<u>THE TRUTH ABOUT LABOR REFORM: WHICH DECISIVE ISSUES CAUSE CONFUSION</u>

By Julián A. de Diego

There is widespread concern about the degree of **ignorance and improvisation** with which the alleged critics questioned **the Labor Modernization Bill** introduced in the Senate, which has already passed out of committee.

Lawmakers and alleged experts debating this Bill not only were wrong about essential aspects of the law and completely ignorant, but more importantly, they improvised to get by and sparked unnecessary fear.

Apparently, reading **109 pages and 182 sections** was extremely demanding. So much so that many people were not up to the test and ended up making dogmatic comments, groundless, disparaging remarks, and especially saying embarrassing things that went viral on social media.

Labor Reform: The Main Mistakes Lawmakers and Experts Made

These same people drafted reports packed with conceptual errors, **misrepresenting the scope of the bill, presenting existing issues as novel solutions when they are not** and when they do not change the current scenario, just taking regional or sectorial solutions as global.

With the exception -naturally- of the bill-drafting group led by the Ministry of Human Capital run by **Sandra Pettovello**, and the support of the Department of Labor team led by **Julio Cordero**, many critics, talking heads, and commentators appear to **have either never read the bill or simply have no idea what it is about.**

I agree with **CGT's and some business organizations' legal advisors** that many critics condemned the bill without actually reading it. Reading this bill requires a high level of technical and legal knowledge as it will not be understood by lay communicators or broadcasters.

Actually, only a handful of people are familiar with the concept of institutional aggregation, **the ultra-activity principle for collective bargaining agreements, retroactive effects for a reform package, fundamental rights, vested v. inchoate rights,** banked hours, different models of industrial relations, year-round and split vacation time, salaries in foreign currency, collective bargaining at a lower level in unions and federations, the effects of CBA approval or homologation, the vicissitudes of union dues and agency fees, difference between substantive and procedural clauses, dynamic salaries as a bonus to base wage under CBA still in force. We are leaving behind the culture of inflation-based pay rises to embrace the culture of productivity, along with many other issues.

As we enter this new crucial stage with negotiations between the national government and the provinces, it is imperative to go back to basics and understand that labor modernization has one main goal: **to set clear rules to provide legal certainty and foster job creation considering emerging and exponential technologies and Generative Artificial Intelligence.**

To do so, freedom of contract is fundamental, and **rules should be specific and clear to resolve any conflict** and guide courts to make clear, conducive and aligned interpretations.

The same goes for modernizing collective bargaining. Due to undesired effects, collective bargaining agreements still contain old institutions, archaic concepts, job categories that have already disappeared, and with a few exceptions, do not rely on a dynamic, flexible and easily-adaptable industrial relations model, which is what we need right now.

The success of the key institutions that were added **last July through the *Ley de Bases* Act No. 27742**, such as the probationary period, legal exclusions and limits on presumptions (Section 23 LCT), and freedom of contract (alternative job boards), together with new rules on union agency fees, are bringing change to a new model.

Specific reference should be made to the repealed fines for unreported work or incorrect registration, which were first created **in 1991 by the National Employment**

Act No. 24013. So far they have not helped achieve the desired goal of full employment but rather promoted litigation and judicial claims, while undeclared work has tripled since then up to date.

The Labor Modernization Bill is the backbone of pending structural reforms. It should be the pillar for investors, entrepreneurs and employers, in a context of common objectives for workers and their legitimate representatives, and all parties as a whole should aim to create high-quality, diversified and inclusive jobs with multiple opportunities for all.