



Regulation Of The Labour Credit Guarantee Fund

On March 11, 2019, the Executive Power regulated Act No. 19.690, which established the creation within the scope of the Banco de Previsión Social (BPS local social security agency), of the Labour Credit Guarantee Fund.

This Act created the fund to cover the eventual insolvency of an employer for the fulfilment of labour credits of its employees.

In the aforementioned Act, the fund is financed by a contribution of 0.025% on the salaries that are subject to social security contributions and that constitute taxable material. The Decree exempts from this contribution the entities that have exoneration of employer contributions.

Beneficiary workers

The dependent workers of private activities who provide remunerated services covered by the BPS, the Retirement and Banking Pension Fund and the Notarial Social Security Fund.

An inclusion schedule was established considering the activity group, from 1°/6/19, companies in groups 4, 6, 7, 14, 15 and 17, from 1°/9/19, companies in groups 2, 3, 5, 12, 16 and 18, from 1°/12/19 companies in groups 1, 8, 9, 10, 11 and 13 and from 1°/3/20 companies in the remaining groups.

They are excluded by art. 5° of the Act, those workers who have either links of consanguinity or affinity up to third degree inclusive either with the employer or members of the board of the company; Directors, general managers and all the employees entitled with decision-making authority in key issues of the business; workers that integrate a working cooperative to continue with the business where they rendered services, as long as they comply with what stated in the Numeral 2, Art. 174 of the Act No. 18.387.

Guaranteed labour credits

The guaranteed labour credits are:

- Salaries or wages earned during the six months prior to the date of the payments suspension or last salary paid. The decree establishes that for salaries and wages it is understood the basic remuneration that the worker received, in the case of commissions or piecework, the basic salary should be determined by the average of the amount received in each day in the last six months. Excluding items such as overtime, work breaks, bonuses



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(seniority, assiduity, night-time, productivity, etc.), food and housing, as well as any other marginal remuneration.

- Vacation pay, vacation bonus and 13th salary, generated in the last two years prior to the date of payment suspension or last salary paid.
- Severance Payment established by law.
- Penalty of 10% for the lack of payment of labour credits provided by the Art. 29 of the Act No. 18.572.

Maximum limit guaranteed

The BPS will provide the corresponding benefit through a single cash payment, up to the nominal sum equivalent to UI 105.000, to which discounts will be made for personal social security contributions. The imputation of such payment will be made to the oldest credits and being of the same date, prorata. For the case in which the payment is made to workers covered by another pension entity, the BPS will take the precautions made by said entity.

Insolvency of the employer and payment of labour credits

For these purposes, the insolvency of the employer is understood when, in the procedures provided for in Title VII of the General Code of the Procedure and / or Law N° 18.387 and amendments, the bankruptcy agreement has been accepted or rejected, or the Court has declared the opening of the liquidation and the worker has not been satisfied in his labour credit.

The BPS will pay the benefit provided that it is proved that i) the employer is insolvent in the terms already mentioned, ii) that the credits have been verified within the insolvency proceeding, or, as the case may be, within the civil collective enforcement process, or they have been recognized in a final judgment issued by the competent court in labor matters. This will be proved by the testimony of the corresponding judicial file, where the verification or determination of the labour credit and the insolvency of the employer are recorded. The beneficiary must sign an affidavit in order to justify that it complies with the requirements established by the regulations to exercise its right to be paid.

Time limit of credits

The decree establishes that the right to collect the benefit will expire after four years, counted from the date on which it could be claimed. For these purposes, the enforceability will be from the moment that the bankruptcy agreement is accepted or rejected or the liquidation of the employer is ordered.

Enforcement date

The collection of the special contribution will begin as of January 2019 and the guarantee fund will begin to ensure the labor credits that accrue as of June 1, 2019, without prejudice to the aforementioned inclusion schedule.

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