

Recommendations addressed to the private sector employer in the application of the protocol in the process of rehabilitation and reinstatement due to illness of common origin in Colombia

Recomendaciones dirigidas al empleador del sector privado en la aplicación de protocolos en el proceso de rehabilitación y reincorporación por enfermedad de origen común en Colombia

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Abstract

This article aims to analyse the procedure applicable to private sector companies in Colombia when disability of common origin requires a rehabilitation and reincorporation process. The methodology of the project is framed within the qualitative approach, using the method of legal hermeneutics, as well as the interpretation and analysis of the arguments proposed by various entities, including the Convention on the Rights of Persons with Disabilities [1] and the World Health Organisation [2]. These analyses highlight that return to work, as a result of a successful rehabilitation scheme, implies a process of reintegration that the worker must face. This reintegration depends to a large extent on the work environment, the challenges associated with fulfilling the functions of the position, the adaptation to the worker's new abilities, and the harmony, collaboration and understanding provided by co-workers, the employer, the worker's family and society in general.

Resumen

El presente artículo tiene como objetivo analizar el procedimiento aplicable a las empresas del sector privado en Colombia cuando la incapacidad de origen común requiere un proceso de rehabilitación y reincorporación. La metodología del proyecto se enmarca dentro del enfoque cualitativo, utilizando el método de hermenéutica jurídica, así como la interpretación y el análisis de los argumentos propuestos por diversas entidades, incluyendo la Convención sobre los Derechos de las Personas con Discapacidad [1] y la Organización Mundial de la Salud [2]. Estos análisis destacan que el reintegro laboral, como resultado de un esquema de rehabilitación satisfactorio, implica un proceso de reincorporación que el trabajador debe afrontar. Esta reincorporación depende en gran medida del entorno laboral, los desafíos asociados al cumplimiento de las funciones del cargo, la adaptación a las nuevas capacidades del trabajador y la armonía, colaboración y comprensión que le brinden sus compañeros de trabajo, el empleador, su familia y la sociedad en general.



1. Introducción

The aim of this article is to set out recommendations for private sector employers for the appropriate application of the rehabilitation and reincorporation process for common illnesses in Colombia. The study is based on the conceptualization of theories and practice of each of the stages from incapacity, through rehabilitation and ending with the worker's reincorporation.

The incapacity as an initial stage determines whether the illness or accident is of common origin, to give way to a rehabilitation process, where economic benefits such as the payment of incapacity and assistance benefits such as medical treatments, medicines and physical therapies are activated. At the end of the rehabilitation process, a concept of the worker's improvement is determined, which, if favourable, leads to a return to work with guidelines, recommendations or restrictions depending on the particular case.

The reincorporation of the disabled worker into the workplace is addressed, where employers play a very important role in health, so that the reincorporation does not deteriorate the worker, taking into account the activity that the disabled person can carry out where it does not generate other pathologies and that the health system guarantees the patient an integral recovery, taking into account the medical formulations and studies carried out that do not generate mental disorders that go against the patient's health and his or her integrity.

This article is developed from the perspective of the interpretative paradigm, the parameters of the qualitative approach, using general hermeneutics and legal hermeneutics, which are important to adequately unravel the problem of disability, rehabilitation and reincorporation in Colombia.

2. Methodology

This reflection article is approached from the perspective of the interpretive paradigm, which aims to understand reality in a dynamic and diverse way,

focusing on the meaning of human actions and social practices. This perspective allows for a deep exploration of how people attribute meaning to their experiences and how these manifest themselves in different contexts.

The methodology used in this project is based on a qualitative approach, in which hermeneutics is used as a central method. This technique is essential to unravel the theories and principles of legal hermeneutics, which are crucial for the interpretation of various jurisprudences, laws and regulations related to disability, rehabilitation and labor reincorporation in Colombia. By applying this hermeneutic approach, the aim is not only to understand the legal provisions, but also to analyze how these are implemented in practice and what implications they have for the individuals involved. Consequently, this article not only provides a reflection on the normative aspects, but also highlights the importance of considering the social and cultural context in understanding these processes.

3. Results

Common disabilities in Colombia.

This section develops the specific objective that aims to specify the definitions of common disabilities in Colombia; this will be addressed methodologically from the interpretative paradigm and from the qualitative perspective.

To begin, it is essential to define what disability is. The Royal Spanish Academy [3] states that it is "the lack of ability to do, receive or learn something; or of understanding or intelligence; or the lack of preparation, or means to perform an act. (RAE)"

That is why a person with a disability needs special attention according to the needs of the illness or physical difficulty that is present and requires going hand in hand with processes to ensure the development of a life in dignified conditions to perform in all areas of his or her life.

