

# CONSEQUENCES OF THE BREACH OF THE BIOSAFETY PROTOCOLS

Based on the regulatory framework defined from the Decree 539 of April 13, 2020 and the subsequent Resolutions issued by the Ministry of Health and Social Protection establishing the Biosafety Protocols applicable to different economic activities, companies belonging to different sectors have initiated and/or completed the adoption or implementation of said Protocols to be able to reactivate their operations or activities across the country. The adoption and implementation of such protocols must meet -depending on the municipality or District where said activities are carried out- additional requirements, such as, for example, their registration and/or approval before a certain governmental entity, as in the case of Cali, Medellín and Bogotá. (To consult the matrix of authorized sectors and their conditions for reactivation and circulation, we suggest reviewing the document available in the following link:

<http://www.phrlegal.com/publicacion/COVID-19-matriz-de-sectores-autorizados-condiciones-para-circulacion-y-protocolos-por-actividades-03-de-junio/>.

Thus, the legal framework that regulates the economic reactivation of companies in the context of the Coronavirus COVID-19 pandemic is in general terms established.

Therefore, it is now relevant to consider what the legal consequences would be derived from operating without having adopted, registered or approved the respective Biosafety Protocol -as the case may be- or operating in breach of the measures established therein.

Apart from the legal effects that in labor terms can be triggered for the company in its capacity as an employer for not complying with the aforementioned Biosafety Protocols -for which we suggest you to consult the document available in:

<http://www.phrlegal.com/wp-content/uploads/2015/10/Liability-of-employer.pdf>, it is necessary to note that operating without having the respective Protocol or in the breach thereof may trigger significant consequences from the view of the sanitary and police regulations, consequences which may vary from the imposition of fines to the suspension or closure of the business premises or activities, as explained below:

## A. SANITARY MEASURES AND SANCTIONS:

Decree 539 of 2020 indicates, with respect to the monitoring of compliance with the Biosafety Protocols, that: "*The municipal or district secretariat, or the entity that takes its place, that*

*corresponds to the economic, social activity, or the sector of the Protocol to be implemented, will monitor compliance with it"*; however, said Decree does not indicate or refer to the sanctioning regime that must be applied in case of non-compliance.

However, given that the provisions enshrined in such Decree are of health character and are aimed at protecting public health of the population, it is necessary to refer to the sanctioning regime established in Law 9 of 1979, by which the National Health Code was adopted, and in the Regulatory Decree 3518 of 2006 (compiled in Decree 780 of 2016), by which the Public Health Surveillance System was created and regulated.

From the aforementioned legal framework it is possible to state that the health authorities -including the Municipal and District Health Secretariats-, could impose, as a consequence of the absence or the non-compliance with the Biosafety Protocols: (i) sanitary measures, which are basically preventive measures, and/or (ii) sanctioning measures, which would be imposed based on the severity of the sanitary infringement committed.

### **i. Sanitary Measures**

Sanitary measures aim to prevent or control the occurrence of an event or the existence of a situation that threatens individual or collective health. Once the fact is known or the complaint has been received -as the case may be-,

the health authority will immediately assess the situation and establish the need to apply the pertinent measures, based on the dangers that such situation may represent from the epidemiological point of view. The sanitary measures that could be imposed correspond, among others, to the following:

- a) Isolation or internment of people;
- b) Quarantine of people;
- c) Control of infectious and toxic agents and materials, vectors and reservoirs;
- d) Eviction of establishments or houses;
- e) Partial or total temporary closure of establishments; and
- f) Partial or total suspension of works or services.

These measures are immediately enforceable, have preventive and temporary character, are not subject to an appeal, and their imposition only require a detailed report by the agent in charge. As a result of the imposition of one of the above sanitary measures, the authority shall immediately initiate an administrative sanctioning proceeding.

### **ii. Sanitary Sanctions**

The administrative sanctioning procedure for sanitary infringements is set forth in Decree 3518 of 2006, and typically responds to the phases of the administrative sanctioning proceedings: (1) initiation of the investigation ex-officio, upon request, or as a result of

the imposition of a sanitary measure; (2) verification of the facts under investigation; (3) formulation of charges; (4) filing of the written defense; (5) provision of evidence; and (6) determination of liability and sanction.

Depending on the severity of the sanitary infringement committed, the sanctions could consist of:

- a) Written Admonition;
- b) Fines that may be successive up to a sum equivalent to 10,000 legal minimum daily wages in force at the time of imposition.
- c) Forfeiture of products or articles;
- d) Suspension of sanitary permission to operate establishments and services; and
- e) Temporary or definitive closure of the respective establishment, building or service.

It is important to know that the health authorities may publicize the fact that, as a result of failure to comply with health regulations and biosafety protocols, the company is putting the health of the population at risk. Therefore, the absence or non-compliance of the Biosafety Protocols, in addition to triggering important legal consequences, has the potential to generate significant effects or risks for companies from a reputational point of view.

## B. POLICE MEASURES AND SANCTIONS:

From the point of view of police regulation, it is necessary to point out that the absence of the respective Biosafety Protocol -registered or approved as the case may be- or failure to comply with it may lead to the imposition of corrective and sanctioning measures, in accordance with Law 1801 of 2016, by which the National Police Code was issued.

Article 173 of the aforementioned Code indicates the corrective measures that the police authorities may impose under their competences, within which it is worth highlighting the following:

- a) Admonition;
- b) Dissolution of a meeting or activity that involves non-complex crowds of the public;
- c) Prohibition from entering an activity that involves complex or non-complex crowds of the public;
- d) General or special fine, as defined in the abovementioned Code;
- e) Suspension of construction or demolition;
- f) Suspension of activity that involves complex public gathering;
- g) Temporary suspension of activity; or
- h) Definitive suspension of activity.

Like the sanitary measures, the previous corrective measures do not have sanctioning character and, therefore, may be imposed without prejudice to the sanctions established in the same Code and in other laws that specifically regulate the matter. Therefore, in addition to the aforementioned corrective measures, a company may be subject to the simultaneous imposition of a sanitary measure or sanction.

In addition to the above, it is necessary to indicate that, in accordance with article 87 of the aforementioned Code, companies that do not have the respective Biosafety Protocol or that despite of having it have not already submitted it to registration or approval - according to requirements established in the respective municipality or District<sup>1</sup>- would be in breach of the sanitary conditions required for any activity that is carried out or not through establishments open or closed to the public, for which reason a police authority may impose a type 4 general fine (according to which it is defined in the referred Code) and/or may order the temporary suspension of activities of the establishment, work or service under investigation.



**Please do not hesitate to contact us, should you have any questions or comments on this matter.**

<sup>1</sup> In Bogotá, for example, the activities exempted from the beginning of the mandatory preventive isolation only must submit their Biosafety Protocols to register, but not to the process of approval. For this reason, it is essential to review in each case to what type of economic sector belongs the specific activity, and the municipalities and districts where it is developed, in order to assess the particular requirements applicable to it.

### CONTACT:



**Álvaro José  
Rodríguez**

[alvaro.rodriquez@phrlegal.com](mailto:alvaro.rodriquez@phrlegal.com)



**Erika Serrano**

[erika.serrano@phrlegal.com](mailto:erika.serrano@phrlegal.com)