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## **Occupational Risks**

**Act No. 24,557 with the modifications introduced by the Executive Decree N° 1278/00**

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Enacted: on September 13, 1995.

Promulgated: on October 3, 1995.

Be it enacted by the Senate and House of Representatives of the Republic of Argentina in Congress assembled, as follows:

### **CHAPTER I**

#### **PURPOSES AND SCOPE OF APPLICATION OF THE ACT**

**SECTION 1 - Applicable provisions and purposes of the Occupational Risks Act (ORA).**

1. This ORA and its regulatory provisions shall govern risk prevention and compensation for damages arising out of employment.
2. The Occupational Risks Act (ORA) has the following purposes:
  - a) To reduce the occupational injuries and illnesses rate by preventing any risks arising out of employment;
  - b) To compensate for the damages arising out of occupational accidents and diseases, including the rehabilitation of injured workers;
  - c) To promote redeployment and relocation of injured workers;
  - d) To promote collective labor bargaining for purposes of improving prevention measures and compensating benefits.

**SECTION 2 - Jurisdiction.**

1. The following parties mandatorily fall within the scope of this ORA:

- a) Officials and employees of the national public sector, the provinces and their municipalities, and the Municipality of the City of Buenos Aires;
- b) Workers in the public sector working under an employment relationship;
- c) People who have an unwaiverable obligation owed to the Government or any other public entity.

2. The national Executive Branch may include the following parties within the scope of the ORA:

- a) Domestic workers;
- b) Self-employed workers;
- c) Workers related on a non-occupational basis; and
- d) Voluntary firemen.



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### SECTION 3 - Compulsory insurance and self-insurance.

1. This ORA governs over all and any people who hire workers included within its scope of application.
2. Employers may self-insure the occupational risks defined herein, insofar as they submit evidence, as often as set forth in these regulations, of:
  - a) Financial-economic stability to provide for the benefits included in this act; and
  - b) Any guarantees for the services required to provide for the medical care and any other benefits contemplated under Section 20 hereof.
3. Any employers who cannot comply with either of the two points above must insure with an "Occupational Risks Insurance Company" (ART) at their discretion.
4. The National Government, the provinces and their municipalities, and the Municipality of the City of Buenos Aires may also be self-insured.

## CHAPTER II

### OCCUPATIONAL RISKS PREVENTION

#### SECTION 4 - Obligations of the parties.

1. Employers and workers falling within the scope of the ORA and ARTs are under a duty to take the legal actions stated to efficiently prevent occupational risks. To that effect and notwithstanding any other legal provisions, such parties shall assume actual commitments to comply with occupational safety and health regulations. Such commitments may be made on a unilateral basis, be included in the collective bargaining or be added in the agreement entered into between the ART and the employer.

Occupational Risk Insurance Companies shall exclusively establish for each of the companies or establishments that are deemed critical, as determined by the enforcement authority, an action plan providing compliance with the following measures:

Periodic assessment of existing risks and their evolution;

Periodic visits to control compliance with the rules for occupational risk prevention and the action plan prepared hereunder;

Determination of the remedial measures that companies shall implement to reduce the identified risks and the recorded occupational accidents and illnesses;

A proposal for training for the employer and workers in the field of occupational risk prevention.



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2. ARTs and employers are under the obligation of informing, as provided in the relevant regulations, the Superintendency of Occupational Risks or provincial Labor Administrations, as applicable, about the formulation and development of the action plan established in this section.
3. For purposes of determining the concept of critical company, the enforcement authority shall consider in particular, among other parameters, the degree of compliance with the occupational safety and health rules, as well as the company's occupational accidents and illnesses rate.
4. The ART shall control the implementation of the action plan and shall be under the duty to give notice the Superintendency of Occupational Risks of any violations thereto.
5. Differences regarding the implementation of the action plan shall be resolved upon by the Superintendency of Occupational Risks.

#### SECTION 5. - Violation surcharges.

1. If the occupational accident or disease had resulted from any violations incurred by the employer of the occupational safety and health regulations, the employer shall pay into the Guarantee Fund, created by Section 33 hereof, an amount depending on the extent of the violation, which shall not exceed thirty thousand pesos (\$30,000).
2. The Superintendency of Occupational Risks is the agency in charge of stating and assessing the seriousness of the violations, fixing the surcharge amount and demanding payment of the resulting amount.

### CHAPTER III

#### COVERED CONTINGENCIES AND EVENTS

#### SECTION 6 - Contingencies.

1. An occupational accident is any sudden and violent event caused by or during work, or on the way from the worker's homeplace to the workplace and viceversa, as long as the injured worker has not interrupted or modified the said course for reasons not attributable to work. The worker may declare in writing to the employer, and the latter may declare to the insurer within the following seventy-two (72) hours, that the in-itinere has been modified on the grounds of study, attendance to another workplace, or care for a sick relative living in a separate abode. At the employer's request, the pertinent certificate must be filed within the following three (3) business days after request.



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2. a) Occupational diseases shall mean such occupational diseases included in the list prepared and reviewed on an yearly basis by the Executive Branch, pursuant to the proceeding set forth in Section 40, item 3 hereof. The list shall identify the risk agent, case medical history, and the activities that may determine per se the occupational disease.

Diseases that are not included in the list, as well as their consequences, shall not give rise to any compensation whatsoever, only except for the following provisions:

2 b) Occupational diseases shall also mean such other diseases that, in each specific case, the Central Medical Committee determines to be triggered by a direct and immediate cause resulting from work, excluding the influence of factors imputable to the worker or to non-occupational factors.

