The Amendment to Mexican Labor Law

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Mexicans celebrated with taste the recent amendments to the labor regulations in the country, mainly because since several years ago there were some attempts to change the law in order to reflect the reality in labor relations and to propose a good set of policies in this area to promote domestic and foreign investments in our country; this was finally done.

The new amendment, which became effective on December 1st, of 2012, will dissipate many of the historic concerns experienced by entrepreneurs, corporations and foreigners when looking to invest in a business. We still need to wait and see how this extensive reform will be implemented in practice and interpreted by the courts, but at a first glance it seems to create a more fair ground for productive labor relationships within the country.

Although this was a comprehensive reform to the Mexican labor law, this brief memorandum will only mention five important points which were modified with the amendments, and which may affect the normal life of a Mexican company:

1. Outsourcing.

Even though it was formerly applied in some cases, the outsourcing of services by service providers to third parties is for the first time contemplated in the labor law as a recognized mechanism and it provides a test in order to prove the "validity" of such outsourcing and the limitation of the consequences of the employer-employee relationship for the company receiving the services.

Before the amendment, the principle applying under Mexican labor law was that, in any outsourcing structure, the entity receiving the outsourcing services was fully and jointly liable with the outsourcing company for any liabilities derived from the employer-employee relationship, even if such relationship was formally only between the employee and the outsourcing company. For that reason it was very important to include indemnity provisions in the outsourcing agreement with the purpose of being able to recover any amounts paid by the company receiving the services due to such legal liability from the outsourcing company.

The amendment provides three conditions which shall be met in order to consider a services relationship as outsourcing:

1) That the outsourcing services do not cover the totality of the activities performed at the facilities of the entity receiving the services;
2) That the services provided by the outsourcing company are "specialized"; and
3) That the services provided by the outsourcing company do not cover tasks which are similar or alike to those performed by the employees of the entity receiving the services.

According to the new rules, in the case such three tests are met, the company receiving the services may avoid potential employer liabilities which could arise before the Mexican authorities derived from the employment relationship between the employer providing services for the company and its employees, which in such case would be solely borne by the outsourcing company. However, the joint liability for certain other obligations related to the employment relationship still seems to remain in force.

The amendment also intends to change the status of the company receiving the services in the case the relationship does not meet the tests to shield the labor liability. In such case the company receiving the supposed outsourcing services will be directly legally liable for all the labor liabilities derived from Mexican labor law, while before the amendment such company was considered as jointly liable – which involves a technical difference. We understand that the amendment may give rise to the opportunity to avoid the status of employer in case the employee duplicates its claim for any labor liability to both the company receiving the services and the outsourcing company. This of course is still subject to application and practice, and the interpretation which the labor courts will come to regarding this concept shall be closely monitored.

2. New types of employment relationships.

In addition to the employment for a specific term or project and the employment for an indefinite term, the amendment introduces the following new types of employment relationships:

1) *Employment agreements for trial and training periods.* These temporary agreements will give the employer an opportunity to confirm if the employee has the capabilities to fit the needs of the job or to train him for a limited period of time to see if he or she can develop the required skills. Such agreements should be made in writing, cannot be extended, and can be used only once with the same employee. The initial training agreements could be valid for three months and in the case of direction and management positions for a maximum of six months. The trial period agreements will be valid for 30 days only and in the case of direction and management positions for a maximum of 180 days.
2) *Agreements with hourly wage.* Although it is not clear the way in which the salary will be calculated to the effect of paying annual and vacation bonuses, among others, the amendment now allows an alternative option to the former obligatory eight hours workdays. The limits to this new mechanism are that the minimum wage per day, regardless of the number of worked hours, shall be the at least the minimum daily wage contemplated in the law, and that the workday cannot exceed 8 hours during day shifts, 7 hours during night shifts and 7.5 hours during mixed shifts.

3) *Seasonal employment agreements.* This sort of agreements may be used in the case of temporary or seasonal peaks and in those cases in which the job does not implies to work in a weekly, monthly or yearly basis.

This is, in our opinion, the most significant change affecting employers contained in the amendment as it will give the possibility to better manage the performance of the hiring regime in the company.

3. Compensation derived from the death of the employee.

The amendment contemplates a change in the calculation of the compensation to be paid in case of the death of an employee while performing his job, which is now equal to 5,000 times the minimum daily wage (rather than only 730 times the minimum wage, which was applicable before the amendment). This change will become relevant in the social security dues payable the Mexican Social Security Institute, as they will most probably increase given that such fees are calculated, among other things, considering the costs of the compensation to be paid in the event of death of an employee, and it will also increase the price of the insurance policies including general liability coverage which are offered by private insurance companies, as they also contemplate such basis for compensation when estimating coverage and costs for ordinary liability insurance. This figure also is relevant as it is likewise the base amount used to calculate damages in case of any accident outside of the labor and employment environment, and is also contemplated as a reference for other liability situations in the federal civil and criminal codes.

4. Termination Notice

The termination of employment is somehow eased given that in order to terminate the employment relationship the employer will only need to personally deliver the termination notice at the moment of the termination to the employee, in the case in which such notice contains the conduct or action that motivates the termination, and the dates in which such actions were committed. Previously, if the employee disagreed on the termination, the employer was required to file before the labor courts the request for termination and the employment relationships did not ended until the termination notice was notified to the employee by the court. This is another key issue in which its interpretation by the courts will be critical and shall be monitored to analyze further recommendations to be taken in connection with any such notices.

5. Back Wages

Under Mexican labor law, once a labor trial ends, and in the event that the employer is condemned, it will be also required to pay for back wages since the time of the termination. The change in this case is that, before the amendment, such back wages did not contemplate any limit, so the amount of the back wages' payment was sometimes exponentially larger than the original claim; now, under the amendment, such payment concept is capped to a limited period of 12 months' salary. In case the trial exceeds such period and the employee prevails in its claim, he or she will be entitled to additionally receive, for each additional month of trial and on a monthly basis, an amount which is equal to 2% of his or her salary, calculated for 15 months.

As also mentioned in other sections of this memo, it is very important to point out that the ultimate effects of the amendment to the labor law would only be clear once the labor courts start interpreting and applying the amended law. This will come in the future, and we shall remain vigilant of those interpretations, resolutions and precedents, which could give rise to the recommendation of other or additional protective actions.

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