

## LEGAL ALERT

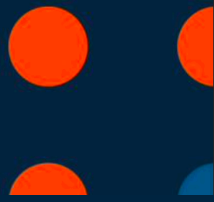
December 2023

### **Inclusion Law: update of the regulations of the law that encourages labor inclusion.**

Dear clients and friends, on November 3, 2023, Decree No. 36 was published in the Official Gazette, which modifies Supreme Decree No. 64 of 2017, of the Ministry of Labor and Social Welfare, the main purpose of the aforementioned modification is objective is to improve inspection tools and the labor inclusion of people with disabilities. The deadline to comply this year is December 31, 2023.



*The content of this information does not and cannot be considered, in any case, legal advice on the part of its authors, which has been written in a merely informative manner.*



In addition to the individualized modification Decree, the labor management, through Opinion No. 1513/42, addresses the scope of the modifications incorporated in the Supreme Decree, specifically in reference to the average number of workers. electronic communication and the registration of contracts for workers with disabilities, nullifying any previous doctrine that is incompatible with this ruling.

Let us remember that the labor inclusion law encourages the inclusion of people with disabilities into the world of work, establishing a 1% job reserve for people with disabilities or beneficiaries of the disability pension of any pension regime, in State organizations and private companies that have 100 or more workers or officials.

In the case of the private sphere, if for justified reasons companies cannot comply with what is ordered by law, there are alternative compliance mechanisms which are:

1. Celebrate service provision contracts with companies that hire people with disabilities;
2. Make monetary donations to projects or programs of associations, corporations or foundations referred to in article 2 of Law No. 19,885.

Among the most relevant aspects of the modifications established in the Decree we can highlight:

## I) **Obligated companies.**

Companies with 100 or more workers must hire or keep hired, as appropriate, at least 1% of people with disabilities or recipients of a disability pension, from any pension regime, in relation to the total number of their workers.

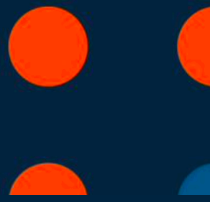
With respect to companies that constitute a single employer for labor and pension purposes (Multi RUT), the obligation to legally reserve the hiring of people with disabilities or recipients of a disability pension from any pension regime will be effective with respect to each company of one hundred or more workers, unless two or more companies are judicially declared the sole employer for labor and pension purposes.

## II) **Determination of the total number of workers in a company.**

To determine the number of workers in a company, an annual average will be used considering the number of workers each month reported in the declaration and/or payment of contributions form to the Administrative Body of the Social Security against Risks of Work Accidents and Occupational Illnesses. , from the previous year.

To determine the number of workers in a company, an annual average will be used, considering the workers hired the previous year, according to the following rules:

By 2024:



The number of workers for each of the 10 months prior to 10/31/2023 must be added, that is, from 01/01/2023 to 10/31/2023, as reported in the declaration and/or payment of contributions to the Insurance Administration Body. Law No. 16,744 and divide this sum by 10.

From 2025:

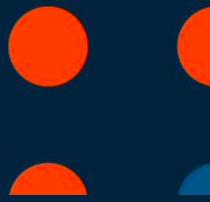
The number of workers for each of the 12 months prior to October 31 of the year prior to the sending of the electronic communication must be added, as reported in the declaration and/or payment of contributions form to the Insurance Administration Body of the Law No. 16,744 and divide this sum by 12.

### **III) Obligation to legally reserve jobs for people with disabilities or recipients of disability pensions.**

Compliance with the obligations regarding labor inclusion of people with disabilities must be carried out during each of the months of the year, in accordance with the information contained in the electronic communication sent in the month of January based on the workers hired in the year. above, without considering the effective number of workers hired each month.

### **IV) Obligation to register employment contracts.**

Companies must register employment contracts entered into with people with disabilities or recipients of a disability pension, as well as their modifications or terms, within fifteen days following their conclusion through the Labor Directorate's website.



