



## Questions and Answers

### Employers Beware: Major Changes in Mexican Labor and Employment Law

Tuesday, December 11, 2012

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**The minimum employment standards law in BC makes it illegal to charge workers for info on employers seeking employees or for finding a job. Are there similar prohibitions in Mexican labor and if so, do they apply to recruitment to work outside Mexico?**

Fernando Gonzalez ([Fgonzalez@s-s.mx](mailto:Fgonzalez@s-s.mx))

A: We have the same principle in Mexico.

Andres Rodriguez ([arodriguez@s-s.mx](mailto:arodriguez@s-s.mx))

A: In addition to what Fernando explains, such prohibition will also apply to recruitment to work outside Mexico if the employee is a Mexican company or a Mexican individual.

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**Thank you. Is this prohibition new in Mexican labor law, or has it been in existence for some time?**

Andres Rodriguez ([arodriguez@s-s.mx](mailto:arodriguez@s-s.mx))

A: This prohibition has been in existence for many years.

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**Did I hear the outsourcing applies as well to general temporary resources completing work core the Mexican entity?**

Juan Carlos de la Vega ([jdelaavega@s-s.mx](mailto:jdelaavega@s-s.mx))

A: Provided that the company is using an outsourcing company in order to hire temporary employees and complete the needed workforce, new outsourcing rules will apply. Otherwise, if such temporary workers are directly hired by the company, these provisions will not apply.

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**If I already have an outsourcing company that provides me employees for direct labor and I have a mix of 60% direct employees and 40% outsourcing and I pay PTU to the direct employees, Do I have to change and make the PTU distribution to everybody?**

Juan Carlos de la Vega ([jdelaavega@s-s.mx](mailto:jdelaavega@s-s.mx))

A: Assuming that such 40% are developing equal or similar tasks to those carried out by the other 60% of employees who are directly hired by the company, there is a risk that the employees hired through an outsourcing could be entitled to receive PTU as well. Nevertheless, specifics of the matter should be revised and analyzed.

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**Can I continue to have this mix between outsourcing and my own?**

Monica Bichara

A: Again, assuming that employees hired through an outsourcing are actually developing equal or similar tasks to those carried out by employees who are directly hired by the company, continuing with this scheme will not be feasible, since the activities that are being outsourced are not of a specialized nature.

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**Can you come back to the service company vs the operating company and how that has changed from past and a further explanation of the provision limiting employers to hire employees of a single union.**

Juan Carlos de la Vega ([jdelaavega@s-s.mx](mailto:jdelaavega@s-s.mx))

A: Even though obligations on profit sharing have been in force for many years, before the reform it was a common practice to constitute a service company (with employees) and an operating company (with no employees). Under this corporate structure, employees were only entitled to profit sharing from the service company and operating company's profits remained untouched. However, as a result of the reform, controlling profit sharing through this scheme could be at risk since the operating company is actually outsourcing the totality of the needed workforce from the service company and, therefore, the former could be considered as the employer of the latter's employees.

On the other hand, the reform has eliminated the legal provision that allowed unions to force the separation of an employee from his job if he quit or was expelled from the union. Consequently, such limitation is no longer applicable.

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**How the probation period works under the new law? Does this apply to new employees as well as current employees applying to new positions?**

Andres Rodriguez ([arodriguez@s-s.mx](mailto:arodriguez@s-s.mx))

A: Such period only applies to new employees to be hired as of December 1st.

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**Which will be the hourly wage?**

Andres Rodriguez ([arodriguez@s-s.mx](mailto:arodriguez@s-s.mx))

A: Employees and employers are legally able to set the corresponding salary per hour, as long as the employer pays at least a daily minimum wage (currently around 5 dollars).

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**Under the new outsourcing rules, if an alternative is to create an entity to continue controlling profit sharing, is there a contingency regarding the lifting of the corporate veil?**

Juan Carlos de la Vega ([jdelavega@s-s.mx](mailto:jdelavega@s-s.mx))

A: We do not see any contingency regarding that possibility.