



## Mexican President Signs Bill to Ban Outsourcing of Jobs

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***Mexican President Andrés Manuel López Obrador announced on October 27, 2020 that he would send a bill to Congress to eliminate outsourcing (third party employers). On November 12, 2020, he signed the bill to be sent to Congress in his morning press conference.***

***"I will send a bill to make that mechanism disappear. It is going to be another controversial issue, I advance it, like the trusts, but we have to clean up, we cannot be accomplices of corruption," he said.***

***The president, who warned in early October that he was already working on this proposal, stressed that the practice affects the public treasury and the development of the country.***

The main amendments of the current legislation introduced by the Bill are:

- An "intermediary" is defined as the individual or entity that intervenes in the hiring of personnel to provide services to an employer. These services include recruiting, selection and training among others. The intermediary will not be considered the employer; it will be the beneficiary of the service.
- Subcontracting of personnel, consisting of a person or entity providing or making available its own workers for the benefit of another, is prohibited.
- The provision of specialized services or the execution of specialized works, which fall outside the corporate purpose or business activity of the recipient of such services, shall not be considered as subcontracting/outsourcing of personnel.

The Bill establishes the formalities and requirements that any individual or company must comply with in order to contract specialized services, which include execution of an agreement specifying the purpose of the services as well as the number of workers involved.

In addition, the reform establishes that the individual or company contracting specialized services or works from a contractor that fails to comply with the obligations derived from the work relationship with its employees will be held jointly and severally liable towards the employees used for such services.

- Individuals or companies providing the above-mentioned services must be authorized by the

Ministry of Labor and Social Welfare. The authorization will be renewed every 3 years. Also, the creation of a register of specialized service providers or specialized works is envisaged.

- In terms of employer substitution, the law establishes that the assets that are the property of the company or establishment must be transferred to the substitute employer for employer substitution to take effect.
- A penalty of 2,000 to 50,000 times the Measurement and Updating Unit (currently MX\$86.88) is imposed on anyone who subcontracts personnel or provides specialized services or executes specialized works without the corresponding authorization.

The bill also includes significant changes to the Social Security Law, the Law of the National Workers' Housing Fund Institute, the Federal Fiscal Code, the Income Tax Law and the Value Added Tax Law.

### **Outsourcing in Mexico: A Synopsis**

Personnel outsourcing has become an important structure for foreign and national companies doing business in Mexico. Millions of Mexican employees are hired through outsourcing or personnel leasing companies. Sometimes, these are specialized outsourcing companies with a workforce of several hundred thousand employees.

**But many companies with foreign capital doing business in Mexico have applied a similar structure by establishing a two-company model: one company hires all employees and leases them the second company, which runs the operation (so called Insourcing).**

Outsourcing was regulated in 2012 in article 15-A and B of the Federal Labor Law to help companies to subcontract certain administrative procedures, so that they could focus on core activities such as production. Companies can contract the services of a third party that would administer payments to workers, payment of social security and taxes. However, according to the President, employers abused that model.

The intention of article 15-A of the Federal Labor Law was to stop abusive outsourcing structures, except the services mentioned above; however, in practice and for political reasons, labor authorities and courts did not implement the strict provisions of the law, nor did they specifically audit companies.

*According to the current legislation, the recipient of the services of the temporal workers is accessorially liable for the obligations with regard to labor law and social security toward the personnel leased to it. In case the temporary employment agency does not pay the social security contributions, the Social Security Institute may sue the company which employs the leased workers.*

*Outsourcing became a well-known model to avoid the obligations related to labor law and social security and, above all, the participation of the employees in the company profit ("Participación de los Trabajadores en las Utilidades", also known by its Spanish acronym PTU).*

Misconducts and abuses by specialized outsourcing companies denounced by the current government and tolerated for political and economic reasons by previous administrations include continuous fixed-term employment agreements, excessive invoicing, VAT reimbursement schemes and registering employees at the minimum salary and paying the rest of the salary in cash to reduce social security contributions. Another tactic is to constantly migrate employees between separate legal entities of the same outsourcing group to keep seniority at a low level as they start fresh at each company. This minimizes the employee's vacation days, vacation bonus and severance pay claims in case of termination.

In March 2020, the Mexican Senate already discussed a bill to regulate the outsourcing or sub-contracting scheme, but due to disagreements within the ruling party MORENA, it blocked the discussion of the bill.

### **Why is the Proposed Reform Important?**

By this scheme, companies evade mandatory sharing of profits of the production company (PTU) with the employees of the personnel services company.

### **It is worth noting that, in the Mexican Labor Law, PTU is among the direct causes to allow unionized employees to go on strike.**

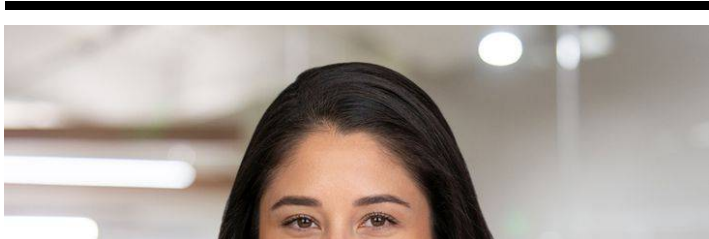
*The current law prohibits a temporary employment if employees are intentionally transferred by the service recipient to the outsourcing company in order to reduce in this way the labor and social security obligations.*

Examples for allowed outsourcing of activities, as intended by the Legislature, are the hiring of external security, catering, cleaning, legal or accounting services. Those are activities that usually do not belong to the core activities of production companies.

The possible reform of the Federal Labor Law to further limit or even eliminate outsourcing has led to reactions from employer organizations such as the COPARMEX (Mexican National Employer Association), which noted that it could severely affect the Mexican economy as many production companies rely on outsourcing to temporarily cover their personnel requirements at short notice.

If you have questions about the impact of the recent litigation or would like to discuss how to prepare your organization, please contact your Fisher Phillips attorney or a member of the firm's [Global Immigration Practice Group](#).

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**Nazanin Afshar**

Partner

818.230.4259

Email

***Service Focus***

International