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Reforms to the Federal Labor Law

Dear clients and friends:

As you most likely have heard, on September 28, 2012, the Chamber of Deputies of the Congress of the Union approved a decree amending various provisions of the Federal Labor Law (Ley Federal del Trabajo (LFT)). Such decree was sent to the Chamber of Senators of the Congress of the Union as the reviewing chamber. On October 24, that legislative body approved the decree making certain changes (only adding 8 articles regarding union life and transparency) and returned it to the Chamber of Deputies for its review (and possible approval) of the changes made by the Senators.

Subsequently, the Chamber of Deputies approved the majority of the additions sent by the Senators, with the exception of two amended articles and the complete elimination of two other articles completely. Consequently, such minute was again sent to the Senate for its review.

Finally, on November 13, 2012 the Senate supported and sent to the Federal Executive what had been approved by both Chambers for its publication and subsequent entrance into force.

On November 30, 2012, the Decree amending various provisions of the LFT was published in the Official Federal Gazette, entering in force (generally) as of the day following its publication.

It should be mentioned that this bill is significant given that attempts to reform the labor law have been frozen for almost 40 years for political and social reasons.

In this regard, below we present the most relevant reforms to the Federal Labor Law:

Concept	Changes made	Comments
Subcontracting *(Outsourcing)*	Subcontracting is regulated, indicating the specific limitations for permitting the subcontracting of personnel. It is specifically indicated that subcontracting must comply with the following conditions: **(i)** that it does not cover all the activities of the company, **(ii)** that the specialized nature of the work be	Sanctions are established of up to 5,000 times the minimum wage (approximately 300,000.00 pesos),as well as the possibility that the contractor of the services can be considered the "employer" for all purposes of the LFT (including obligations regarding social security and profit sharing " PTU" ; in other words,there would be the risk of the

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	justified; and **(iii)** that it does not include work the same as or similar to the work done by the rest of the workers of the contracting company.	employee claiming profits from both companies).
New forms of hiring.	A new form of "seasonal" hiring is created.	In cases of seasonal activities or activities that do not require services during the entire week, month or year, hiring is permitted for certain months or specified periods; under this scheme, the workers would have the same rights *(vacation, vacation premium and Christmas bonus)* as permanent employees, but only in proportion to the time worked in each period.
Payment of salary by unit of time (payment by the hour).	The possibility is established of the worker and employer agreeing to payment for each hour of work.	In no case may the payment the workers receive per day under this scheme be less than a daily minimum wage, regardless of the hours worked.
Payment of salary electronically (bank transfers).	The possibility is provided for the employer to pay salary and benefits by deposits or electronic transfers.	The employer must absorb any cost (commission) that is generated for the worker to have the account. It should be pointed out that currently, by court precedent, it is already permitted to pay by electronic transfer.
Individual employment agreements subject to a "trial" period or"initial training"	In employment contracts for an indefinite time period or temporary contracts (for a specific time or specific work) more than 180 days, the possibility is contemplated of establishing a "trial" period in order to verify that the worker meets the requirements for the job being sought. The possibility is regulated of contracting a worker for initial training for three or up to six months.	The employment can be terminated without liability for the employer if, in the latter's judgment, the worker did not pass the trial period or did not evidence the corresponding training.

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Temporary suspension of employment for health emergencies.	The suspension of work when the competent authorities declare a health emergency is regulated.	The obligation is established for the employer to pay at least the minimum wage per day to its workers for each day that the suspension lasts, without exceeding one month.
Obligation to indicate in the individual employment contracts the name,nationality, age, gender, civil status, CURP, ID number, Taxpayer ID number and domicile of both parties.	New information regarding both parties must be included in the new contracts.	Obviously, the CURP of the employer would only apply if the employer is a natural person.
New provisions for contracting a Mexican worker who will work abroad.	An agreement must be executed subject to the approval of the Federal Conciliation and Arbitration Board.	If the employer does not have a permanent establishment in Mexico, it will consign before the Federal Board a deposit or bond, to the latter's satisfaction, to guarantee fulfillment of the obligations.
New causes of rescission of an employment contract without liability for the worker	New causes are added for which the worker can rescind the employment contract with the employer: **(i)** that the employer, his relatives or representatives engage in acts of harassment and/or sexual harassment and **(ii)** that the employer and/or his representatives require the worker to commit acts, conduct or behavior that harm or threaten the dignity of the worker.	
Delivery of written notice to the worker of the cause(s) of rescission.	The form of delivering the written notice to the worker is changed. Now, it may be done either directly (personally) to the worker or through the competent Conciliation and Arbitration Board.	Direct notice can be given through the Board, without having to show that the worker refused to receive the rescission notice.

