

FAREWELL TO SUBCONTRACTS: WHAT EMPLOYERS NEED TO KNOW IF MEXICO RESTRICTS OUTSOURCING AND SUBCONTRACTING

Insights
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Change may be on the horizon in Mexico as its Congress deliberates a new bill that, if passed, would outlaw outsourcing and subcontracting employees under most circumstances and absent government approval. This proposed bill, which was sent to the Mexican Congress on November 12 by President Andres Manuel Lopez Obrador (AMLO), aims to end what has been identified as corruption in employment practices. On December 9, AMLO signed an agreement with labor unions and business leaders to continue negotiations over the contents of the bill until February, when Congress returns from its winter break. The negotiations include the possibility of capping certain companies' profit-sharing rates to ease the burden of hiring workers directly. As currently worded, the new law would have a dramatic impact on Mexican employers and foreign companies doing business in Mexico alike. What do employers need to know about this significant development?

THE PROPOSED BILL, SUMMARIZED

The proposed legislation is essentially a ban on outsourcing and subcontracting, subject to limited exceptions. It establishes strict requirements with which any individual or company wishing to contract specialized services must comply, including written agreements with specific terms. Those companies that wish to provide such services must seek authorization to do so from Mexico's Ministry of Labor and Social Welfare every three years.

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In an effort to curtail tax evasion, the bill also makes significant changes to social security, income tax, and other federal laws. Failure to comply with these requirements could result in significant penalties for which all involved parties (including the individual workers) could be jointly and severally liable.

WHICH BUSINESS ARE MAIN TARGETS?

AMLO has commented that this law is essential to combat rampant corruption and evasion of laws designed to provide a social safety net for low-income and potentially disenfranchised workers. Some intended targets include companies that:

- hire workers via fixed-term employment agreements at minimum wage, while paying the remainder of the salary via cash, to reduce payroll taxes and social security contributions;
- hire temporary workers via one entity for three- to six-month stints, and then rehire them through a separate (but often commonly owned) entity – migrating these individuals between separate legal entities of the same outsourcing group to keep seniority low – thereby denying those workers the ability to accrue vacation days, severance pay, and other benefits determined based on length of service;
- evade paying certain employment-related taxes by only having a handful of employees on payroll, while “outsourcing” hundreds or thousands of jobs to temporary workers – thereby denying vast swaths of the workforce the benefits of full-fledged employment; and
- dismiss or lay off all or most of their temporary workers at the end of the calendar year, just to rehire them in January or February without having paid any year-end or holiday bonuses to which those workers might have otherwise been entitled.

The main opposition to this new bill comes from COPARMEX (the Mexican National Employer Association) and other business organizations. These groups argue that the new law will negatively impact the Mexican economy because many companies rely on outsourcing to temporarily fill in labor gaps when needed on short notice or for seasonal work. They also claim that such a sweeping ban will

eliminate many legitimate and properly paid jobs. Now that AMLO and business leaders have agreed to continue negotiations through February, some of those concerns may be addressed by way of amendments to the bill's current wording.

WHAT SHOULD YOU DO?

If the Mexican Congress passes the bill as proposed, it could have a significant impact on Mexican companies and foreign companies doing business in Mexico alike. Companies may want to consider reviewing their employment practices to determine what changes, if any, need to be made to comply with the potential new law to avoid running afoul of it or incurring any penalties.

If your organization does business in Mexico or with Mexican companies, contact your Fisher Phillips attorney or any member of our [International Practice Group](#) to learn more about the potential implications of this law and how your organization can mitigate risks associated with the new requirements in the event the law is passed.

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