

# CLIENT ALERTS

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## UPDATE: Mexico Government Reaches an Agreement on Outsourcing with Stakeholders

4.9.2021

On April 5, 2021, Mexico's Secretary of Labor published a press release announcing it had reached an agreement with the business sector, employees' unions, and the members of Mexican congress relating to outsourcing changes to Mexico's Federal Labor Law.

On November of last year, the President of Mexico (Andrés Manuel López Obrador), citing his concerns of abusive and simulated practices in outsourcing practices, announced a bill aimed to virtually eliminate or substantially limit all employee outsourcing in Mexico (the "Bill") (See our previous November 17 and December 14 alerts). After months of negotiations, the concerns and interests of all stakeholders were addressed. The following list includes a brief summarization of the changes already discussed in previous alerts and the new agreement:

**Prohibitions on Outsourcing:** Except for specialized work, employee outsourcing will now be prohibited. Employee outsourcing should be interpreted to mean when an entity or individual (contractor or providers of outsourcing services) makes its own employees for the benefit of others (contracting companies or recipients of subcontracting services) under a service agreement.

**Specialized Work:** Employers will only be allowed to hire outsourced personnel for specialized services if said purpose or activities are not the among the principal activities of the company receiving and benefitting from services. Shared services among companies under common control are permitted, with certain restrictions. Central questions are what will be considered "specialized services" ("*servicios especializados*") and "principal activities" ("*actividades principales*")? Will the new law's prohibition apply only to permanent workers involved in actual design, engineering, and production of a company's

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goods and services? Will it apply to sales activities? Will it apply to any support functions such as HR?

**Registration Requirements:** Companies providing outsourcing services will need to register with Mexico's Secretary of Labor and Social Security in a newly created national registry.

**Profit Sharing:** Perhaps, the most crucial subject-matter change for employers reached in this new agreement are; the changes to the profit-sharing system in Mexico. Under the proposed agreement %which still needs to be ratified by Mexican Congress% two methods to calculate profit-sharing will be used: (A) a maximum of three (3) months' salary will be used for purposes of calculating Mexico's mandatory employer profit sharing ("PTU") payment; and (B) in cases where employees receive a PTU payment exceeding this amount, the amount of the payment will be calculated based on the employer's median annual profits over the last three (3) years. Unions may attempt to negotiate for more than the minimum profit sharing required by the new law.

**Timing Concerns:** It is believed that the proposed amendments will be published in Mexico's Official Gazette on May 1, 2021, with a proposed entry into force on September 1, 2021. If the dates suggested above are accurate, it would mean that employers have roughly 4 months (from date of publication) to bring outsourcing structures into compliance. Fines and penalties and joint tax liability will be applied to firms providing subcontracting services and firms receiving such services.

**As a result, it is critical for employers to start assessing and evaluating their current hiring practices and service agreements with labor service providers.**

Please be advised this information is preliminary, it is subject to change when the actual text of the Bill is published in Mexico's Official Gazette. Butzel will continue to provide further Client Alerts and other updates as we analyze and continue to monitor the Bill's progress through the Mexican Congress. For assistance in properly following Mexico's work guidance, or if you have any specific questions you would like us to address, please contact us. We are here to assist you.

**Raul Rangel**

202.454.2841

[rangel@butzel.com](mailto:rangel@butzel.com)

**Jim Bruno**

313.225.7024

[bruno@butzel.com](mailto:bruno@butzel.com)