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December 15, 2020 year 09 | No. 07



Is outsourcing being abolished in Mexico?
By Edgar Bezares

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NOVEMBER NEWS on
Mexican Commercial Law

Is outsourcing being abolished in Mexico?

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Today the great variety of commercial relationships and the growing development of the economy in the world have caused a complete change in several aspects of daily life, forcing us to redefine concepts that had remained rooted in our society and, consequently, in our national legislation.

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Of course, employment relationships are comprised in the aforementioned aspects, because they have been an important part of the social, commercial and economic dynamics, according to which a higher degree of specificity and professionalism is required by every company, so each person must have enough technical preparation for being competitive in these challenging circumstances. All this results in the typical service provision between employers and their workers being linked and developed differently. Outsourcing emerged from this need.

The essence of outsourcing is that companies assign their economic and human potential, as well as their infrastructure exclusively to the development of their corporate purpose, instead of directing it to external aspects that also require different levels of professionalism, which can be provided by other corporations fully specialized for such specific purpose, what results in a double benefit: a) greater productivity and efficiency for each company in its respective trade and 2) the creation of more specialized companies and, therefore, more sources of employment.

The origins of outsourcing are dated between 1940 and 1960 in the United States of America and since then it was accepted in several countries, but it was legalized in Mexico until November 30, 2012, when all the related reforms to the Federal Labor Law were published in the Official Journal of the Federation, plainly allowing outsourcing in the articles 15-A to 15-D.

However, last November 12, 2020, the Mexican President, Andrés Manuel López Obrador, formally sent to the House of Representatives (lower house) his proposal to reform the Federal Labor Law and several social security and tax laws, that expects to finish with all forms of alleged simulation and misuses that commonly occur with outsourcing, affecting its intrinsic intentions.

In the proposed initiative, on the one hand, the reform to the existing articles 12, 13, 14, 15, 1004-A and 1004-C of the Federal Labor Law is suggested and, on the other, the abolition of articles 15-A to 15-D, which specifically regulate outsourcing, is also proposed¹.

Initially, the proposed amendment to article 12 of the Federal Labor Law is useful, because it defines and delimits the “intermediaries” as each person or company that, by specialized services, take part in the recruitment, selection, or training of personnel for the employer to hire the better-qualified person for a certain position, which does not mean such intermediaries can be considered employers of the recruited person.

1.- Bill of Labour Reform issued by President Andrés Manuel López Obrador.

The core part of the amendment is the one referring to the repeal of outsourcing, so the proposal of reform of article 13 of the labor law seems to be too drastic since it states expressly that: “outsourcing of personnel, which consists in a person or company providing or making its own workers available for the benefit of another, is prohibited”.

However, this is no more than a smokescreen to create a false and wrong idea of the suggested amendment, what nowadays is so common for the federal government and its urge to be in the limelight, since the proposed amendment to article 14 does actually allow outsourcing (subcontracting) of employees, by stating “Neither the provision of specialized services nor the execution of specialized works, which are not included in the corporate purpose or the economic activities of the beneficiary of those services or works, shall be considered subcontracting of personnel”, but a license granted by the Ministry of Labor and Social Security must be obtained previously by the contracted firms, according to the requirements contained in the amendment of article 15 of the Federal Labor Law.

“...the proposed amendment to article 14 does actually allow outsourcing (subcontracting) of employees...”

According to the suggested amendments, it is a mandatory requirement that the provision of the subcontracted services or works is documented in an agreement, describing its nature and the number of people who will develop the activities for the beneficiary. In addition, in case the contractor fails in complying with its employees’ obligations, the beneficiary of the services or works will be jointly responsible before its contractor’s employees.

As previously mentioned, it is suggested that contractors must be granted a license issued by the Ministry of Labor and Social Security so that they can provide their outsourced services for which they have to prove the real specialization of their provided services or the executed works, as well as being up to date in all of their tax obligations. The granted license would be valid for three years and could be renewed only if the companies satisfy again the legal requirements. The outsourcing companies will be registered in the list of service providers and specialized works.

Likewise, the project of reform of articles 1004-A and 1004-C of the law considers higher fines to the contractors and the beneficiaries of the services provided in case they deny and obstruct the inspections made by the labor authorities, as well as when they provide or receive the works and services without having the required licenses.

The sense of the project to reform the articles of the labor law, it is proposed by the President to reform some articles of certain social security and tax laws to make them congruent with each other and with the objective of the whole reform.

In the statement of purposes to amend the law, the President of Mexico refers that the apparent abolition of outsourcing seeks to fight against the alleged “recurrent simulations” made by the outsourcing and the beneficiary companies by virtue of which the working class and the public treasury have been constantly harmed, for example, by moving or hiring employees from one company to an “outsourced” one, created deliberately, where they receive fewer benefits than the ones they would obtain in the beneficiary company, and they are registered in the social security institutions with a salary lower than real. Other forms alleged is that both companies (beneficiary and outsourced)

provide the same kind of services or execute the same works, all this to have less payroll burdens.

