

LEGAL UPDATE NEWSLETTER

May 2021

This newsletter provides information about the laws published during the period, the bills currently being processed in Congress, the decrees and regulations issued by the government and autonomous agencies, as well as important jurisprudence on matters that may impact foreign investment in Chile.

The information provided herein is strictly for guidance purposes only, and under no circumstances should be regarded as replacing an official interpretation by the competent authorities regarding the matters presented.

PUBLISHED LAWS

Constitutional reform to establish and regulate a special regime for the withdrawal of pension funds and advances of annuities.

Subject Social security

Subcategory Pension funds and annuities

Law No. 21.330

Publication date April 28, 2021

Effective date April 28, 2021

The law introduces a new transitory article to the Constitution, which authorizes members of the private pension funds system, to exceptionally and voluntarily withdraw up to **10% of the accumulated funds** in their individual capitalization accounts (the accounts in which the Pension Funds Administrators assign their regular contributions) up to a **maximum withdrawal amount of 150 UF and a minimum of 35 UF**.

The withdrawals will be free of taxes **and there is no obligation to return the funds in the future**. Those who exercise their right to withdraw their funds can opt to increase their mandatory contributions to 11% of their salaries and income, for a minimum period of 1 year and up to when they consider appropriate.

Similarly, those that withdraw funds can **choose to postpone their retirement and receive fiscal contributions** on the funds in their individual accounts, for each year they postpone receiving their pension. The amount and form in which the fiscal contribution will operate is going to be determined by a qualified-majority law.

On the other hand, those who receive **life annuity pensions**, or their beneficiaries, can request an advanced payment, up to an amount equivalent to **10% of the reserve** maintained in their respective insurance company,

up to a maximum of 150 UF. The advanced payment **will be charged against the monthly amount of future** life annuities, pro rata, proportionally and in the same percentage as the advanced payment.

The members can request the withdrawal of their funds **up to 365 days after the publication of the law**. The payment of the solicited funds shall be made to the member or their beneficiaries within a maximum of 30 days from the reception of the request.

Law that modernizes the Labor Directorate

Subject	Labor
Subcategory	Digitalization, electronic inspection, contracts, administrative sanctions
Law No.	<u>21.327</u>
Publication date	April 30, 2021
Effective date	October 1, 2021, though some provisions will enter into force on different dates .

The law introduces changes to the Labor Code and other laws in order to modernize the functioning of the Labor Directorate (“Dirección del Trabajo”). The following changes are highlighted:

Electronic Platforms

- Employers will be obliged to **register employment documents** on the Labor Directorate’s website.
- New employment contracts must be registered within **15 days of their conclusion**. Furthermore, all employment contracts in effect that were signed prior to this law entering into force must be registered **within a year**.
- At the moment of **registering the employment contract**, employers must indicate the terms agreed. Also, at the end of the contract, the employer must report the date and reason for the contract’s termination.
- The Labor Directorate is required to have an **electronic system** for processing and following up on complaints, inspections, requests for pronouncements, and consultations regarding procedures in progress.
- Likewise, the law sets the obligation to include the **domicile and email address** of both parties to employment contracts signed following the law’s entry into force.

Handling of Data

- The Labor Directorate is authorized to sign agreements with public and private entities that **manage databases** referring to employers, companies, employees, and trade unions, for obtaining, handling, and maintaining data related to labor obligations, social security and health and safety in the workplace.

- This data must be **processed appropriately** and only used to the extent needed in order for these entities to fulfill their functions in accordance with the law. They must maintain absolute confidentiality regarding the information and personal data obtained.

Regulation of labor mediation

- A **new definition of mediation** is added, incorporating, as a new type of voluntary mediation, that which is summoned ex officio by the Labor Directorate for the fulfillment of its objectives and the exercise of its powers.
- In addition, the law regulates the participation in mediations by **expert advisers** who are already listed on a register maintained by the Labor Directorate.

Micro businesses and SMEs

- The law also sets up a **department to attend micro, small and medium-sized companies** within the Labor Relations Department of the Labor Directorate.

Fines

- The law creates a **new category of fines** for breaches of labor obligations, distinguishing between micro and small companies.
- The **resolution that issues a fine** must include its categorization, classifying it as minor, serious, or very serious, considering the nature of the offense, the impact on labor rights, the number of workers affected and the behavior of the employer.