For purposes of determining the existence of such contingencies, the following conditions shall be satisfied:

i) The worker or his successors shall start the proceedings by filing a grounded petition with the Jurisdictional Medical Committee with the purpose of proving the presence of the risk agents, clinical signs, exposure and activities that are a direct cause of his ailment.

ii) The Jurisdictional Medical Committee shall examine the petition by holding a hearing with the interested party/ies as well as with the employer and the ART; by guaranteeing due process, it shall request the necessary evidence and shall issue a resolution duly grounded on scientific expert reports.

Under no circumstance an illness shall be deemed to be an occupational disease if it is an immediate, or foreseeable mediate, consequence of non-occupational factors or factors imputable to the worker, such as predisposition or liability to contracting certain ailments.

2 c) When the existence of an occupational disease is asserted and the ART deems it not to be included in the list of occupational diseases, the proceeding established in subsection 2b shall be followed. If the Jurisdictional Medical Committee believes that the disease falls under the scope of such subsection, it shall give notice thereof to the ART, which, from such moment until the final resolution on the worker's condition is passed, shall provide all the benefits under this act. In such event, the Jurisdictional Medical Committee shall promptly request the intervention of the Central Medical Committee for it to confirm or amend such opinion. If the Central Medical Committee's ruling does not confirm the Jurisdictional Medical Committee's opinion, the ART shall cease granting such benefits. If the Central Medical Committee confirms the ruling, it shall also determine, if applicable, the percentage of the injured worker's disability for purposes of the payment of the relevant cash benefits. Such decision, whose scope is applicable only to the specific case decided on, shall not entail an amendment to the list of occupational diseases in force. The Central Medical Committee shall render its ruling within 30 days from having received the requirement from the Jurisdictional Medical Committee.



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2 d) Once the Central Medical Committee has rendered its ruling, those who have provided benefits of any kind shall be entitled to start an action for improper delivery against whomever is responsible for having assumed them.

3. This act shall not be applicable to:

a) Any occupational accidents and diseases caused by the worker's willful default or by non-occupational force major;

b) Worker's disabilities already existing at the time of beginning the employment relationship and evidenced in the pre-occupational examination carried out in accordance with the guidelines established by the enforcement authority.

SECTION 7 - Temporary Disability.

1. A situation of Temporary Disability (TD) exists when the injury suffered by the workers temporarily prevents him from carrying out his ordinary tasks.

2. Temporary Disability (TD) comes to an end upon:

a) Medical release;

b) Ruling of Permanent Disability (PD);

c) A year has elapsed since the first disabling sign;

d) Injured party's death.

SECTION 8 - Permanent Disability.

1. A situation of Permanent Disability (PD) exists when the injury suffered by the worker causes him a permanent decrease in his working capacity.

2. Permanent Disability (PD) shall be total when the decrease in permanent working capacity is 66% or higher, and shall be partial when it is lower than the said percentage.

3. The degree of Permanent Disability shall be determined by the medical committees under this act, on the basis of the occupational disability assessment table that the national Executive Branch shall prepare, and shall consider, among other factors, the worker's age, type of activity and any chances of occupational relocation.

4. The national Executive Branch shall, when appropriate, guarantee the application of homogenous criteria during the assessment of the disabilities, in accordance with the Integrated Pension Scheme (IPS) and the ORA.



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## SECTION 9 - Provisional and Final Nature of PD.

1. The situation of Permanent Disability (PD) that may entitle the injured party to collect a monthly payment benefit shall be provisional during the following 36 months after been ruled upon.

The said term may be extended by medical committees, for another 24 months at most, when there is no certainty as regards the final nature of the percentage of decrease in working capacity.

In case of partial Permanent Disability, the provisionality term may be reduced if there is certainty of the final nature of the percentage of decrease in working capacity.

Once the above terms are due, Permanent Disability shall have a final nature.

2. The event of Permanent Disability (PD) that may entitle the injured party to collect a lump sum payment shall have be final in nature on the date when the period of temporary disability comes to an end.

## SECTION 10 - Severe disability.

A situation of Severe Disability exists when a worker suffering total Permanent Disability needs to be continuously assisted by another person in order to carry out any essential living acts.

## CHAPTER IV

### CASH BENEFITS

#### SECTION 11 - Legal regulations concerning cash benefits.

1. The cash benefits hereunder have the same exemptions and exonerations as those applicable to alimony claims. They are also unwaiverable and may not be transferred or disposed of.

2. Cash benefits received upon Temporary Disability (TD) or provisional Permanent Disability shall be adjusted according to the AMPO variation, as defined in Act No. 24,241, pursuant to the regulatory provisions.

3. The national Executive Branch is hereby empowered to improve on the cash benefits established herein when the general financial-economic situation of the system so allows.

4. In the events set forth in Section 14, item 2, subsection «b»; Section 15, item 2; and Sections 17 and 18, items 1 of this act, beneficiaries shall collect together with the cash benefits therein provided, an additional lump-sum benefit, as established hereinbelow.



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In the case of Section 14, item 2, subsection «b», such additional benefit shall amount to THIRTY THOUSAND PESOS (\$30,000).

In the case of Sections 15, item 2 and Section 17, item 1), such additional benefit shall amount to FORTY THOUSAND PESOS (\$40,000).

In the case of Section 18, item 1, the additional benefit shall amount to FIFTY THOUSAND PESOS (\$50,000).

#### SECTION 12 - Base pay.

1. For purposes of determining the amount of cash benefits, base pay means the amount resulting from dividing the total amount of salaries or wages subject to dues and contributions, to be allocated to the Integrated Pension Scheme, accrued in the TWELVE (12) months prior to the first disabling sign, or at the time the service is rendered in the event it does not exceed ONE (1) year, for the number of running days within the term under consideration
2. The monthly base pay value results from multiplying the amount obtained according to the above item by 30.4.

#### SECTION 13 - Temporary Disability Benefits.

1. As from the day immediately following the first disabling sign and all through the period of Temporary Disability (TD), the injured worker shall collect a monthly cash benefit equal to the monthly value of his base pay.

