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July 3/ 2024

New labor regulations

Considering the labor reform proposal which has been promoted by the National Government since 2023, and which on June 18, 2024, was approved in the first debate by the Seventh Commission of the House of Representatives, it was announced that the Government will seek to implement through Decrees some labor measures that were not approved in such debate.

In order to facilitate a general and quick understanding of those Decrees, we present below the main changes that would occur in labor matters with the implementation of such Decrees, which are of great interest to our business community.

I. LABOR COEXISTENCE COMMITTEE

The preventive and corrective mechanisms for labor harassment are regulated, as well as the operation and constitution of the labor coexistence committee, the internal procedure to be followed in the company when a complaint is filed, the requirements to be met for the filing of complaints of labor harassment, as well as the responsibility of employers and the Administrators of Labor Risks (ARL by its acronym in Spanish) regarding the development of measures for the prevention and correction of labor harassment.

In this sense, this Decree seeks to define some minimum actions that companies must carry on in order to implement preventive mechanisms of labor harassment; likewise, it is intended to include requirements that should be met by those who are part of the labor coexistence committee and requirements that the complaint must meet in order to initiate the corresponding procedure, which in principle must always be made in writing. Another important aspect to be modified is related to the ordinary meetings of the labor coexistence committee, which would have to be held monthly and not quarterly as is currently the case.

II. LABOR INTERMEDIATION

The purpose is to establish the criteria for labor inspection in matters of outsourcing and unlawful labor intermediation. In this sense, it would be considered illegal labor outsourcing when the contractor or service provider lacks its own organization and a specialized productive structure for the development of the contract and/or when its personnel are under the dependence of the contractor or beneficiary of the services.

In addition, it seeks to implement indicative criteria for illegal labor outsourcing practices, some of which are associated with unlawful labor outsourcing with contractors or service providers that lack their own organization and specialized productive structure, and other criteria associated with illegal labor outsourcing with contractors or service providers whose personnel are subordinated to the company contracting the services.

Likewise, the Decree also establishes that when a company sends personnel to another, without being authorized to operate as a Temporary Service Company, or being authorized, supplies personnel outside the temporary and exceptional situations, or exceeding the maximum term, it will incur in illegal labor intermediation practices.

Finally, the amount of successive fines that could be imposed by the Ministry of Labor for each infraction for as long as the non-compliance subsists is modified from successive fines of up to 100 smlmv to successive fines of up to 5,000 smlmv.

III. UNION ASSEMBLY AND UNION DUES

The purpose is to modify some provisions related to the assembly of the union organizations where the decision to go on strike or to go before the Arbitration tribunal will be made. In this sense, it is established that the employer's omission to deliver to the union the employees' payroll will be considered as an act tending to hinder the holding of the assembly.

Regarding the collection of union dues, the Decree establishes that the employer has the obligation to withhold and deliver to the union the amounts that the non-unionized employees must pay to them for benefiting from the collective bargaining agreement, without the employer being able to promote the waiver of such benefits because they cannot be waived. Currently, the law allows the explicit employee's waiver of the agreement benefits.

IV. UNIFIED COLLECTIVE NEGOTIATION

Collective bargaining is intended to take place at the branch or sector of activity, municipal or regional level or at any other level that the parties deem appropriate. In this sense, the execution of collective bargaining agreements at levels higher than the company would not repeal or modify the collective bargaining agreements in force in the company; however, they would be applicable to the employees when the agreements at levels higher than the company are more favorable to them.

The Decree establishes that collective bargaining agreements of sectorial or geographic scope would be of mandatory application for all employers and employees at the respective bargaining level, for which reason pluri-subjective or pluri-individual agreements could not be entered into with non-unionized employees.

V. STRIKE IN ESSENTIAL PUBLIC SERVICES

The Decree establishes the possibility of having strikes in essential public services, and therefore, in such event, minimum services must be guaranteed in order to avoid interruption of the minimum essential services.

It is established that the fixing of minimum services will be made by mutual agreement between employers and employees' organizations. In case such agreement is not reached, the labor inspector of the jurisdiction where the strike will take place will be the competent authority to set the minimum services.

The Decree states that in case the strike is declared illegal, the Ministry of Labor would intervene immediately in order to prevent the employer from dismissing or punishing the employees who participated in the strike, in this case, the Ministry would order the employer to identify the conduct of the employees who have exceeded or abused the exercise of the right to strike.

VI. ARBITRATION TRIBUNAL

It seeks to modify some provisions on the convening and integration of the arbitration tribunal. It establishes that it will be preferably processed through the technological and virtual platforms established by the Ministry of Labor. The Decree seeks that the installation of the tribunal will take place in a term not exceeding 5 working days from the communication of the content of the resolution of convocation and integration by the Vice Minister of Labor Relations and Inspection, at present this installation cannot exceed 8 working days.

Note: Please note that these measures have not yet been decreed by the National Government at the time of publication of this alert and, in case they are decreed, they could undergo some modification.



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