**V) Reasonable reasons to comply with the legal contracting reserve through subsidiary measures.**

Only the following are considered justified reasons:

a) The nature of the functions carried out by the company. When, due to its characteristics or specialty, none of the processes or activities that the company executes can be developed by people with disabilities. When considering this cause, one must keep in mind:

- It is not considered a well-founded reason to invoke the company's business.

- The employer who meets the conditions to establish this justified reason must prepare a report that analyzes the company's jobs, considering the description of each position, the essential and non-essential functions and activities to be carried out; the required skills and technical knowledge; and the location of the job.

b) The employer who meets the conditions to establish this justified reason must prepare a report that analyzes the company's jobs, considering the description of each position, the essential and non-essential functions and activities to be carried out; the required skills and technical knowledge; and the location of the job.

- The lack of people with disabilities or recipients of a disability pension from any pension scheme interested in the job offers made by the employer. To consider this cause, it is required.

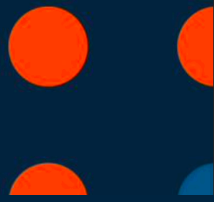
- The publication of the job offer for at least 30 calendar days in the National Employment Exchange established in Law No. 19,728; and

- The lack of applications from people with disabilities or recipients of disability pensions who meet the requirements.
- In relation to this cause, it must be kept in mind that the existence of well-founded reasons must be reported in the annual electronic communication for the month of January.

## **VI) Subsidiary compliance measures.**

Companies that, for justified reasons, cannot fully or partially comply with the legal reservation for hiring people with disabilities have two alternatives:

- a) Celebrating and executing contracts for the provision of services with companies that have hired people with disabilities or recipients of a disability pension, who must effectively provide services for the main company. In this regard, the annual amount of the agreement may not be less than twenty-four minimum monthly earnings and must necessarily be executed, in whole or in part, by a person with a disability or recipient of a disability pension.
- b) Make monetary donations to projects or programs of associations, corporations or foundations referred to in article 2 of Law No. 19,885.
  - Starting with the electronic communication of January 2024, donations must be made in the month of January of the year of sending of the electronic communication and prior to its sending, to comply through a subsidiary measure of compliance with the obligation of contracting that annuity.



## VII) Obligation to have a Labor Inclusion Manager

Companies that have more than 100 workers must hire or keep hired at least one person with specific knowledge in matters that promote labor inclusion, which is accredited with certification granted by the National Labor Skills Certification System.

## VIII) Background that must be reported to the Labor Directorate in January 2024.

The total number of workers in the company, broken down by each of the months considered for the calculation:

1. Copy of the contracts of people hired with disabilities or recipients of a disability pension.; I
2. If there are well-founded reasons why the company cannot comply with the obligation to hire workers with disabilities or recipients of disability pensions, identifying the reason and its foundations, and the subsidiary compliance measure to be adopted;
3. Certificate(s) of donation(s) to projects or programs of associations, corporations or foundations referred to in article 2 of Law No. 19,885, issued until December 31, 2023, and/or
4. Background that records the conclusion and execution of contracts for the provision of services with companies that have hired people with disabilities or recipients of disability pensions.

These records show compliance with the obligations corresponding to the year 2023.

## **IX) Entry into force.**

The modifications incorporated by Decree No. 36 come into force as of November 3, 2023 and, consequently, are applicable from the electronic communication that obligated companies must send to the Labor Directorate in the month of January. of the year 2024.

This is only a summarized legal alert and does not replace the full text of the law, which is why we suggest you consult any concerns regarding the scope of said law, keeping the attention of our work team, which is at your entire disposal: Daniel Cortés S. [dcortes@dnpv.cl](mailto:dcortes@dnpv.cl) and/or Javiera Barría W. [jbarria@dnpv.cl](mailto:jbarria@dnpv.cl).

Without further ado, I remain yours,

**dnpv abogados**