

## TEN TRAPS OF THE LABOR REFORM

- The approval of the current Labor Reform Bill, together with the Tax Reform, will contribute to the effect of reducing the economy's trend growth rate.
- In the end, the bill points at trade union leaders being responsible for defining the distribution of company earnings in the short term. Thus, in the medium term, the development of new businesses will be affected, which ends up impairing the workers themselves.

The debate about the Labor Reform has already started; despite relying on a large number of exponents, it will probably be even shorter than the tax discussion, because there are very few internal discrepancies in the government regarding these matters, and the opposition cannot do much in terms of votes. Therefore, as we have shown in previous Public Issues, we have reasons to be worried, since this reform contains serious diagnosis errors and will generate more costs than benefits, not only for the country, but also for the workers themselves. Additionally, contrary to what occurs in tax matters, the labor legislation mistakes are practically irreversible, as the reality of several European countries shows: even in crisis situations it has been very difficult for them to make the labor market more flexible.

Just as the tax reform, the labor reform reduces the economy's trend growth, because it damages the incentives to individual effort and new entrepreneurship. In fact, it may tend to higher wage equality for unionized workers, but at the expense of jeopardizing the rest, and also with a downward leveling trend. Probably, these negative effects will not be seen in the short term, but there is no doubt that our country will finally fall into the so-called "middle income trap".

The bill has several negative features, some of them as a result of the interaction between different articles. The ten most important articles are pointed out below.

### **1. Concealed Compulsory Union Membership:**

It is true that the bill does not stipulate the compulsory affiliation to a trade union; however, in practical terms, it is as if it did, because if unionism becomes the only way for the worker to improve his situation in the company, it is evident that the price he would have to pay for his membership freedom is in most cases unaffordable. This concealed compulsory membership is achieved through the fact that unions will be the sole authorized negotiator, the impossibility of

the employer to extend benefits to non-unionized workers, the threat of anti-union practice if they are extended individually and the precarization of the rights of negotiating groups. This excessive power of the union leaders is obtained in a completely independent way from the trade union's representation.

## **2. Effects on the Small and Medium Business:**

The Labor Reform affects the small and medium businesses to a much larger extent than the large ones. Large businesses rely on enough resources to propose agreements that are very satisfactory for the union leaders, with structures that are impossible for smaller companies. Thus, a strike without replacement workers can be financially lethal for a small or medium business, which in many cases is part of the productive chain of another large company. A small or medium business affected by a strike will be totally prevented from fulfilling its production commitments, which can entail the end of the business, even lawsuits. Therefore, the strike becomes a pressure instrument that is impossible to outweigh for the business. In this manner, the union receives a transitory income, which affects the future development of the business and also, to a large degree, the enterprising incentives.

## **3. Impossibility to Recuperate the Labor Source in the Strike:**

The bill does not only stipulate the end of replacement workers, but it also prevents workers from pulling away from the strike, even though some of them may consider that the company's offer is satisfactory. So, regardless of the trade union's representativeness, and without neither considering the percentage of workers who do not wish to maintain the strike, the individual will be subjected to that of the union leaders, whose objective can often differ from that of the worker.

## **4. Loss of Privacy Rights regarding the Wages:**

The bill establishes that the employer must hand over the members' payroll to the trade union, and although it stipulates that it shall be anonymous, the truth is that individualization or speculation can be quite simple in most cases. In large companies (more than 200 employees), union leaders will also have access to the companies' complete payroll. It is pretty evident that the objective of this regulation aims at achieving higher wage equality by decree, which certainly punishes the more productive workers, affecting in the end the productivity of the businesses, and thereby future wage increases.

