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Employment-related impact of coronavirus (I): accident at work and uncommon illness

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Contagion and quarantine for coronavirus are regarded, exceptionally and only by assimilation, as accidents at work. The Government's restriction of the foregoing solely for the purposes of temporary disability may pose some difficulties in terms of application, although it seems clear that it intends to limit assimilation solely and exclusively to access to and collection of this benefit.

1. One of the first measures of an occupational and social security nature approved by the Government, in an attempt to alleviate the effects of the coronavirus pandemic, was included in Art. 5 of Royal Decree-Law 6/2020 of 10 March (Official Journal of Spain [BOE], 11 March), adopting certain urgent measures in the economic field and for the protection of public health. Under this Decree, periods of isolation or infection of workers as a result of the COVID-19 virus are exceptionally considered to be a situation assimilated to an accident at work. This assimilation is allowed "exclusively for the temporary disability monetary benefit of the Social Security System", covering both contingencies - isolation or infection - and extending to both employees and self-employed workers.

   However, as with any other benefit, it has its conditions. The first is that you must be registered for any of the social security classes ('schemes') at the time of the causal event. In this regard, the date of the causal event will be the date on which the isolation or illness of the beneficiary is determined, without prejudice to the fact that the leave from work note is issued after that date. The second is to have an isolation leave from work that will determine the duration of the appropriate leave.

2. The use of the term *assimilation* to the accident at work is correct because, although some cases could be true accidents at work (those who go to some professional or work-related event and became infected; those who, in the course of their profession, contracted the illness, and even those who, hospitalised as a result of an accident at work, became infected), preventive or curative quarantine usually has a social - not professional - origin.

   It should be noted that, in our legislation, an accident at work - defined as 'any bodily injury suffered by the worker on the occasion or as a consequence of work performed in others' employ' since the 1900 Accidents at Work Act included it - have been extending their scope of application to other cases. Thus, Art. 156 of the Social Security Act (LGSS) regards as such, among others and for the purposes of this article, illnesses contracted by a worker as a result of his work, provided that it is proven that the illness was exclusively caused by the execution of the work; the illnesses or defects suffered previously by the worker that are aggravated as a result of the injury constituting the accident at work; the consequences of the injury that are modified in their nature, duration, seriousness or termination due to intercurrent illnesses; illnesses that constitute complications derived from the pathological process determined by the injury itself, or that have their origin in conditions acquired in the new environment in which the patient has been placed for healing. It should be noted - especially with regard to this analysis - that Art. 156(4) of the Social Security Act excludes from the accident-at-work category such that "are due to force majeure unrelated to the work being performed at the time of the injury".

   The government now exceptionally carries out this assimilation, which will make it possible to apply the main advantages of a benefit - of temporary disability - arising from an occupational contingency – the accident at work. And, for this purpose, among others, it will allow access to it without requiring previous contribution periods, it will be received from the first day, its amount will be 75% of its calculation basis and the calculation basis will be determined on the basis of the contribution for occupational contingencies of the last month contributed, which is usually a greater basis than that for common contingencies, since the total remuneration of the worker is taken into account, without excluding some amounts that are not incorporated into the common contingency bases. In general, it will be the company that assumes not the cost, but the direct payment to the worker, since the former is a collaborator of the Social Security and provided it is voluntarily accepted, as per Art. 102 of the Social Security Act. The company will offset the amount paid to the worker for his disability in the settlement of contributions.

   However, the Social Security advanced some criteria that are not in line with this new legislation - classifying both stages as *common illness*. Such criteria will require adapting those cases to this new legislation, since it will take effect from 12 March and does not contain any transitional provision in this regard. Perhaps a new confirmation of leave from work note will be useful for this purpose, or it may even be an effective solution to take into account only the date of the causal event, even if the leave from work note includes the classification of a common illness. In any case, and as the financial effects of such classification are quite different, it will be

necessary to adjust the situations that still persist when the legislation comes into force, but not in the cases that, fortunately, have already obtained the fit for work note.

These discrepancies should serve to remind us that, when the modern Social Security System was approved (the 1963 Bases Act), an item was included, that of the 'joint consideration of the contingencies', which had not yet been applied. It is a matter of protecting the contingency without differentiating whether its origin is occupational or common and, therefore, without allowing for different consequences. Our legal system did not follow – does not follow – this recommendation in respect of the Social Security bases, but this case is a basic example of how a situation such as the one suffered at this time is of a common or occupational nature according to the will of the legislator.

3. There is greater interest in the Government's qualification that this assimilation is carried out due to the exceptional nature of the situation and "exclusively for the monetary benefit of temporary disability" of the Social Security. In an attempt to contain all the effects that an accident-at-work statement may entail, the Government limits them. But avoiding, for instance, attempts to extend the clauses of the Collective Agreements referring to improvements in accident at work cases or, where appropriate, to claim a surcharge on benefits if it is shown that the contagion has been caused by a lack of occupational health measures in the company, will not be easy.

   In principle, this limitation - given the exceptional nature of the benefit - could be interpreted as referring to the field of social security. Thus, and since it is considered an accident at work only for the purposes of temporary disability, it should be interpreted as meaning that, if that disability, due to pathological complications, results in the permanent disability or death of the worker, the rules laid down generally for permanent disability or death by injury of the worker would not apply, since there is only assimilation "for the purposes" of temporary disability. Because if it were otherwise interpreted, death resulting from an accident at work would entail compensation and permanent disability resulting from an accident at work would entail a higher lifetime benefit.

   But the conclusion regarding the performance surcharge may not be as clear. In accordance with Art. 164 of the Social Security Act, any financial benefit caused by an accident at work or work related illness will be increased, depending on the seriousness of the fault, from 30% to 50% when the injury is caused by work equipment or in facilities, establishments or workplaces which do not have the means of protection prescribed by law, or which are unfit for use or in poor condition, or where the general or particular occupational health and safety measures or those relating to personal suitability for each job have not been observed, taking account of the characteristics of the job and the age, sex and other conditions of the worker. This is a responsibility that falls directly on the employer who infringes the rules and which may not be the subject of insurance, any agreement or contract made to cover, compensate or transfer this responsibility being void ab initio. Asserting a lack of occupational health and safety measures as the source of contagion in a pandemic such as the current one will be difficult, but not impossible.