The cash benefit corresponding to the first ten days shall be borne by the employer. Subsequent cash benefits shall be borne by the ART which, in every case, shall assume in-kind benefits.

The payment of the cash benefit shall be made within the term and in the manner established in Act No. 20,744 (1976 restated text), as amended, for the payment of workers' salaries or wages.

2. The party responsible for the payment of the cash benefit shall withhold the contributions and shall pay the relevant dues to the Social Security subsystems that make up the Comprehensive Social Security System or such provincial subsystems replacing the latter, solely pursuant to the social security regulations in force, and shall also pay family allowances.» and shall pay the dues relating to the social security system, and shall also pay family allowances.
3. During the period of Temporary Disability, caused by occupational accidents or diseases, the worker shall not collect any salaries or wages from the employer, notwithstanding anything provided in the second paragraph of item 1 of this Section.



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## SECTION 14 - Partial Permanent Disability (PPD) Benefits

1. Once the Temporary Disability is over and as long as the Partial Permanent Disability (PPD) continues being provisional, the injured worker shall collect a monthly cash benefit equal to the monthly value of his base pay multiplied by the disability percentage, apart from the relevant family allowances, until the final nature of the disability is ruled.

2. Upon ruling the final nature of the Partial Permanent Disability (PPD), the injured worker shall collect the following benefits:

a) When the disability percentage is equal to or lower than FIFTY PERCENT (50%) a lump-sum compensation, the amount of which shall be equal to FIFTY-THREE (53) times the monthly value of the base pay, multiplied by the disability percentage and a co-efficient that will result from dividing SIXTY-FIVE (65) by the age of the injured worker as of the date of the first disabling sign. Such sum under no circumstance shall exceed the amount resulting from multiplying ONE HUNDRED AND EIGHTY THOUSAND PESOS (\$180,000) by the disability percentage.

b) When the disability percentage exceeds FIFTY PERCENT (50%) and is lower than SIXTY-SIX PERCENT (66%), a Periodic Allowance -taken out according to the provisions hereof- the amount of which shall be equal to the monthly value of the base pay multiplied by the disability percentage. This benefit shall be subject to a withholding of contributions to Social Security and dues for family allowances until the injured worker can collect a pension for whatever reason. The current expected value of the periodic allowance shall under no circumstance exceed ONE HUNDRED AND EIGHTY THOUSAND PESOS (\$180,000). The supplementary benefit established in Section 11, item four of this act shall be added.

## SECTION 15 - Total Permanent Disability (TPD) Benefits

1. As long as Total Permanent Disability (TPD) continues being provisional, the injured worker shall collect a monthly cash benefit equivalent to 70% of the monthly value of the base pay. Such worker shall also collect any pertinent family allowances, which shall be granted, subject to non-contributory nature. During such period, the injured worker shall not be entitled to any benefits from the pension scheme, regardless of his right to enjoy the applicable health insurance coverage, and the ART shall withhold the relevant contributions for purposes of being forwarded to the National Institute of Social Services for Pensioners, or any other agency that should provide such benefit. Upon ruling the final nature of the Total Permanent Disability (TPD), the injured worker shall collect the benefits for final retirement, due to disability to which he is entitled under his pension scheme. Regardless the benefit stated in subsection 4 of section 11 of these presents, the injured worker shall also collect, under the conditions set forth in the regulations, a monthly cash benefit supplementary to the benefit under the pension scheme. The amount thereof shall be determined by an actuary on the basis of the capital paid in by the ART.

Such capital shall be equal to FIFTY THREE (53 )times the monthly value of the base pay, multiplied by a coefficient that will result from dividing number 65 by the age of the injured worker as of the date of the first disabling sign, and may not exceed ONE HUNDRED AND EIGHTY THOUSAND PESOS (\$180,000).

3. When the Total Permanent Disability fails to become final, the ART shall bear the relevant capital of recomposition, as defined in Act No. 24,241 (Section 94) or if applicable, it shall pay an sum equal to the one the injured worker is entitled to under his pension scheme.

#### SECTION 16 - Injured worker returns to work.

1. Cash benefits due to Permanent Disability may be collected concurrently with the conduct of paid activities as an independent worker or employee.
2. The National Executive Branch may decrease dues and contributions to the Social Security System, on account of events of return to work by workers with Permanent Disability.
3. The benefits set forth in this act may co-exist with other benefits under the pension scheme to which the employer is entitled, except for the provisions of Section 15, second paragraph of item 1 above.

#### SECTION 17 - Severe Disability.

1. Any injured party ruled to be severely disabled shall collect the benefits provided for the different events concerning Total Permanent Disability (TPD).
2. In addition, the ART shall pay the injured party a monthly cash benefit equal to three times the AMPO amount, as defined in Act No. 24,241 (Section 21), which payment will cease upon the injured party's death.

#### SECTION 18 - Injured party's death.

1. The workers' successors shall be entitled to the death benefit contemplated in the pension scheme of which the injured party is a member, and to the benefits set forth in the second paragraph of subsection 2 of section 15 of this act, together with the one stated in section 11, subsection4.
2. For purposes of this act, successors are any people listed in Section 53, Act No. 24,241. They shall appear according to the priority and conditions specified therein. The age limit established in such rule shall be extended to TWENTY-ONE (21) years of age, and shall rise to TWENTY-FIVE (25) in the event of students solely dependent on the deceased worker. Should none of the persons listed in the abovementioned section exist, the worker's parents shall be entitled to the benefit in equal parts and in the event of death of one of such parents, the benefit shall be collected in full by the other parent.



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Upon death of both parents, the benefit shall correspond, in equal parts, to such worker's relatives who prove to have been dependent thereon. The regulations shall determine the degree of kinship required to obtain the benefit and the manner in which the condition of dependent relative is proved.

