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COVID-19 Return-to-Work Toolkit

COLOMBIA

Introduction

When the world first heard about coronavirus, it was far from imagining the consequences that it would bring at all levels. In Colombia, its arrival took us somewhat by surprise, especially in the workplace. Business and the way of working have had important changes, and employers have faced the necessity of adapting business and business customs to new ways of working. The Government, mainly the Ministry of Labor, who has adopted the preservation of employment as its principal position, has been issuing guidelines that have to be followed by employers.

With the different guidelines given through circulars, employers have implemented different alternatives for their workers, which have been proposed since the beginning of this health emergency. Now, with the quarantine lifted for certain economic sectors and the gradual reactivation of normality, employers must adopt biosecurity protocols to avoid the spread of the virus.

Within this Toolkit, we will find the following points:

- 1. Special obligations of employers regarding COVID-19**
- 2. Current guidelines regarding workers**
- 3. Biosecurity protocols**
- 4. Other considerations**

1. Special obligations for employers regarding COVID-19



The Ministry of Health, the Ministry of Labor, and the Ministry of Interior have been issuing different Circulars and Decrees regarding the prevention, control, and management of COVID-19 cases.

The mentioned provisions set the obligation to report to health authorities any suspected case of the virus (employers must report if the employee has a fever, dry cough, and respiratory difficulties, among other symptoms, and direct him/her to the center of medical attention assigned by the governmental entity). Moreover, employers must implement specific training with respect to COVID-19, apply all the protocols, procedures, and guidelines that the government has indicated and inform employees about them.

The employer must report to health authorities any suspected case of the virus (employers must report if the employee has a fever, dry cough, and respiratory difficulties, among other symptoms, and direct him/her to the center of medical attention assigned by the governmental entity).

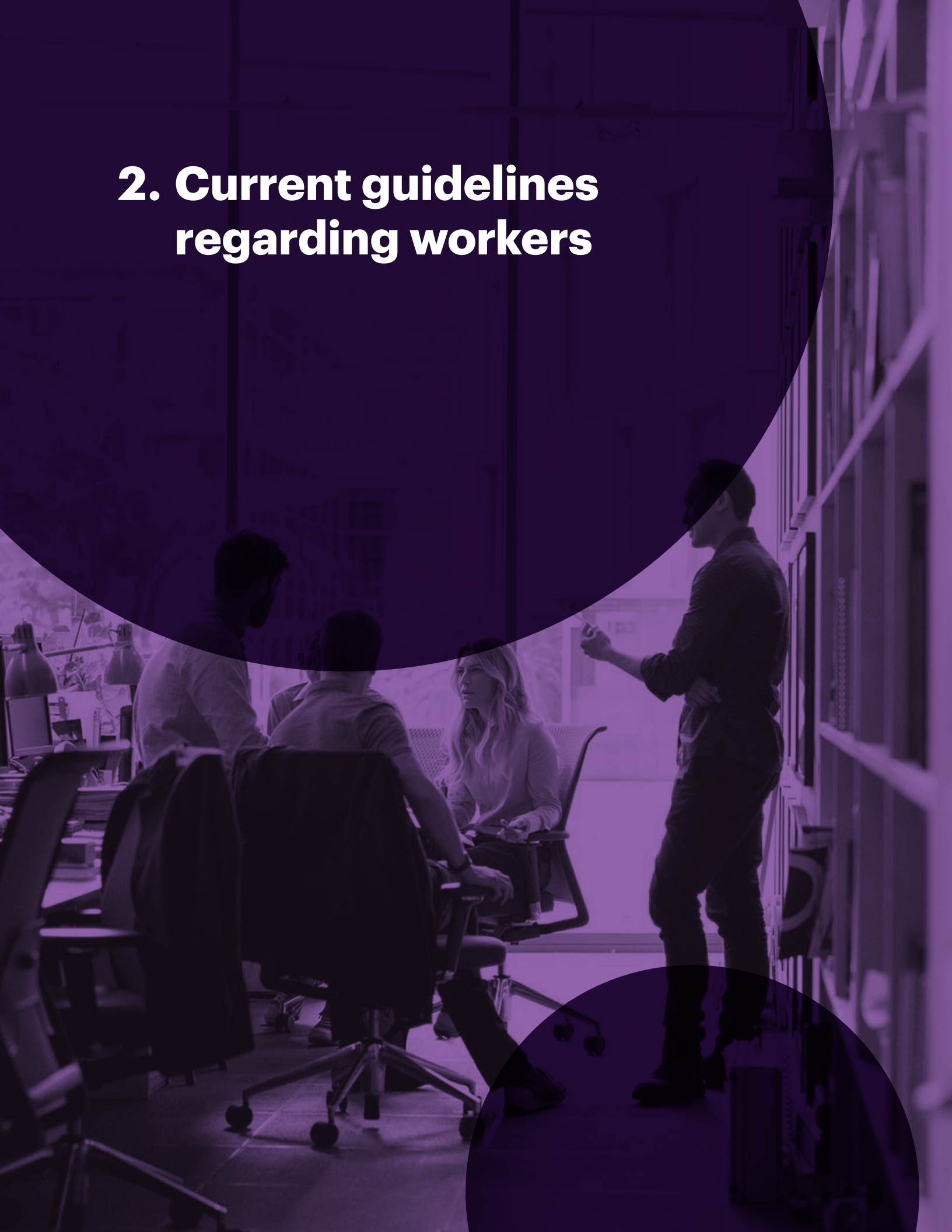
Please note that if the employee has been diagnosed with the virus and medical leave has been issued by the practitioner, no compensation will have to be paid by the employer during the leave (except for the first 2 days of leave) but the payment during leave will be assumed by the social security entity (according to rules and amounts established in the law for leave cases).

