

## **EMPLOYEE TRANSFER: INNOVATIVE SOLUTIONS**

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### **Introduction**

Due to the Social, Preventive and Mandatory Isolation (ASPO) measures adopted in Argentina, many companies impacted by a decrease in their activities suspended employees, while others in the opposite situation had to incorporate new staff. This situation started a new trend in the market: the transfer or loan of employees, under innovative schemes that are not yet contemplated in labor regulations.

Indeed, certain renowned companies have recently executed alliances and framework collaboration agreements in order to transfer suspended employees (temporarily, in most cases): some well-known examples of these alliances are General Motors and Unilever; Le Pain Quotidien and Mercado Libre; Alsea (Burger King, Starbucks) and Pedidos Ya; Arcos Dorados (McDonlad's) and Mercado Libre.

The characteristics of the collaboration agreements and transfers executed differ depending on the needs and particularities of each company, so it is important to conduct a case by case analysis in order to define the best strategy and minimize risks. Nevertheless, it is noted that most of these transfers include the following elements:

- Execution of a framework collaboration agreement between the companies which defines a program for the transfer of employees and the rights and obligations of the companies.
- Employees voluntarily participate in a selection and hiring process conducted by the company that receives temporarily the employee.
- Selected employees remain on the payroll of their employer and at the same time are incorporated into the payroll of the other company, under the figure of a fixed-term or temporary contract.
- A leave of absence without pay is agreed between the employee and his original employer.

- The Company expressly authorizes the employee to provide services to the other company, asserting that the employee's non-competition obligations are not affected by this situation.
- The union that represents the employees is consulted and consents the transfer.

## **Brief alliances review**

### *General Motors and Unilever*

Unilever and General Motors (GM) entered into a framework agreement through which Unilever temporarily hired GM employees who were suspended. This was the first of this kind of deals and set a trend that other companies soon followed.

Certain GM employees were given the opportunity to voluntarily participate in the program and after a selection process, they entered Unilever on a fixed-term contract with the same salary as an operator of that company. At the same time, they continued suspended in GM, collecting 70% of their remuneration under the figure of non-remunerative benefit (section 223 bis of the Labor Contract Law).

Additionally, the transferred employees had the possibility of acquiring new skills since the companies have different production processes.

Under this scheme Unilever hired at least 15 employees from GM plant in Villa Gobernador Gálvez, Santa Fe. The union that represents GM workers (SMATA, mechanic employee's union), cooperated for the execution of the framework agreement.

### *Le Pain Quotidien and Mercado Libre*

There was a previous relationship between these companies since Le Pain Quotidien (LPQ) has an "in company" sales location in one of Mercado Libre's (ML) premises. Through a framework collaboration agreement, and with the consent of the Gastronomic Union, approximately 100 LPQ employees (waitresses, cashiers and cooks) took a leave of absence without pay at LPQ at the same time were incorporated into ML through a fixed-term contract, maintaining gastronomic union healthcare.

### *Alesea and Pedidos Ya*

This agreement is substantially different from the others since the transfer of Alesea employees for the commercial and support areas of Pedidos Ya, is of a permanent nature, not temporary.

Indeed, Alsea's employees may voluntarily go through a selection process and if they decide to join Pedidos Ya, they sign a new employment agreement and resign to their job at Alsea.

#### *Alsea, Arcos Dorados and Mercado Libre*

Mercado Libre executed an agreement with Alsea and Arcos Dorados to incorporate, in two stages and temporarily, 150 suspended employees of these two companies to ML's Customer Service and Shipping areas in Argentina.

Employees can apply for a selection process and if selected, they are temporarily transferred to ML and agree on a leave of absence without pay with Alsea/Arcos Dorados.

#### *Arcos Dorados and the Chamber of Argentine Software Industry*

Arcos Dorados executed an agreement with the Chamber of Argentine Software Industry (CESSI) so that 200 employees of the former can work in the companies that are part of the Chamber with a fixed-term employment contract.

The particularity of this agreement is that an employer's organization (the CESSI) mediates between the company that has suspended personnel and the companies in a position to hire them.

The technology companies associated to the CESSI may hire Arcos Dorado's employees for three months while they remain in Arcos Dorados' payroll with a leave of absence without pay.

In addition, the CESSI offers to the applicants training in programming and software development.

### **Relevant aspects to consider when implementing a transfer scheme**

These new employee transfer schemes are creative solutions according to the needs of the market that do not find a specific regulation in Argentine labor laws. Therefore, it is important to keep in mind the following aspects when implementing a transfer framework agreement:

- *Target employees.* Define the accurate group of employees that may participate in the process and those who are excluded.
- *Renovation / permanent incorporation clauses.* Determine if the fixed or temporary contract can be renewed and / or if the employee can subsequently be incorporated permanently into the company that receives him and under which conditions.
- *Potential labor contingencies.* Depending on the way in which the transfer is executed, there could be the risk of labor claims related to the acknowledgement of seniority, remuneration and/or benefits. Likewise,

considering that the fixed-term contract and the temporary contract are special modalities of the employment contract that require compliance with specific conditions to be valid, they must be implemented with greater caution. Otherwise, they might be construed as labor contracts for an indefinite term.

- *Indemnities.* It is especially relevant that companies establish a clear indemnity compensation scheme regarding the rights and obligations between the parties in case of claims made by the employees involved.

Finally, it is important to stand out that these agreements which provide innovative solutions in a context of crisis will probably be analyzed by labor case law and it is also desirable that in the future they are incorporated to labor laws, providing legal certainty to all the parties.

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