BILLS

Bill to modify law No. 19.039 relating to Industrial Property

Type of bill	Government Motion
Subject	Industrial Property
Subcategory	Trademarks, patents, industrial drawings and designs
Bulletin No.	<u>12.135-03</u>
Entry date	October 2, 2018
Status	Legislative discussion finalized. Awaiting enactment by the President of the Republic

Urgency	No urgency
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This initiative incorporates a series of modifications to Law No. 19.039 on Industrial Property. Its objective is to promote innovation and productivity, modernize registration procedures, and allow more efficient management by the National Institute of Industrial Property (Inapi). The main changes are:

Modifications relating to Trademarks

- **The concept of "trademark" is broadened**, permitting signs or logos that are not capable of graphic representation, thereby allowing the registration of olfactory or three-dimensional trademarks.
- Trademarks of **commercial and industrial establishments are eliminated**. They must be renewed as service marks (in classes 35 and 40, respectively).
- Incorporation of new grounds for cancellation of the registration:
 - a) **Lack of effective use of the trademark**: if during the five years following registration, the trademark has not been the object of real and effective use by the owner or a third party, to distinguish one or more of the respective products and/or services; or that said use had been suspended uninterruptedly for the same period.
 - b) **Loss of distinctive character**: if the owner has provoked or tolerated the trademark to become the usual designation of a product or service.

The expiration cannot occur automatically, but **must be requested** by whoever has a legitimate interest.

- General opposition and registration **procedures are simplified**, mainly relating to notifications and payment of fees.
- Likewise, the bill introduces the crime of **trademark counterfeiting**, establishing a penalty of imprisonment for a period ranging between 61 days to 3 years and 1 day, in addition to fines. This applies to those who counterfeit a registered trademark for the same products and services; and for those who manufacture, bring into the country, or possess with the aim of commercialization or commercialize, objects that feature counterfeit trademarks of the same products or services for profit and their commercial distribution.

Modifications relating to Patents

- The granting of a **provisional patent** is allowed, when the applicant cannot comply with all of the elements required for a full patent application. This provisional patent will be granted for a period of 12 months, during which the applicant will have a priority right to apply for the definitive patent.
- **New exceptions to patent exclusivity rights**: non-commercial private acts, experimental acts, preparation of prescription drugs for individual cases, amongst others.

- The bill also introduces the **patent usurpation action**, which may be filed by the legitimate owner against anyone who has registered a patent without the right to do so. The owner may request the transfer of the registration and the respective compensation for damages. This action must be presented before the **civil courts**.
- Likewise, the **period of supplementary patent protection is limited to a maximum of 5 years**, in cases where there has been an unjustified administrative delay in granting the patent. On the other hand, the period for applying for protection is reduced, from six months to 60 calendar days.

The bill also establishes a new abbreviated procedure for granting protection for **industrial drawings and designs** and increasing the period of protection to 15 years.

Bill to limit the creation of disposable products and to regulate plastics

Type of bill	Parliamentary Motion
Subject	Environment
Subcategory	Plastics and disposable products
Bulletin No.	<u>12.633-12</u> and others merged
Entry date	May 15, 2019
Status	Legislative discussion finalized. Awaiting enactment by the President of the Republic.
Urgency	Extreme urgency

The objective of this bill is to protect the environment and reduce waste by **limiting the provision of single-use products** in food outlets; to promote the **reuse and certification of single-use plastics**, and to regulate **disposable plastic bottles**.

For the purposes of the law, **single-use products** are understood to be: glasses, cups, bowls, cutlery (knife, fork and spoon), chopsticks, pots, stirrers, straws, plates, glasses, boxes or containers of prepared food, trays, sachets, individual items and caps other than those used for bottles, and which are not reusable.

Limitation on the provision of single-use products in food outlets

- Where items are consumed **within the establishment**, the use of single-use products is **prohibited**, regardless of the material they are made of.
- Where items are consumed **away from the establishment**, the use of disposable products using materials other than plastic is allowed. Plastic may be used if it is certified by the Environment Ministry.

- Single-use products other than prepared food containers **should be provided only when the consumer expressly requests them.**
- The use of **single-use plastic straws, stirrers, cutlery, and chopsticks** is absolutely prohibited.