If an employee is diagnosed with COVID-19, the corresponding EPS (social security entity for health to which the employee is affiliated) will issue a medical certificate in this regard, and the practitioner will issue medical leave. The Social Security System will be responsible for the payment of the days the employee rests under medical leave, in principle by means of 66.66% of salary from day 3 (the first 2 days will have to be assumed by the employer).

The employer should also make a report to the authorities and the workers' compensation entity (ARL) if an employee is diagnosed with COVID-19, for such entities to guide the implementation of prevention measures within the working place and environment.



2. Current guidelines regarding workers



Employers in Colombia have the power to unilaterally modify employment conditions as long as these modifications do not negatively affect the employee or worsen the current employee's conditions. Otherwise, if employment conditions may be negatively affected (i.e. reduction in compensation due to reduction in working hours, etc.) the employer will have to agree (advisable to do it in writing) with the employee the change in the relevant employment conditions.

On the other hand, under Colombian Labor Law, the employment agreement can be suspended (which has the consequence that the employee will not render services and the employer will not pay salary during the suspension period) if there is a temporary activities suspension or closure of business, partially or, for up to 120 days, at the existence of technical, economic, or other circumstances beyond the control of the employer, but the previous authorization from the Ministry of Labor is required for such situation to cause the suspension of the employment agreements.

Under the current state of emergency, the Colombian Government has adopted the following measures on employment matters, to facilitate the application of the recommendations made by Ministry of Labor: (i) reduction in the advance notice employers have to give to employees when granting vacations; (ii) permission for employees to withdraw the savings deposited in their personal severance pay (*cesantías*) account in proportion to the reduction of salary; (iii) temporary non-payment of contributions to payroll taxes (9% over the value of payroll) for companies in aviation, tourism, restaurant and events industries; (iv) access to the benefits of the Mechanism for Protection for the Unemployed, which includes an economic aid of two minimum legal salaries (COP\$ 1,755,606) divided in

three monthly payments (COP\$ 585,502); (v) reduction in the percentage of the pension contribution to the social security system, from 16% to 3% during April and May of 2020; (vi) benefit from the program to support formal employment (PAEF as its acronym in Spanish) which gives employers an allowance of COP\$351.000 for each employee, fulfilling some requirements; and (v) payment of 50% of the semester bonus for employees earning up to a salary equivalent to one minimum legal wage.