Medical disabilities are conceived when a dependent worker, whether due to an accident or illness, requires days to recover from his pathology and apply the respective treatment, therefore, a work disability is generated.

The Colombian state guarantees access to health protection, promotion and recovery services, as provided in its article 49 of the Magna Carta, and this is why within the regime of the General Social Security System, the recognition and payment of disabilities has been granted, whether due to general illness or occupational disease.

The honorable Constitutional Court through its reporting magistrate Lizarazo [4], in jurisprudence T- 523 of the year 2023, provides us with an analysis of the essential function of work disability, specifying that:

Work disability guarantees the right to a dignified life, health and the minimum living wage during the time in which the worker is not able to carry out work, since it allows him to receive the necessary income to satisfy his basic needs [5].

There are two reasons for incapacity for work: a work-related illness, which is caused by an accident or illness caused by the performance of the duties of the position; or a common illness, which is derived from a pathology inherent to human beings that is not caused by work-related tasks.

There are two bases that the same decree determines within the article to be able to establish that an illness is of common origin, and these are:

1. That in the pre-occupational medical examination carried out by the company, the diagnosis of the illness in question was detected and recorded.
2. That the exposure was insufficient to cause the illness, according to environmental measurements or evaluations of specific biological indicators [6].

Consequently, when an illness is not caused by the development of activities inherent to the position held, or an accident that occurs within the company's facilities, we are talking about an illness whose origin is common, such as, for example, diabetes, cancer, kidney or homeopathic diseases.

Rehabilitation and reintegration process in Colombia

This chapter aims to explain what the rehabilitation and reintegration process in Colombia consists of, which for the purposes of its development will be carried out by giving it a qualitative methodological look, using inductive methods such as synthesis and analysis.

According to the World Health Organization [2], the rehabilitation process is a set of interventions aimed at optimizing functioning and reducing disability in people with health conditions in interaction with their environment. In short, rehabilitation helps children, adults or older people to be as independent as possible in their daily lives and allows them to participate in educational, work or recreational activities or carry out tasks that give meaning to life, such as caring for the family. OMS [2].

For Villamizar [7], Health Management Consultant at Mercer Marsh Benefits, in his article Labor and Occupational Reincorporation Program, he establishes that the labor reincorporation of workers obliges the employer and each of those responsible within the comprehensive rehabilitation process, to meet certain objectives regarding the health condition of the worker who has suffered a work accident and/or occupational disease, hoping to achieve a successful process of labor readaptation of the individual to the work environment that reduces the impact or effects on his work performance and daily life activities.

According to the results derived from the study of protocols, guides and standards, mainly the Manual of procedures for Rehabilitation and Occupational Reincorporation of workers in Colombia. It has been possible to see that the labor reinstatement is:

The set of processes that go from the evaluation, orientation, to the professional rehabilitation itself, which includes all the scientific, technical, educational-training, and social interventions that lead the disabled person to obtain and keep a job that is consistent and in accordance with their residual capacities [8].

The rehabilitation process has been determined as:

The set of social, therapeutic, educational and training actions; of limited time; articulated and defined by a multidisciplinary team, and that involve the worker, as an active subject of his own process, the family, the work community and the social community to generate changes in the worker and in his environment, that allow him to return to work and to fulfill the objectives set that aim to experience a good quality of life [8].

The process around rehabilitation has its origin in a medical work disability, which according to SURA EPS [9], is a period of time given to the worker when he is physically or mentally disabled to temporarily perform his usual profession or trade according to the acute picture of the illness or injury that has left him unable to perform his work function for a certain time and has the purpose of facilitating the full recovery of these.

This is why rehabilitation plays an important and fundamental role for the optimal recovery of the worker, who, in the progression of a disease of common origin, requires a treatment and a sequence of therapies aimed at recovering him in an optimal way to resume his daily tasks and reincorporate him into his usual activities and those of his work.

Recommendations addressed to the Employer in the private sector

In 2020, the Ministry of Labour designed a didactic manual where it establishes the Programme of Integral Rehabilitation and Occupational and Labour Reincorporation in the General System of Labour Risks, which establishes the criteria that the worker must fulfil in order to enter the rehabilitation programme:

1. Any worker who has suffered an accident at work, an occupational disease or who, due to the evolution of a basic limiting condition, presents alterations in his or her capacity to carry out activities, either temporarily or permanently.
2. Injured workers with a medical incapacity of more than 15 days.
3. Workers with permanent sequelae due to serious injuries as a result of a work accident or occupational disease that interfere with their occupational performance.
4. In addition to those mentioned above, all those deficiencies that compromise the mental, physical or sensory function of the worker, which may limit their ability to carry out activities according to the criteria of the interdisciplinary rehabilitation team of the Labour Risk Administrators, whether their own or contracted [10], shall be included.