#### SECTION 19 - Periodic allowance.

1. For purposes of this act, periodic allowance shall mean the monthly cash benefit agreed upon between the beneficiary and a retirement insurance company which shall be as of the execution of the relevant agreement solely liable for payment thereof. Right to such periodic allowance starts on the date on which the final nature of the partial permanent disability is declared and it terminates upon the beneficiary's death. In the case of companies that are not members of any ART, such benefit shall be taken out from a retirement insurance institution chosen by the beneficiary. Such institution, as of the execution of the relevant agreement, shall be solely liable for the payment thereof.

2. The national Executive Branch shall state the type and amount of the guarantee of payment of the periodic allowance in case of bankruptcy or insolvency liquidation of the retirement insurance companies.

#### CHAPTER V

#### BENEFITS IN KIND

#### SECTION 20 -

1. ARTs shall provide any workers suffering from any or all contingencies stated herein the following benefits in kind:

- a) Medical and pharmaceutical care;
- b) Prosthesis and orthopedia;
- c) Rehabilitation;
- d) Occupational redeployment; and
- e) Funeral service.

2. ARTs may suspend cash benefits in case the injured worker should unjustifiedly refuse, as determined by the medical committees, to collect the benefits in kind referred to in subsections a), c) and d).

3. Benefits referred to in item 1, subsections a), b), and c) of this Section, shall be granted to the injured parties until they are totally recovered or as long as the disabling signs continue to exist, as provided for in the regulations.



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## CHAPTER VI

### RULING AND REVIEW OF DISABILITIES

#### SECTION 21 - Medical committees.

1. Medical committees and the Central Medical Committee created under Act No. 24,241 (Section 51) shall be in charge of ruling upon:

- a) The occupational nature of the accident or disease;
- b) The nature and degree of the disability;
- c) The content and extent of the benefits in kind.

2. These committees may also review the type, nature and degree of disability and - in matters of their competence- resolve any discrepancies that may arise between the ART and the injured party or his successors.

3. The regulations shall state the procedures to be followed by and before the medical committees, as well as their fees scale.

4. In all events, the procedure, including transportation and supplementary studies, shall be free of charge for the injured party.

5. Particularly as regards the determination of the occupational nature of the accident under subsection a), paragraph 1 of this Section and provided that at the commencement of the proceedings the cleavage of views in that respect is asserted, the relevant Committee shall, guaranteeing due process, request as established in the regulations a judicial decision prior to ruling upon such issue.

#### SECTION 22 - Review of disability.

Until the final nature of the disability is ruled upon and at the request of the party liable to pay the benefits or of the injured party, medical committees shall carry out new examinations to review the previously acknowledged nature and degree of disability.

## CHAPTER VII

### FINANCIAL REGULATIONS

#### SECTION 23 - Assessment.

1. Any benefits to be provided for by ARTs pursuant to this act shall be financed by a monthly payment at the employer's expense.



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2. The regulations established in Act No. 24,241 (Section 9) shall apply for purposes of determining the taxable base, including any and all benefits having a compensating nature according to the IPS.
3. The monthly payment must be stated and paid together with the employer's and the employee's contributions forming part of the Comprehensive Social Security System. The ART shall be in charge of its fiscalization, verification and enforcement.

#### SECTION 24 - Rate scheme.

1. The Argentine Superintendency of Insurance Companies together with the Argentine Superintendency of Occupational Risks shall fix the indicators to be taken into account by the ARTs to outline the rate scheme. These indicators shall indicate the presumed occupational injuries and illnesses rate, the actual occupational injuries and illnesses rate, and the employer's continuance with an ART.
2. Each ART shall determine its rate scheme on the basis of how the value of the monthly payment shall be fixable, according to each establishment.
3. The rate scheme must be approved by the Argentine Superintendency of Insurance Companies.
4. As contemplated in the rate scheme, the monthly payment mentioned in the above Section shall be fixed according to each establishment.

#### SECTION 25 - Tax treatment.

1. The monthly payments referred to in Section 23 are an expense deductible from income tax.
2. Agreements to be a member of an ART are exempted from any Argentine taxes or duties.
3. A periodic allowance has the same tax exemptions as a life annuity agreement held with a retirement insurance company.
4. Provinces are hereby invited to adopt identical exemptions as those stated in the above item.
5. ARTs obligatory reserves are exempted from any taxes.



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## CHAPTER VIII

### MANAGEMENT OF BENEFITS

#### SECTION 26 - Occupational Risks Insurance Companies

1. Except for the events stated in self-insurance regulations, management of benefits and other actions provided for in this ORA shall be made by private law agencies, previously authorized by the Superintendency of Occupational Risks and by the Argentine Superintendency of Insurance Companies, denominated "Occupational Risks Insurance Companies" (ART), which are qualified as regards financial stability, management competence and any other requirements provided for herein, under Act No. 20,091 and any of their respective regulations.

2. Authorization given to an ART shall be withdrawn:

a) For any such reasons and procedures as contemplated herein, under Act No. 20,091 and in any of their respective regulations.

b) In case of failure to provide integral and timely benefits in accordance with this ORA;

c) When any serious faults are verified during the fulfillment of its purpose and are not corrected within the terms established by the regulations.

3. The only purpose of ARTs shall be to provide such benefits as stated herein, in the scope they determine in accordance with their regulations.

4. ARTs may also agree with their members upon:

a) Providing any cash benefits stated in the occupational rules and regulations in the event of accidents and no-fault diseases; and

b) coverage of financial claims arising from accident lawsuits and occupational diseases grounded on previous laws.

For purposes of the two procedures above, the ART shall freely fix the rate, and shall make separate financial-economic arrangements from those relating to the enforcement of this ORA. Both procedures shall be under the general regulations concerning insurance.

5. The minimum capital required to create an ART shall be three million pesos (\$3,000,000), which will be paid in at the time of organization. The national Executive Branch may change the minimum required capital, and create a mechanism to raise capital in accordance with the assumed risks.