It is important to bear in mind that compensation of employees during quarantine, even if they are unable to perform functions, has no modifications nor may be unilaterally changed by the employer. Nevertheless, the Colombian Labor Code establishes the possibility to review the employment agreement when external factors affect the fulfillment of normal initial conditions agreed upon. In this regard, employer and employee can review and modify by mutual consent the employment agreement, including compensation scheme, workdays, inter alia. As the Ministry of Labor has issued different measures to protect employability, the Ministry is performing strict surveillance of measures being adopted by employers.

Regarding the return to work, we must mention that an employee cannot refuse to go to his/her workplace, except for medical conditions that put them at greater risk. Failure to attend could result in a breach of their labor obligations, and consequently, the imposition of disciplinary sanctions, following the internal work regulations in force by the employer.

3. Biosecurity protocols



Concerning biosecurity protocols, it is important to point out that they have been issued specifically for each industry, taking into account the authorization that the government gives so that it can operate.

Nevertheless, Resolution 666 of 2020, issued on April 24, 2020, establishes the general biosecurity protocol for those employees authorized to come back to work (activities exempted from quarantine), and other preventing measures. Regarding the elements of personal protection (PPE), Circular 29 of the Ministry of Labor established that those who have the obligation to deliver them are the employers, except for those cases in which workers have direct exposure (health sector), in which case, this is the responsibility of the ARL.

This Resolution establishes general measures hand washing, social distancing, and the use of masks. Regarding each of these measures, the employer must have different elements, as follows:

- Handwashing: In common areas and work areas, have handwashing points (clean water, soap, disposable towels, and washing technique) where it must be done every 3 hours for 20-30 seconds and place glycerinated alcohol in places where easy and frequent access. The SG-SST area must implement follow-up and monitoring and intensify information and education actions for all preventive activities.
- Physical distancing: Workers must stay 2 meters from other people and jobs, avoiding direct contact. Thus, all the adjustments to the offices must be made (including common places such as casinos, cafes, or rest areas). The capacity of the workers in the work area must be controlled and meetings cannot be held in which the 2 meters are not guaranteed between people. Technology should be exploited to avoid the physical exchange of documents.
- PPE: It is the task of the person responsible for the SG-SST to determine the PPE required by each worker according to the activities they carry out. The employer must provide these PPE and guarantee availability and replacement, and report

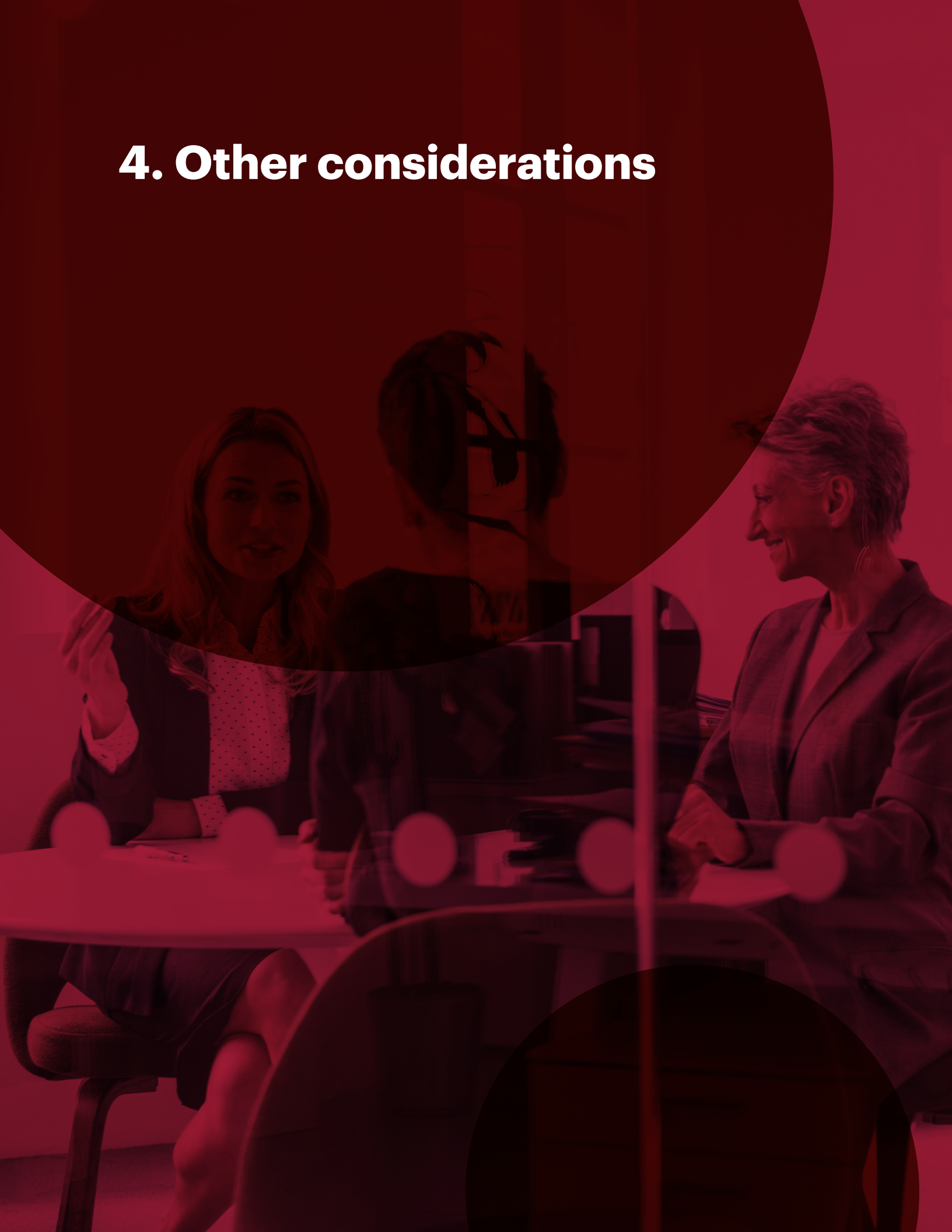
the recommendations for their efficient use. PPE is personal, and must be disinfected after use and before being stored in a clean and dry area, and must be used exclusively for the development of work activities.

