

Legal Regime for Employees with Disabilities

The legal framework for people with disabilities is primarily composed by Law No. 42 of August 27, 1999, amended by Law 15 of May 31, 2016, which establishes equal opportunities for people with disabilities, and Executive Decree No. 333 of December 5, 2019, which regulates this law.

Law No. 42 of August 27, 1999 in Article 3, item 9, defines disability as *“a condition in which a person has a physical, mental, intellectual, and sensory impairment, whether of a permanent or temporary nature, which limits the ability to perform one or more essential activities of daily life, which may be caused or aggravated by the economic and social environment.”*

The most relevant aspects of this law are:

a. Job Security: A person with a disability, a parent, guardian, or legal representative of a person with a disability, cannot be dismissed or demoted or have their position or salary reduced. However, if any of these individuals engage in justifiable grounds for dismissal, the employer can request authorization for their dismissal from the Sectional Labor Courts.

b. Paid Leave: Employers are required to grant people with disabilities, parents, or relatives within the fourth degree of consanguinity and the second degree of affinity, guardians, or individuals authorized by the legal representative of the person with a disability, up to 144 hours of leave to accompany them to medical appointments, required treatments, or educational activities related to the disability.

To use this paid leave, employees must request permission from their employer in advance and, upon their return, provide proof of attendance of the treatments or activities they participated in.

This paid leave should not affect the period of vacation, sick leave, or other entitlements of the employee. Furthermore, the employer may extend the 144 hours of leave if the employee needs it and it is duly certified by a competent authority.

c. Mandatory Hiring of Workers with Disabilities: Every private company employing 25 to 50 workers is required to have at least one person with a disability in its workforce. Companies with more than 50 workers must have a workforce consisting of no less than 2% of workers with disabilities.

Workers with disabilities who are qualified to work must receive a salary equal to that of any other worker performing the same task within the company.

The Ministry of Labor has the faculty to verify compliance with this obligation. If it determines non-compliance, the responsible company will be subject to a penalty equivalent to the minimum wage for each person with a disability not hired for the duration of the employer's reluctance.



The punishable conduct is the employer's reluctance to hire workers with disabilities. Therefore, the fact that the company does not reach the number of disabled workers at a given time in accordance with the aforementioned percentage does not necessarily mean it is in violation of the law, as there are factors that make hiring impossible and are not attributable to the employer, such as a lack of technical knowledge on the part of the worker, the limited availability of people with disabilities to apply for a job in a company that is not of interest to them, the nature of the company's activities that do not allow workers with a certain degree of disability for safety reasons, among others.

To avoid being considered reluctant to hire workers with disabilities, it is suggested that the company keep a record of the recruitment process for people in such conditions, which may be accompanied by job fairs exclusively for people with disabilities, as well as proof that it has requested resumes from people with disabilities registered in the Ministry of Labor and Labor Development's database.

Finally, for the hiring of employees with disabilities, it is sufficient for them to certify their condition through a medical report. However, the person can also obtain certification to this effect from the National Certification Directorate of the National Secretariat for Disability.