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6. Property destined to back the ART's reserves shall not be attached by any obligations other than those derived herefrom, not even in the case the ART is liquidated. In this event, property shall be transferred to the Reserve Fund created under ORA.

7. An ART shall have, whether of its own service or outsourced, any necessary infrastructure to adequately provide such benefits in kind as contemplated herein. Agreements to receive these benefits may be made with labor union health funds.

#### SECTION 27 - Membership.

1. Employers that are not included in the self-insurance regulations shall mandatorily become a member of any ART, at their own free choice, and state the admissions and releases in their workforce.

2. An ART shall not reject any membership by an employer included in its field of application.

3. Membership shall be granted by an agreement, which form, content and terms are to be determined by the Superintendency of Occupational Risks.

4. Renewal of agreement shall be automatic and the Rate Scheme in force at the time of renewal shall be applicable therefor.

5. Termination of the membership agreement shall depend upon the subscription of a new agreement between the employer and another ART, or on becoming a member of the self-insurance system.

#### SECTION 28 - Liability concerning omissions.

1. If an employer that is not included in the self-insurance system fails to become a member of an ART, he will be directly liable to the beneficiaries for the benefits provided hereunder.

2. If the employer fails to state his payment obligation or hiring of a worker, the ART shall provide the benefits anyway, and may charge the employer twice for their cost.

3. In the event of the items above, the employer shall deposit the omitted payments into the Guarantee Fund created under ORA.

4. If the employer fails, on a total or partial basis, to make any payments at his expense,

the ART shall provide the benefits, and may enforce the due payments on the employer.



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## SECTION 29 - Deficient equity.

Upon legally stating that the non-insured employer, or self-insured employer, has a deficient equity to assume the commitments at his charge, benefits shall be financed by the Superintendency of Occupational Risks, at the expense of the Guarantee Fund created under ORA.

The employer's deficient equity shall be proved by such summary proceedings as contemplated for merely declaratory actions, as regulated in the different jurisdictions where evidence must be given.

## SECTION 30 - Self-insurance.

Anyone who has chosen the self-insurance system shall comply with all and any obligations this law enforces upon the employer and ARTs, except for such obligations as membership, contribution to the Reserve Fund created under ORA and any other that is inconsistent with the said system.

## CHAPTER IX

### RIGHTS, DUTIES AND PROHIBITIONS

## SECTION 31 - Rights, duties and prohibitions.

### 1. Occupational Risks Insurance Companies shall:

- a) Report before the Superintendency of Occupational Risks any violations incurred by their members in connection with occupational safety and health regulations, including the Improvement Plan;
- b) Have access to any information required to provide the benefits contemplated under ORA;
- c) Promote prevention, informing the Occupational Risks Superintendency about the plans and programs required to be implemented by the companies;
- d) Keep a record of the occupational injuries and illnesses rate as per establishment;
- e) Give information to interested parties about the company structure, balance sheets, rate scheme, and any other elements stated in the regulations;
- f) Not fix any payments violating the provisions of this ORA, or destine resources to any purposes other than those contemplated hereunder;
- g) Not carry out any psycho-physic examinations on workers, prior to subscribing a membership agreement.



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**2) Employers shall:**

- a) Receive information from the ART regarding the rate scheme and benefits, as well as advice on risks prevention;
- b) Notify workers about the identity of the ART of which they are members;
- c) Report the ART and the Superintendency of Occupational Risks about the accidents and occupational diseases that may occur in their establishments;
- d) Comply with the safety and health regulations, including the improvement plan;
- e) Keep a record of the occupational injuries and illnesses rate as per establishment.

**3. Workers shall:**

- a) Receive from their employer information and training concerning occupational risks prevention, and must take part in preventive procedures;
- b) Comply with safety and health regulations, including the improvement plan, as well as with the occupational redeployment measures;
- c) Inform the employer of any events they have knowledge about, concerning occupational risks;
- d) Undergo medical examinations and rehabilitation treatments;
- e) Report to the employer any accidents and occupational diseases they have or suffer from.

**SECTION 32 - Penalties.**

1. Default by self-insured employers, ARTs and retirement insurance companies to comply with obligations under their charge shall be assessed a penalty of 20 to 2,000 AMPOs - Obligatory average contribution relating to retirement insurance companies), unless it is an offense deserving a more severe penalty.

2. Default by self-insured employers, ARTs and retirement insurance companies to provide such benefits as stated in Section 20, item 1, subsection a) (Medical and pharmaceutical care) shall be assessed such penalty as set forth in Section 106 of the Criminal Code.

3. If default consists in failure to make the monthly payments or state that payment has been made, the employer shall be punished by six-month to four-year imprisonment.

4. Default by self-insured employers, ARTs and retirement insurance companies to provide cash benefits under their charge, or make contributions to the funds created hereunder, shall be punished by two-to-six-year imprisonment.

5. In the case of legal entities, imprisonment penalty shall apply to directors, managers, syndics, members of the surveillance committee, administrators, attorneys-in-fact or representatives that may have taken part in the punishable act.

6. Offenses classified in items 3 and 4 of this Section shall become actual offenses when the indemnifying party does not discharge the abovementioned duties, within fifteen running days after he has been demanded to do so at his legal domicile.

7. Argentine Federal Courts shall have jurisdiction to deal with the offenses stated in items 3 and 4 of this Section.

## CHAPTER X

### GUARANTEE FUND CREATED BY ORA

#### SECTION 33 - Creation and resources

1. A Guarantee Fund under this ORA is hereby created, which resources shall be allocated to provide benefits in case employer's deficient equity is legally declared.

2. For the guarantee mentioned in the item above to operate, the beneficiaries or ART, if any, shall make the necessary arrangements to enforce judgement and request that a statement be made of deficient equity in the terms prescribed by regulation.

