legal situation" is when the new law becomes effective.*

*This is because there is a dynamic phase, which is the moment when the situation is created (and also when it is extinguished), and there is a static phase, which is the period when the situation produces its effects. These effects are the consequences that arise from a legal situation and take place after the situation arises and before it comes to an end.*

*However, it is clear that the new law - by its very immediate effect - applies to legal situations that may arise in the future (that is, after the effective date of the new law) but also to situations that are just arising or have arisen and have not come to an end yet.*

*It is worth mentioning that a legal situation comes to an end when the acts from which it originates have been performed with all the related consequences, so that no action or effect is pending by operation of the previously existing law.*

*Therefore, as these repealed rules contain severance pay or compensation for the damage caused by the employer's misconduct during employment, which was terminated before the effective date of Act No. 27742, in addition to the fact that the Plaintiff filed a claim to seek payment also before the effective date of the new law, this Court found that the legal situation had come to an end on the effective date of the new law that repealed such special compensation.*

*Therefore, as to the assessment of the legal situation between the parties and as a general rule, the law in force during employment, i.e. during the legal situation, shall be applicable. At this point of the analysis, it is important to discuss the principle of non-retroactivity, which ensures that the rights and obligations arising in legal situations that come to an end during the effective term of the old law shall not be changed by the enactment of a new law repealing the old provisions.*

*Even more so if it affects the employee's vested rights at the time of termination of the employment contract. So the protection of these vested rights is essential to maintain legal security and confidence in the legal system, preventing any legislative changes from causing uncertainty and unfair damage.*

*It is said that "the previously existing law continues to apply to those legal situations that arise during its effective term, even after a new law has been passed... the new law has no retroactive effects: it only applies for the future... the protection of vested rights is essential under transitory law to guarantee equality and equity in law enforcement". (Roubier, Les Conflits de Lois dans le Temps. Paris: Sirey, 1929, pp. 3/5)*

*This Court cannot help but point out that as provided by Section 9 LCT: "In case of doubt about the application of a statute or collective bargaining agreement, the most favorable terms to employees shall prevail... when in doubt about the interpretation or scope of the law... in specific cases, the Courts or those in charge of applying it will decide in the most favorable way for employees, when they have completed all the steps of their investigation or analysis, and evidence still is non-conclusive but always based on the principles of coherence and defense at trial..."*

*That is why this newly-passed Act No. 27742 should not be applied to legal relationships that ended before its effective date, as in this case..."*

Best regards,

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**Leading Law Firm - de Diego & Asociados** [These reports are prepared by the Senior Consulting Team, a sophisticated team of lawyers specialized in labor and employment law, with more than 40 years of solid experience serving clients with the latest trends, carefully selecting topics for Human Resources executives.]