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"Cap" on accrued wages.	Accrued wages are limited to a maximum period of 12 months. Thereafter, a monthly interest of 2% on the amount of 15 months of salary, which may be capitalized at the time of payment.	Currently, the principal risk of the labor proceedings is that the accrued wages, if the employer does not prove its case, run from the date of unjustified dismissal to the date the award (judgment) is paid. Due to a backlog of work for the labor authorities, labor proceedings take on average 2 to 2.5 years to resolve, which represents a significant cost for the employer that is ordered to pay the wages accrued during the entire proceeding. (There are proceedings that for different reasons last much longer than 2 years). While this measure is a protection for employers, unfortunately if the worker demands reinstatement and wins the proceeding, the wages would continue to accrue for each new proceeding filed by the worker.
Registration before the National Fund for Workers Consumption (INFONACOT).	Employers will be required to register with INFONACOT.	Currently,it is optional for the employer to register with INFONACOT. With the reform, it is obligatory. In this regard, once the Law enters into force, employers will have 12 months to join INFONACOT.
Obligations regarding withholdings for child support (alimony).	When a worker required to pay child support (alimony) ceases to be employed, the employer must inform the Family Court and those receiving support of this, within 5 day from when the employment is terminated.	This responsibility does not currently exist; it is only required to withhold the support established by the court.
New obligations for employers.	- In work places with more than 50 workers, adequate facilities must be adapted for access and development of activities for disabled persons. - The provisions regarding safety, health and work environment and in case of a health emergency must be complied with.	

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	- 5 days of paid parental leave must be granted to male workers in case of the birth or adoption of a child. - The relevant work safety, health and environmental provisions, as well as the entire text of the collective bargaining agreement governing the company must be visibly posted and disseminated in the work place. - The receipts for payment of social security dues must be kept for a maximum of 2 year.	
New obligations regarding training, educatio and productivity.	New obligations are established in relation to providing training and education. It will be mandatory to create and maintain mixed training, education and productivity commissions and their functions are regulated. The National Productivity Commission is created.	
New procedural rules and provisions.	Among the new procedural provisions, an important one is that now anyone advising, advocating for or representing any party before the Conciliation and Arbitration Boards must evidence that they are a licensed attorney or have a law degree.	
Creation of a new type of proceeding for "Individual Social Security Disputes".	This new proceeding is created to resolve those disputes regarding: 1) the granting of cash or in kind benefits claimed from IMSS, INFONAVIT and/or AFORES and/or 2) the granting of social security benefits that are applicable for collective bargaining agreements.	These types of proceedings will always be heard by the Special Board of the Federal Conciliation and Arbitration Board corresponding to the location of the IMSS clinic to which the insured and/or his/her beneficiaries belong.
Agreements "outside of a proceeding".	In the agreements to be ratified and approved by the Conciliation and Arbitration Board terminating employment, the concepts to be paid to the worker must be itemized.	In reality, currently it is already done this way and in fact, each Board establishes its own criteria and rules for executing agreements outside of a proceeding.

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Sanctions for violations of work standards.	Fines employers may be subject to for violating work standards are increased to a maximum of 5,000 times the minimumwage (approximately $300,000.00 pesos).	
Publishing of the collective bargaining agreements and internal work regulations.	An obligation is established for the Conciliation and Arbitration Boards to publish the collective bargaining agreements and work regulations registered with them.	Currently the Federal Conciliation and Arbitration Board publishes the collective bargaining agreements registered with it.
Working pregnant women.	Working women can divide (with certain limits) their 12 weeks of maternity leave, and during the nursing period, if agreed to by the employer, their work shift can be reduced up to 1 hour (nursing).	Only 4 of the 6 weeks of leave can be transferred from before the birth for after the birth.

It is important to take the new provisions into account, particularly those regarding subcontracting since currently businesses in Mexico, for tax and liability questions, are carried out through operating companies and services companies (outsourcing), and the reforms represent a significant change in this regard that could impact the operations of companies.

If you have any comments or need additional information, please do not hesitate to contact us and our labor specialists would be glad to answer all your questions and implement any changes that may be necessary.

For more information please contact our team of experts:

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México D.F. a Enero de 2013.