Promotion of the reuse and certification of single-use plastics

- To prove that a plastic product meets the legal requirements, the manufacturer or importer must have a **certificate** issued by the Environment Ministry to that effect.
- Those establishments that provide certified plastic products must **display the certificates in a visible way to the public.** Furthermore, certified plastics should be easily distinguishable for consumers.

Regulation of disposable plastic bottles

- Companies that sell beverages will be **obliged to offer them in returnable bottles** and to receive these containers from consumers. MSMEs are excluded from this obligation.
- Disposable plastic bottles must be made using a percentage of plastic that has been **collected and recycled within the country** (which must be duly certified), in the quantities determined by regulations.
- Regulations will determine **the percentage of returnable bottles** that supermarkets must have available for sale on their shelves.

Other aspects addressed by the bill include duties concerning publicity information and education; inspection; infractions and fines; public bodies, among others.

JURISPRUDENCE

Supreme Court

Case No.	<u>129.322-2020</u>
Type of remedy	Appeal
Date	May 17, 2021
Subject	Immigration
Subcategory	Definitive residence, Department of Foreign Affairs and Immigration

The Supreme Court **reversed the ruling of the Santiago Court of Appeals**, which had rejected the protection application filed by a Peruvian citizen against the Civil Registry and Identification Service, due to the latter's refusal to grant her a renewal of her identity card.

The Court of Appeals indicated that the Service **had not acted illegally**, since the plaintiff did not have the residence stamp issued by the Department of Immigration and Migration (DEM). It should be noted that the plaintiff indicated that her request for definitive residence **had not been answered since 2018**.

However, the Supreme Court found that the Civil Registry and Identification Service **had failed to comply with the principles of speed, conclusiveness, procedural economy, and inexcusability** established in the Law of the General Basis for State Administration. This failure, in as much as it resulted in the delay of the decision of the plaintiff's request, made it impossible for her to regularize her life in the country.

Therefore, the Supreme Court ordered that the Department of Immigration and Migration **issue the corresponding ruling regarding the application for definitive residence** presented by the plaintiff.

Supreme Court

Case No.	<u>4.415-2021</u>
Type of remedy	Appeal
Date	May 10, 2021
Subject	Environmental issues
Subcategory	Construction, noise pollution

The Supreme Court **reversed the decision of the Valdivia Court of Appeals**, which rejected the remedy of protection filed against a real estate company by the owner of a property adjacent to the company's construction project. The plaintiff stated that the project would be causing disturbances to the property and the integrity of his household, due to the existence of annoying noises and vibrations.

Upon receiving the appeal for protection, the Supreme Court requested a report from the Environment Superintendency, a representative of which went in person to inspect the adjoining property. At the site, the Superintendency verified that **although nocturnal noises were not frequent, there were noises above the limits** established by Supreme Decree No. 38 of 2011, issued by the Environment Ministry.

Consequently, the Supreme Court required the real estate company to **adjust the noise emissions to the limits established in the current regulations**. Similarly, the Environment Superintendency was ordered to verify compliance with the order.

Supreme Court

Case No.	<u>129.589-2021</u>
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Type of remedy	Appeal
Date	May 03, 2021
Subject	Environmental issues
Subcategory	Environmental Assessment Resolution, saturated zone

The Supreme Court reversed the ruling of the Temuco Court of Appeals, which **rejected the remedy of protection filed by 65 residents of the Villarrica Lake basin** and the members of the indigenous community, "Manuel Huiquirir Indigenous Reserve", against the Environmental Assessment Commission of the La Araucanía Region, for having favorably evaluated a pisciculture modification project.

The plaintiffs stated that the Environmental Assessment Resolution (RCA) relating to the project was **an illegal, arbitrary act and contrary to constitutional guarantees**. They argued that the Villarrica lake basin had been declared a saturated zone and the project implied an increase in dissolved phosphorus in the area, which is a polluting contaminant. The RCA was challenged in administrative proceedings, a claim that was pending resolution.

The Court of Appeals considered that contentious administrative issues of an environmental nature require **a procedure of broad nature**. Such a procedure would signify addressing technical and legal aspects handed over to the environmental authority, and **this is outside the scope of a remedy of protection**.

However, the Supreme Court indicated that the lake basin **was susceptible to being affected by the project in question** and that the environmental monitoring obligations cannot be classified as mitigation measures. Therefore, it ordered the **suspension of the application of the RCA** until the claim is resolved in administrative proceedings.