The mask is mandatory in public transport and areas with a massive influx of people. It must be used correctly and hands must be washed before and after use. This can be disposable, although it is also possible to use fabric ones as long as they meet the technical requirements.

In addition to the above, a permanent cleaning and disinfection protocol must be developed for the place and work tools; The procedure, frequency, supplies, specific personnel and PPE of the personnel performing it must be defined (the use of gloves is recommended concerning this personnel). Cleaning of floors, windows, walls, partitions, furniture, chairs, doors, and all items that are in constant contact with workers should be intensified. The protocol must include a cleaning and disinfection procedure before opening and after closing offices, including common areas and furniture, and periodically during the workday. Control of rodents and insects should be done taking into account the recommendations of the Ministry of Health. Cloths and the use of disinfectant must be available to clean the contact areas of the equipment or elements of general use (i.e. entrance handle, elevator buttons) or designate a person to do so. Carry out follow-up and monitoring activities, train general services personnel, prepare digital technical and instructional dates on cleaning and disinfection processes.

The team or person responsible for the SG-SST has the responsibility of monitoring the health of workers in this context; The Resolution 666 also establishes specific tasks in detail, including temperature taking, personnel over 60 or with pre-existing conditions of high risk who must work from home, obligations to train and communicate protocols to personnel, among others.

4. Other considerations



In Colombia, health data is considered sensitive information. Employers are responsible for the correct treatment of the employee's information, and therefore are not able to make public any information with respect to any employee, except for an authority order.

For purposes of providing information to the authorities relating to the health condition of the employee and in general treating such data (transfer, storage, etc.), it is advisable that the employer, if possible, obtains written authorization from the employee for that purpose. Nevertheless, as it is established by law to report contagion cases to the health authorities, the employer must comply with this obligation.

In accordance with the general protocols of preventive sanitary measures for companies issued by the Ministry of Health, the employer should take the temperature of employees when entering the workplace and regularly during the working hours randomly. If an employee has a temperature of 38°C or above, the employer has to send him/her home to have preventive isolation.

It is worth noting that, taking into account the quality of sensitive data, it will be advisable for the employer to implement a policy and have an authorization format for the treatment of medical data that will be collected from its workers.

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