

Outsourcing Impact On Mexican Operations (Employment Structures)

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On April 24th, 2021, the Mexican Labor Law (which regulates employment relations in the private sector at both Federal and local levels) was reformed to include radical restrictions over the outsourcing relationships between companies, to avoid acts of simulation and fraud to the detriment of employee's rights.

In terms of such reform, subcontracting personnel is prohibited, and companies can only subcontract specific services that are not part of their corporate purpose or their main economic activity. However, when such service implies "making the staff available to the client", the service provider needs to be registered as a specialized service provider through a digital system called "REPSE" managed by the Ministry of Labor and Social Welfare (STPS for its acronym in Spanish).

The concept of "making staff available" was defined by the STPS on an administrative document (not part of the reform), and it exists when the staff of the service provider renders services in the facilities of the client on a permanent, indefinite, or periodic basis.

When a service is deemed as specialized in such terms, the service provider should also enter into a Service Agreement with special data, submit quarterly reports to social security authorities, and provide monthly information to the client on its tax obligations regarding VAT and Income Tax. Failing to comply with such obligations could lead to the imposition of fines, non-deductibility or crediting of taxes, and even criminal charges (in extreme cases of tax fraud).

Therefore, when a company (regardless of its nationality) has outsourcing relations with a Mexican company, it should study the following aspects:

1. Analyze if you are subcontracting a service or subcontracting specific positions or people.
2. Analyze if the services will be rendered in your facilities or your client's facilities on a permanent, indefinite, or periodic basis.
3. Analyze if the outsourced activities are part of your corporate purpose or main economic activity or that of your client.

Further risk analysis is needed on every specific case since there are lots of variables concerning: the type of services, invoicing/taxes, location of the staff, etc., which play an important role when evaluating an employment structure for operations in Mexico.