3. The Guarantee Fund created under ORA shall be managed by the Superintendency of Occupational Risks and shall have the following resources:

a) The resources contemplated herein, including the amounts derived from penalties assessed upon non-compliance with the provisions about occupational risks and safety and health regulations;

b) A contribution by self-insured private employers, to be fixed by the national Executive Branch, not lower than the contribution stated in Section 34.2;

c) Any amounts recovered by the Superintendency of Occupational Risks from employers going through a deficient equity situation;

d) Any income derived from the resources of the Guarantee Fund created under ORA, and any sums transferred by the Superintendency of Occupational Risks;

e) Gifts and bequests.



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4. Any amounts in excess in the Fund, as well as any gifts and bequests coming into the Fund, shall only be allocated to support research, training activities, publications and advertising campaigns aiming at reducing the unfavorable impact on workers' health. The said funds shall be managed and used according to the conditions provided for in the regulations.

## CHAPTER XI

### RESERVE FUND CREATED BY ORA

#### SECTION 34 - Creation and resources.

1. A Reserve Fund is hereby created under this ORA, which resources shall be used to pay for or hire the benefits to ART's charge, at the time ART has been liquidated and discontinued making payments.
2. This fund shall be managed by the Argentine Superintendency of Insurance Companies and be composed of the resources contemplated herein, and a contribution at ART's charge, which amount shall be annually fixed by the national Executive Branch.

## CHAPTER XII

### ORA REGULATORY AND SUPERVISORY AGENCIES

#### SECTION 35 - Creation

The Superintendency of Occupational Risks is hereby created, a self-financing agency falling under the competence of the Argentine Ministry of Labor and Social Security. The Superintendency Of Occupational Risks shall absorb the powers and duties now assumed by the Argentine Department of Occupational Safety and Health.

#### SECTION 36 - Duties.

1. The Superintendency of Occupational Risks shall have such duties as conferred hereby and, especially, the following:
  - a) Control compliance with the occupational safety and health regulations, being entitled to make any supplementary provisions resulting from delegations of this law or any regulatory Executive Decrees;
  - b) Supervise and fiscalize ARTs' operation;
  - c) Assess any penalties provided for herein;



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- d) Require the necessary information to comply with its responsibilities, being entitled to request an official entry and search with warrant, and the assistance of law enforcement personnel;
  - e) Draft its internal regulations, administer its equity, manage the Guarantee Fund, devise its organization structure and make its internal regulations concerning human resources management;
  - f) Keep the Argentine Registry of Occupational Disabilities, where records shall be kept of data identifying the injured party and its company, time of accidents and diseases, benefits paid, disabilities claimed. The Superintendency of Occupational Risks shall also prepare occupational injuries and illnesses rates;
  - g) Supervise and fiscalize self-insured companies and their compliance with occupational safety and health regulations.
2. The Argentine Superintendency of Insurance Companies shall have the duties conferred to it by this law, Act No. 20,091, and their regulations.

#### SECTION 37 - Financing.

- 1. Expenses arising from the operation of supervisory agencies shall be paid by the rate contemplated in Act No. 20,091 (Section 81), applied on the monthly payments that an employer pays an ART.
- 2. The national Executive Branch is hereby empowered to reallocate the pertinent budget items in order to provide the Superintendency of Occupational Risks with the necessary equipment and budget for this year.

#### SECTION 38 - Authorities and regulations concerning personnel.

- 1. A superintendent, appointed by the National Executive Branch upon selection, shall be the top authority of the Superintendency of Occupational Risks.
- 2. Compensation paid to the superintendent and higher officials of the Superintendency shall be fixed by the Argentine Ministry of Labor and Social Security.
- 3. Relations between personnel and the Superintendency of Occupational Risks shall be governed by labor legislation.



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## CHAPTER XIII

### EMPLOYER'S CIVIL LIABILITY

#### SECTION 39 - Civil liability.

1. The benefits provided hereunder hold employers harmless against any civil liability, vis-à-vis their employees and the latter's successors, the only exception being Section 1072 of the Civil Code.
2. In this event, the injured party or his successors may claim for damages, in accordance with the regulations in the Civil Code.
3. Notwithstanding any civil action mentioned in the previous paragraph, the injured party shall be entitled to the benefits herein, at ART's charge or at self-insured companies' charge.
4. If any of the contingencies contemplated under Section 6 hereof has been caused by a third party, the injured party or its successors may claim the indemnifying party for damages they may be entitled to, in accordance with the provisions in the Civil Code. The amount of the benefits they have received or must receive from ART or the self-insured employer shall be previously deducted.
5. In the events stated in the above items, the ART or the self-insured employer, if applicable, is obliged to provide the injured party or its successors all and any benefits prescribed herein, but may charge the party liable for damages twice the amounts paid, provided or hired.

## CHAPTER XIV

### THREE-PARTY PARTICIPATION ENTITY

#### SECTION 40 - Standing Advisory Committee.

1. A Standing Advisory Committee is created under this ORA, made up of four Government representatives, four General Union Federation (Confederación General del Trabajo - CGT) representatives, four representatives of employers' organizations, two of which shall be appointed by the small-and-medium-business sector, and shall be presided over by the Argentine Ministry of Labor and Social Security.

The Committee shall approve its internal regulations on a consensus basis, and may propose changes to the regulations on occupational risks and on occupational safety and health system.

2. This Committee shall have advisory duties in respect of the following matters:

- a) Regulations applicable to the law;
- b) List of occupational diseases; previous opinion submitted by the Central Medical Committee.
- c) Assessment table regarding occupational disabilities;
- d) Determination of the scope of benefits in kind;
- e) Prevention steps towards occupational risks;
- f) Indicators showing the financial-economic stability of the companies that intend to self-insure;
- g) Determination of the schedule concerning the stages of cash benefits;
- i) Determination of the guidelines and contents of the improvement plan.

