

Bill Reforming the Federal Labor Act regarding subcontracting

As you know, there has been a lot of discussion concerning possible amendments to eliminate subcontracting schemes. Accordingly, yesterday the President of the Mexican Republic, together with the Secretary of Labor and Social Welfare, announced that a new Bill will be presented to the Chamber of Deputies to reform various provisions of the Federal Labor Act, the Social Security Act, the National Workers Housing Fund Institute Act, the Federal Tax Code, the Income Tax Act and the Value Added Tax Act, in relation to subcontracting (*hereinafter, the Bill*).

It is important to emphasize that the statement of purpose indicates that subcontracting, although it is the natural form for the legal relationship for developing particular specialized processes, has been subject to abusive or simulated practices that harm the rights of the workers, and therefore this bill attempts to strengthen employment and eliminate practices that harm labor rights and evade compliance with employer obligations.

As a result of the above, the main amendments that the Bill contemplates are:

1. The concept of "intermediary" is defined as the individual or entity that intervenes in the hiring of personnel to provide services to an employer. These intermediation services may include recruiting, selection, training, capacity building, among others. Under no circumstance will the mediator be considered the employer, since the one benefiting from the services.
2. The subcontracting of personnel, consisting of an individual or entity providing or making workers available in benefit of another, is prohibited.
3. The providing of specialized services or the execution of specialized works that do not form part of the corporate purpose or the economic activity of their beneficiary will not be considered subcontracting of personnel, but only if the service provider has the authorization of the Ministry of Labor and Social Welfare for that purpose.

Furthermore, formalities and requirements are established that any individual or entity must comply with to be able to contract the providing of specialized services or the execution of specialized works, which include the formalization of a contract in which the purpose of the services to provide or the works to execute is indicated, as well as the number of workers who will participate for completing it.

It is established that the individual or entity that contracts the specialized services or the specialized works with a service provider that does not meet its obligations towards its workers will be jointly liable in relation to the workers used to provide those services.

4. It is intended to establish a requirement that individuals or entities that provide the above referenced services must have the authorization of the Ministry of Labor and Social Welfare. The authorization will be renewed every 3 years.

The creation of a registry of specialized services or specialized work providers is also contemplated.

5. In relation to employer substitution, it is established that the assets of the company or establishment must be transferred to the substitute employer for the employer substitution to take effect.
6. A sanction is established of 2,000 to 50,000 times the Measure of Unit and Indexing (currently MX\$86.88) on anyone subcontracting personnel or providing specialized services or executing specialized work without the corresponding authorization.

As mentioned, the Bill also contemplates relevant amendments to the Social Security Act, the National Workers Housing Fund Institute Act, the Federal Tax Code, the Income Tax Act and the Value Added Tax Act, in order to harmonize them with the reforms to the Federal Labor Act.

We will keep you updated on its progress and we will be happy to support you in creating an action plan in case the Bill runs its course.

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