The Ministry of Labour (2020), continues to establish some characteristics that the rehabilitation programme must have, which are:

- a. Have a limited duration.
- b. Clearly defined and quantifiable objectives.
- c. Strategies defined in accordance with the defined objectives.
- d. To count on the active participation and commitment of the worker who is the object of the Programme, the family and the actors of the labour and social community necessary in the process and to define for each one, their roles and specific responsibilities.
- e. The Integral Rehabilitation Team should be made up of medical specialties and rehabilitation science disciplines. [10]

The last update of the manual was carried out in 2020, by the Ministry of Labour, issuing the Single Decree of the Labour Sector, which establishes the Integral Rehabilitation Programme for labour and occupational reincorporation, which leaves in

evidence a scarce information guide for companies that today have expanded their ways of working, even more after the pandemic by the covid-19 virus, which has forced to establish different ways of fulfilling the functions of work such as teleworking, working from home.

An update is necessary in this period of time as this process of relocation or reinstatement has ceased to be voluntary to become a legal obligation for companies, so much so that it has been included as a priority objective in the National Plan for Safety and Health at Work 2013-2021, however, this regulation is unknown by companies, which is evident in the cases at the jurisprudential level found during the literature review.

For this reason, it is of vital importance to recommend some protocol steps to be followed by the employer who is living in his company with an employee in a process of Rehabilitation or Reincorporation due to illness of common origin. These, in our opinion, are the following, as a result of this research:

- Comply with the guidelines outlined in the current rehabilitation manual published by the Ministry of Labour (2020).
- Take into account the recommendations for reintegration into work or adaptation of the workplace given by the treating physician, headed by the person responsible for health and safety at work in the company.
- Participate in, promote, support and monitor the development of the Comprehensive Rehabilitation and Occupational and Labour Reincorporation Programme for its workers.
- To carry out surveillance systems that allow for the monitoring of health and labour events that allow for the early identification of the risks of disability in the worker population.
- Grant and facilitate the worker's intervention in the necessary events to achieve their functional recovery.

- To carry out the necessary job studies for the development of the Integral Rehabilitation and Labour Reincorporation Programme.

Manjarrez et al [11], in their article Legal analysis of disabilities of common origin in the private sector in Colombia: emphasis on rehabilitation and reincorporation, point out that despite the fact that Colombian legislation has regulated rehabilitation and reintegration to work when the worker recovers the capacity to carry out the functions of their position in different provisions, in reality this has been implemented in an experimental manner according to the possibilities of the company, most of the time without taking into account the health conditions of the employee.

Each of the suggestions described above are of vital importance for a reincorporation in fair conditions, where the worker enjoys his right to work, adapting to the health conditions that he has at present, so that his livelihood is not violated in order to live in full enjoyment of his vital minimum, developing a life in fair conditions.

4. Discussion and conclusions

This article provided an analysis of the procedure established in Colombian regulations for its application in the private sector when a pathology caused by a common illness or accident requires rehabilitation and reincorporation in Colombia. It was based on qualitative methodology using inductive, hermeneutic and subjective tools. In order to achieve the objectives, various theories and regulations were reviewed, resulting in the following:

The determination of an illness or accident is made by the treating physician through an evaluation committee composed of occupational physicians who must determine if the pathology is based on the exercise of the function of the position or if not, it is assumed to be general. After this, a rehabilitation process must be established, consisting of medical and therapeutic treatments, which will lead to a satisfactory recovery in order to proceed to reincorporation, which can be total, under recommen-

dations or permanent or transitory restrictions that accompany the worker and guarantee healthy and fair living conditions.

Strict compliance with the guidelines established for rehabilitation and return to work not only has practical implications in terms of physical recovery, but also has a significant impact on the worker's self-esteem and human dignity. This process should be perceived by the employee as an opportunity to reintegrate into their work environment in a full and effective manner, which fosters a sense of belonging and recognition within the organization.

When employees feel that their needs are met and that their well-being is a priority for the company, their self-esteem is reinforced. This motivates them to become actively involved in their rehabilitation process, while feeling valued and respected as individuals. A supportive environment, where efforts are recognized and appropriate resources are provided, can be instrumental in cultivating a renewed enthusiasm for their work and a commitment to their professional development.

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The author declares that she has no conflict of interest. This document only reflects your views and not that of the institution to which you belong.

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