3. In respect of the matters above, the application authority shall consult the committee prior to adopting the pertinent actions.

Reports issued by the committee in connection with subsections b), c), d) and f) above shall have a binding effect.

If no unanimous decision is reached, the matter under advice shall be submitted to arbitration by the President of the Standing Advisory Committee created under ORA, as provided in subsection 1, who will award among the proposals introduced by the represented sectors.

The list of occupational diseases shall be prepared taking into account the direct cause of the disease and the duties discharged by the employer and the occupational environmental conditions.

## CHAPTER XV

### GENERAL AND SUPPLEMENTARY RULES

#### SECTION 41 - Applicable rules.

1. In such matters as are not expressly regulated by this law, and insofar as they are consistent herewith, Act No. 20,091 shall be of supplementary application.
2. Section 188 of Act No. 24,241 is not applicable to the regulations hereof.



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## SECTION 42 - Collective bargaining.

Collective labor bargaining may:

- a) Create Occupational Risks Insurance Companies, on a non-profit basis, preserving the free membership principle for any employers falling within the scope of the Collective Bargaining Agreement;
- b) Define the actions to prevent risks arising out of employment and to improve working conditions.

## SECTION 43 - Report.

1. The right to receive the benefits described in this law begins to be enforced at the time when the events causing the work-related accidents and diseases are reported.
2. The regulations shall state the requirements for this report.

## SECTION 44 - Statute of limitations.

1. Any actions derived herefrom are barred by statute of limitations in two years after the date when the benefit was paid or provided and, in any event, in two years after the date the labor relation comes to an end.
2. Any actions taken by management entities, and regulatory and supervisory agencies relating to this law for purposes of claiming payments are barred by statute of limitations in ten (10) years after the date when payment was made.

## SECTION 45 - Special situations.

The national Executive Branch is hereby entrusted to make supplementary rules as regards:

- a) Plurality of employment;
- b) Labor relations lasting for a specified time or partial time;
- c) Occurrence of injuries and illnesses; and
- d) Retired worker or worker with deferred retirement.

This power is restricted to the issuance of supplementary rules for the application and enforcement hereof.



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## SECTION 46 - Legal jurisdiction.

1. Decisions made by provincial medical committees shall be appealable and shall be heard before the federal court having jurisdiction in each province. The pertinent statement of grievances, if applicable, shall be made before the said court, or the Central Medical Committee, at each worker's choice.

The Central Medical Committee shall hear the appeals in accordance with the procedure established under the regulations.

Decisions made by the federal court having jurisdiction in each province, and those issued by the Central Medical Committee shall be appealable before the Argentine Federal Chamber of Social Security. All and any evidence, produced at any instances, shall proceed in the jurisdiction where the worker resides and shall be free of charge for him.

2. To the effect of the action stated in Section 1072 of the Civil Code, the civil courts shall have jurisdiction in the City of Buenos Aires.

Provinces are hereby invited to determine jurisdiction in this matter, pursuant to the abovementioned criterion.

3. Collection of monthly payments, surcharges and interests owed to ARTs, and the fines, contributions charged to self-insured private employers, and ARTs' contributions shall be actually paid upon issuance of a court order for collection, as regulated in the civil and commercial procedural codes for each jurisdiction. The debt certificate issued by the ART or by the Superintendency of Occupational Risks will be good executory instrument.

In the City of Buenos Aires, a choice may be made between the Argentine Federal Labor courts and the civil or commercial courts.

In the provinces, the civil or commercial courts shall have jurisdiction to that effect.

## SECTION 47 - Concurrence.

1. Benefits shall be paid, provided or hired in favor of the injured party or his successors, if applicable, by the ART to which the monthly payments were assessed or assessable on the date of the first disabling sign.

When the contingency has arisen from a process developed through time and in such circumstances evidencing that monthly payments were assessed or assessable to several ARTs, the ART obliged to pay, pursuant to the above paragraph, may charge the other ARTs twice the costs of the benefits paid or provided, in the same proportion as each of them is liable according to the time and strong exposure to the risk.



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Any discrepancies arising from the origin of the contingency and any such that may arise when the above paragraphs apply shall be submitted to the Superintendency of Occupational Risks.

2. When the first disabling sign occurs under circumstances where no monthly payments were assessed or assessable to ART, benefits shall be provided, paid or hired by the last ART to which monthly payments were assessed or assessable, and in that case the rules contemplated in the above item will be applicable.

#### SECTION 48 - Guarantee funds and reserve funds.

1. The guarantee funds and reserve funds shall be exclusively financed by the resources provided herein. The said resources are not subject to execution against beneficiaries and third parties.

2. The said funds shall not become a part of the Argentine general administrative budget.

#### SECTION 49 - Additional and final provisions.

##### ADDITIONAL PROVISIONS

FIRST: Amendment to Act No. 20,744

Section 75 of Act No. 20,744 is hereby substituted by the following text:

1. The employer is obliged to observe the legal regulations concerning occupational safety and health, and to enforce the interruptions and limitations to the working time as established in the legal provisions.

2. Any injuries and illnesses suffered by the worker as a result of non-compliance with the obligations stated in the above item shall be governed by the rules concerning repair for damages caused by occupational accidents and occupational diseases, and the sole benefits established in the said regulations shall be applicable.

SECOND: Amendments to Act No. 24,241.

Section 177 of Act No. 24,241 is hereby substituted by the following text:

The insurance agreement mentioned in the above section may only be made by the insurance companies exclusively limiting their purpose to this coverage and to the periodic cash payment benefits set forth in the Occupational Risks Act.



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The said insurance companies may operate in other insurance of persons, supplementary to the retirement insurance coverage, shall be authorized by the Argentine Superintendency of Insurance Companies, and their corporate name shall bear the expression "retirement insurance companies".