## **5. Coverage of the Collective Bargaining:**

The bill stipulates that part-time workers, seasonal workers and workers subject to training contracts in large businesses, who are currently excluded, shall have the right to collective bargaining. Therefore, it overlooks the obvious fact that when dealing with a temporary contract, given the nature of the contract, the negotiation is made directly in the hiring process, since it fully incorporates the market conditions, which prevents abusive situations. In fact, and if we consider the construction sector, specific functions last generally a shorter term than the works. Usually, workers change during the works' development, which makes collective bargaining still less justifiable. In the case of training contracts, giving workers the right to collective bargaining finally derives in companies being strongly discouraged to hire under this modality, which rather than affecting the company it impairs the workers using this mechanism, mainly as a way of increasing their human capital.

## **6. Minimum Floor:**

The bill stipulates that collective bargaining starts as of the labor conditions currently in force. Although in an economic prosperity period of the country and/or the company, this floor does not represent an obstacle, it clearly becomes one in low-activity periods, which can be specific to one company, and prevents it from searching for mechanisms that ensure its viability in the medium term. This does not only have an impact on companies suffering a decline situation, but also on all workers, because when facing the risk of problems, even in booming periods, companies moderate their offers, since they generate them a rigidity that is difficult to cope with in the adverse cycle. Modifying the current bonus scheme would be much more useful to make workers part of the success of the companies in which they work.

## **7. Minimum Services:**

The bill stipulates that, in case of a strike, the union must provide the workers needed to avoid "an actual and irreparable damage of material goods or damage to the health of healthcare users or to a facility delivering essential services". Consequently, the strike paralyzes the productive activity of the company and prevents it from fulfilling the commitments with its customers, which can lead to financial bankruptcy. Therefore, there is a conflict between a short-term gain for the workers and the company's medium-term development, which ends up impairing current and future workers. It is equally serious that when no agreement is achieved between the union and the employer regarding the minimum services (which seems probable), the Labor Office interferes.

## **8. Intercompany Union:**

The bill stipulates that the employer shall be compelled to negotiate with an intercompany union, which shall have the same rights as the individual union. This goes indirectly in the line of bargaining by branch, since the intercompany union may establish negotiations with all the companies of a line of business, exchanging information from each one of them, which is collected during the bargaining processes. Additionally, the formation of company cartels will be a risk, since companies will get organized to equally face the bargaining with workers of the corresponding line of business. In this scenario, consumers are affected by the loss of competition in the markets (or the competitiveness of the economy in tradable lines of business).

## **9. Flexibility Agreed with Small Print:**

Flexibility is a key condition for companies to adapt and compete in a highly changing environment. The labor reform introduces the possibility of agreeing special work conditions, which on the whole is positive, since the real obstacle for collective bargaining in Chile is that there are no negotiation spaces, in a context where the Labor Code overregulates all matters. However, and unlike what happens with other issues included in the bill, in this case a high representation of the union is required, which starts at 65% to arrive at 30% under the legal provisions. This means that, in practice, agreements will be feasible in large companies only, because in the rest of them the unionization level is far below the minimum required. In brief, agreements can derive in greater flexibility in large businesses, leaving small and medium businesses, which need much more flexibility conditions, subject to the rigidity of the Labor Code. Additionally, the bill transfers the regulation of these agreements to a future and uncertain regulation of the Ministry of Work, which also establishes limits of days and hours that sometimes are more restrictive than the current legislation.

## **10. The Labor Office inside the Companies**

This is a very complex matter, which crosses several articles of the reform bill. Through this reform, the Labor Office becomes a key and leading actor in the relationship between employer and employee, which also plays the supervising, regulating and decisive role simultaneously, which is tremendously complex in the practice. It is not only both judge and party, but it is also a judge that cannot comply with the necessary impartiality criterion, since its main role is to watch over the workers. The implementation of this Labor Reform with the current institutional framework of the Labor Office can only guarantee bigger conflicts, and strongly tip the balance towards the objectives of the union leaders.

## **CONCLUSION**

We are no doubt faced with a negative labor reform, not only for the companies, but also for the workers themselves. It calls our attention that the government has called it the “bill that modernizes labor relationships”, inasmuch as it is thought and designed for a productive context of large monopolistic or oligopolistic businesses whose production is static, and not only in relation to the quantities but also in the type of goods they produce. This is totally opposed to the current productive reality.