



LaborNet

Unconstitutionality of Section 55 of the Labor Modernization Act

Dear All,

Executive Summary – Declaration of Unconstitutionality of Section 55 of Law 27802

Panel I of the National Labor Court of Appeals – "Jacinto, Giselle Sabrina v Bourbon Café Srl et al on Employment Termination" – Judgment dated August 18, 2026.

For this specific case, Panel I of the National Labor Court of Appeals declared the unconstitutionality of Section 55 of Law 27802, as its provisions violate the rights recognized under Sections 14, 16 and 17 of the Argentine Constitution and the protective principle enshrined in Section 14 bis.

1. Scope. Section 55 of Law 27802

The Court of Appeals found that Section 54 of Law 27802 establishes, as a general rule, that payments arising out of individual employment relationships be adjusted according to the variation of the Consumer Price Index (CPI) – General Level – prepared by the INDEC (National Institute of Census and Statistics), with a pure interest rate of 3% per year.

Section 55 was an exception to this rule, applicable to employment-related claims that, at the time the new regulations became effective, were under litigation and pending a final judgment.

2. Grounds for the Declaration of Unconstitutionality

The Court held that such exception is constitutionally inadmissible because, even when establishing a floor equivalent to 67% of the amount that would derive from applying the CPI plus 3% per year, it could cause a substantial loss in the economic value of the employment-related claim.

Consequently, these provisions did not merely regulate the ancillary components of the claim, but implied a significant statutory reduction, benefiting the debtor by diluting a portion of the claim over time.

In addition, the Court found that Section 55 violated the principle of equality by establishing a differentiated treatment among plaintiffs based on whether their claims were under litigation. The Court considered this circumstance to lack an objective and sufficient justification.

Finally, it found that the rule affected the right of access to jurisdiction, as it subjects those who exercised their right of action to a less favorable updating system.

3. Consequences for the Declaration of Unconstitutionality

The Court expressly clarified that the declaration of unconstitutionality of Section 55 does not result in the application of the system prior to Law 27802.

On the contrary, it held that, once the exception provided for by Section 55 is eliminated, the general system under Section 54 of Law 27802 shall be applicable.

Consequently, the claim under litigation will be adjusted according to the variation of the CPI, adding a pure interest rate of 3% per year on the updated principal, from the time each amount became due until its effective payment. For those periods in which the CPI is not published, the CER shall be used.

4. Implications for Companies

This court decision gains particular relevance for pending labor lawsuits that fall within the timeframe of Section 55.

Although this is a declaration of unconstitutionality for this specific case, the criteria adopted by Panel I sets an important precedent. It determines that labor claims pending a final judgment should not be subject to the exceptional system under Section 55, but rather to the general adjustment system under Section 54.

In terms of contingency management, this new criterion could impact:

- How contingent labor liabilities are calculated;
- Which provisions should be made for ongoing judicial proceedings;
- How to assess the amounts for settlement agreements; and
- Which procedural strategy to take for pending employment-related cases.

Consequently, it is advisable to conduct a review of all ongoing labor lawsuits that could be impacted by Section 55 in order to evaluate any potential effect as a result of the application of the adjustment mechanism under Section 54.

Finally, it is worth noting that this court decision does not, by itself, declare the unconstitutionality of Section 55 with an *erga omnes* effect, as the constitutional invalidity is declared in a specific case. Therefore, it will be important to monitor whether other courts adopt this approach and how case law develops on the matter.

Please feel free to contact us for further information.

Best regards,

Leading **Law Firm - de Diego & Asociados** [These reports are prepared by our 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