**THIRD: Amendments to Act No. 24,028**

The first paragraph of Section 15 of Act No. 24,028 is hereby substituted by the following text:

Any worker who undergoes psychophysical injuries and illnesses by or during work, while he is working for the employer, shall -prior to initiating any legal actions- report it, in order to start the compulsory administrative settlement procedure before the labor administrative authority. Courts shall not serve notice of any claims that do not meet with this obligation.

**FOURTH: Insurance companies.**

1. Any insurance companies that at the time of promulgation hereof are operating in the lines of insurance concerning occupational accidents may:

a) Make arrangements for the benefits and other actions contemplated herein. The said insurance companies are, exclusively in connection with occupational risks, persons having the same rights and obligations as ARTs, except for the possibility of making an agreement with a beneficiary to receive a periodic allowance, the obligation to have a sole purpose, and the minimum capital requirements. In this last case, the rules governing general insurance activity shall be applicable. The said insurance companies shall have the same tax treatment as ARTs. Property backing the reserves derived from this procedure shall be subject to the regulations of this ORA, must be recorded and separately enumerated from other property relating to other activities, and they may not back other commitments.

In case of liquidation, the said property shall be transferred to the Reserve Fund created under this ORA, and may not be attached by any claims or actions arising from other procedures.

b) Agree with an ART on the transfer of all the injuries and illnesses rates pending as a result of this procedure, at the time the Argentine Superintendency of Insurance Companies so determines. In this case, they must also transfer the assets backing all the said liabilities.

**FIFTH: Previous contingencies.**

1. Any and all contingencies brought to the employer's knowledge after the date when this law comes into force shall only entitle to the benefits stated in this ORA, even when the contingency previously exists, and as long as the right pursuant to the regulations hereof is not barred by statute of limitations.



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2. In this event, benefits are to be provided by the ART the employer is a member of, unless he has chosen the self-insurance system or unless the labor relation with the injured party has come to an end before the employer becomes a member of the ART.

## FINAL PROVISIONS

### FIRST:

This ORA shall come into force and effect once the standing advisory committee approves, on a consensus basis, the list of occupational diseases and the disability assessment table.

The said approval must be given within 180 days after promulgation hereof.

Unless and until the standing advisory committee issues a resolution, the National Executive Branch is once and provisionally empowered to make a list of diseases and outline a disability assessment table.

### SECOND:

1. The cash benefits scheme contemplated herein will come into force on a progressive basis. To that effect, a schedule of several stages shall be defined and the definitive scheme will be reached within the following three years after the date this law comes into force.
2. Moving from one stage to the next shall be conditioned upon the fact that the average monthly payment at the insured employers' charge remains below 3% of the wages list. If this event is not verified, application of the schedule will be temporarily suspended until there is evidence that moving from one stage to the next does not entail exceeding the said cost target.
3. During the first stage, the cash benefits scheme relating to the partial permanent disability shall be as follows:

In the event that the permanent disability percentage is equal to 50% or higher, and lower than 66%, and as long as the provisionality situation exists, the injured party shall receive a monthly cash benefit, which amount shall be equal to the disability percentage multiplied by 55% of the monthly value of the base pay, and also any pertinent family allowances. Once the provisionality stage comes to an end, a periodic allowance will be paid, which amount will be equal to the disability percentage multiplied by 55% of the monthly value of the base pay, and also any pertinent family allowances. In no event, the expected real value of the periodic allowance in this first stage shall exceed \$55,000. This ceiling shall automatically increase to \$110,000 when the Standing Advisory Committee moves from the first stage on to the next.



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If the disability percentage is lower than 50%, a lump sum payment compensation shall be paid, which amount shall be 43 times the monthly base pay value, multiplied by the disability percentage and by a coefficient that will result from dividing number 65 by the injured party's age at the time of the first disabling sign.

In no event that amount shall be higher to the amount resulting from multiplying 55,000 by the disability percentage.

THIRD:

1. This ORA shall not apply to the legal actions initiated before the date this law has come into effect, except for the provisions in the following item.
2. The first and third additional provisions shall come into force on the date of promulgation hereof.
3. Upon coming into force of this law, Act No. 24,028, supplementary and regulatory provisions and any other rules contradicting this law are hereby abrogated.

SECTION 50 - Section 51 of Act No. 24,241 is hereby substituted by the following text:

SECTION 51: Medical committees and the Central Medical Committee shall be composed by five (5) doctors that will be appointed as follows: three (3) by the Superintendency of Pension Fund Management Companies, and two (2) by the Superintendency of Occupational Risks, who will be selected upon competition for a public position, and upon consideration of their backgrounds. They shall have the assistance of professional, technical and administrative personnel.

Expenses incurred during committees' operation shall be financed by Pension Fund Management Companies and the Occupational Risks Insurance Companies, in such percentage as is fixed by regulations.

At least one medical committee will operate in each province, and another one in the City of Buenos Aires.

SECTION 51 - Notice hereof to be given to the National Executive Branch. - ALBERTO R. PIERRI. - CARLOS F. RUCKAUF. - Esther H. Pereyra Arandía de Pérez Pardo. - Edgardo Piuzzi.

READ IN THE MEETINGS ROOM OF THE ARGENTINE CONGRESS, IN BUENOS AIRES, ON THE THIRTEENTH DAY OF SEPTEMBER OF THE YEAR NINETEEN NINETY FIVE.

Decree Order 535/95. Buenos Aires, 3/10/95



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**THEREFORE:**

It is hereby ordered that Act No. 24,557 be considered a Federal Act, that this law be observed, be notified, published, transmitted to the Argentine Department of Official Registry and entered into the appropriate records. - RUCKAUF. - Eduardo Bauzá. - José A. Caro Figueroa.