As we can see, despite what was widely announced by the President's Office, it is false that the project to reform the law prohibits outsourcing or have redefine it, but instead provides for more requirements, controls and legal limits imposed to be thoroughly valid and, additionally, as usual for this current government to print its distinguishing stamp, it is intended to replace the name "outsourcing" or "subcontracting" with that of "provision of specialized services or execution of specialized works".

"...the apparent abolition of outsourcing seeks to fight against the "recurrent simulations" made by the outsourcing and the beneficiary companies by virtue of which the working class and the public treasury have been constantly harmed..."

Of course, many companies have misused outsourcing in order to reduce their payroll burdens, affecting directly their employees and the public finances, but anyway it is not possible to stigmatize this labor institution, whose practical purposes entail uncountable advantages if it is properly regulated, supervising its legal execution.

Since the date outsourcing was legally authorized in Mexico, about 33% of the employments created annually were in the form of outsourcing model. Internationally, although the percentages are slightly lower, they are also important, since, for example, the new jobs created reach 12% in Germany, 19% in France and 24% in Brazil, what shows us how significant outsourcing is today².

After analyzing the reform suggested by President López Obrador, it can be concluded that its purpose is correct, as well as the regulation proposed, so if they are correctly and efficiently applied, the illegal practices related with outsourcing could be suppressed.

2.- <https://www.eleconomista.com.mx/opinion/Subcontratacion-una-tendencia-generalizada-en-el-mundo-y-una-solucion-a-la-crisis-del-empleo-20200128-0156.html>

Vaccination against covid-19 in Mexico is said to arrive before the end of December.

The Secretary of Foreign Affairs, Marcelo Ebrard, restated that in Mexico, the vaccination against covid-19 will begin before the end of December, as in the European Union. This, after the president of the European Commission, Ursula von der Leyen, announced via Twitter that the first people vaccinated in Europe will also be immunized before the end of December, according to her own estimates. www.milenio.com/politica/coronavirus-mexico-ebard-vacunacion-iniciara-diciembre 26/11/2020.

Adjustment to the jurisdiction: Senate expands crimes for which the president can be charged and tried.

With 89 votes in favor and 23 against, the Senate approved the ruling of constitutional reform to modify the jurisdiction and expand the list of crimes for which the president can be tried, promoted by President Andres Manuel Lopez Obrador. The Senate noted that the approved reform will allow the president to be accused and judged for: acts of corruption, electoral crimes, treason and crimes for which any citizen could be prosecuted. www.animalpolitico.com/2020/11/senado-aprueba-reforma-elimina-fuero-presidencial-amlo/ 26/11/2020.

Mexico's economy rebounds strongly: it grows 12.1% in the third quarter.

The recovery occurs after a historic 17% drop in the second quarter, caused by the closure of productive activities due to the coronavirus pandemic. A preliminary estimate released in late October suggested that Latin America's second largest economy had expanded by 12% between July and September. Within the Gross Domestic Product (GDP), secondary activities - industry and manufacturing - had the greatest quarterly advance, with 21.7%, followed by commerce and services, with 8.8%, and primary activities, with 8%, according to seasonally adjusted figures of National Institute of Statistics and Geography. www.forbes.com.mx/economia-de-mexico-rebota-con-fuerza-crece-12-1-en-el-tercer-trimestre/ 26/11/2020.

Mexico pre-purchases more than 200 million doses of Covid-19 vaccine.

Mexico has pre-purchased more than 200 million doses of the different vaccines that are being developed in the world against Covid-19, which would cover 92 percent of its population, reported the Ministry of Foreign Affairs (SRE), which would place the country in eighth place in the table of countries that have pre-purchased the biological). The World Economic Fund stressed that each vaccine needs two doses to generate protection against the disease, adding that only Canada, Japan, the United States and the United Kingdom would be the only governments capable of vaccinating more than 100 percent of their population. www.jornada.com.mx/ultimas/politica/2020/11/27/pre-compra-mexico-mas-de-200-millones-dosis-de-vacuna-contra-covid-19-4142.html 27/11/2020.

Mexico to introduce tax breaks along southern border, extend in north.

Mexico will introduce fuel and tax breaks along the country's southern border and extend a program of similar benefits through the end of 2024 along its northern border in a bid to boost local economies. The plan was first launched last year and reduced two taxes - a value added sales tax known as IVA and the ISR income tax - and will now extend to 22 local districts, or municipalities, along Mexico's southern border with Guatemala and Belize. President Andres Manuel Lopez Obrador, flanked by his finance and economy ministers, announced the expanded tax breaks at his regular morning news conference. <https://www.reuters.com/article/us-mexico-taxes/mexico-to-introduce-tax-breaks-along-southern-border-extend-in-north-idUSKBN2871LZ> 27/11/2020.

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