

Article 29 Bis is added to the National Workers Housing Fund Institute Law in relation to Subcontracting

On June 4th of this year the Decree adding article 29 Bis to the National Workers Housing Fund Institute (INFONAVIT) Law was published in the Official Federal Gazette.

The purpose of this reform is to increase the investigative authority of INFONAVIT in relation to the companies that use a subcontracting regime (outsourcing) and, principally, to delineate the responsibility between the contracting company and the outsourcing company.

The reform unifies the definition of subcontracting with the definition found in the Federal Labor Law and furthermore imposes a secondary obligation between the contracting company and the outsourcing company, as contemplated in the Social Security Law, establishing that when workers are contracted through a subcontracting regime, both (contracting company and outsourcing company) will be responsible for complying with the obligations indicated in the INFONAVIT Law. In other words, the beneficiary of the services (contracting company) will only be responsible for compliance with such obligations if the outsourcing company fails to comply with them, provided that INFONAVIT has requested compliance and the outsourcing company has not done so.

In addition, quarterly the contracting companies and outsourcing companies must communicate to the corresponding INFONAVIT collection delegation the contracts they have executed, specifying the following information:

1. Regarding the parties to the contract: Name, type of entity, corporate purpose, corporate domicile, tax domicile and, if applicable, contractual domicile, RFC, employer registration number with IMSS and INFONAVIT, articles of incorporation registration data, and name of the legal representatives that signed the contract.
2. Regarding the contract: Purpose, term, profiles, positions or jobs, type of personnel (operative, administrative or professional), justification of the specialized work and approximate number of workers monthly. The outsourcing company will also indicate the name of the beneficiary of the services of each worker.

Although obligations are imposed, the article does not contemplate the imposition of penalties for non-compliance, nor specific means for giving the quarterly notice referred to above.

Notwithstanding the deficiencies in the drafting, it is important when entering into services contracts to evaluate whether or not they are subcontracting contracts and if so, to ensure that the contracting company ensures that the outsourcing company complies with its social security obligations, and to evaluate the manner in which they will present the notices to INFONAVIT with respect to the contracts executed.



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Sincerely,

Von Wobeser & Sierra, S.C.

Mexico City, June 26th, 2015.