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AMENDMENTS TO THE SOCIAL SECURITY LAW AS REGARDS SERVICES PROVIDERS

On July 9, 2009 the Federation Official Gazette published an Executive Order amending the Social Security Law (“the Law”) which, with the qualification mentioned further on, was in force as of the day following the date of publication thereof.

The objective of said amendments is to control and monitor the compliance of social-security obligations of companies providing the services of personnel to third parties.

For this aim, in the first place, the Executive Order spells out the presumption of joint and several liability in charge of the party benefitting from the work or services provided, as was already foreseen in the Law in the case of employment intermediation.

That is to say, the amendments determine that when, in enforcing a contract or agreement of any kind, an employer provides workers, employees, or other individuals susceptible to registration with social security, in order for them to carry out works or services under the direction of the beneficiary thereof and in the premises that the beneficiary designates, then the beneficiary of such works or services shall assume the obligations set forth in the Law in respect of said workers/employees, in the event that their employer fails to fulfill such obligations.

While application of joint liability of the services’ or works’ beneficiary is conditioned to the Mexican Social Security Institute (IMSS)’s previously having served the employer the pertinent requirement, and to the employer’s having failed to comply therewith, and further to the IMSS’ having served notice of such requirement to the beneficiary of the works/services, in our opinion such conditions are insufficient, thus the imposition of sanctions on the works/services beneficiary derived from them would be questionable.

On the other hand the amendments imply major administrative loads on companies since they provide that contracts’ or agreements’ parties shall be obliged to provide a considerable amount of information to IMSS on a quarterly basis in relation to agreements/contracts executed in that quarter; such information includes various identification data of the contracting parties, as well as concerning contracts’ characteristics, including the profiles, positions or categories of the personnel in charge of performing the works or services with indication of whether they are operative/manufacturing workers or administrative or professional employees, as well as

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their estimated monthly amount (of the personnel). The information shall be submitted only once with respect of each contract.

Because such information must be provided within the first fifteen days of January, April, July and October, it should be noted that the parties of contracts entered into as of July 10, until September 30, 2009, already must submit it on or before October 15, 2009

Additionally the amendments provide that, for each single worker/employee, the employer must submit the name of the beneficiary of the contracted works/services in the computerized system authorized by IMSS; to which effect a transitory article of the Executive Order provides, on one hand, that the IMSS will authorize the corresponding computerized system within a term of 250 days, and, on the other, that the employer must also give information on the estimated monthly payroll of the workers/employees provided to the beneficiary of the works/services, as well as the addresses where the works/services will be carried out, as well as whether the beneficiary thereof is responsible for the direction, supervision and training of the workers/employees.

Under the amendments, failure to comply with the above obligations will be penalized with fines equivalent to twenty to three hundred and fifty times the daily minimum salary in force in the Federal District (Mexico City).

Finally, concerning employers' classification for purposes of work-related-risks insurance, the amendments provide that, at the request of the works/services provider, an employer registration number will be assigned them for each work-risks class that the provider needs, then with that registration number the provider will register their workers at the federal level. Those employers thus classified will annually and independently revise their work-risk level regarding each one of the assigned registration numbers.

The above amendment in particular will not become effective until March 16, 2010, i.e., upon expiration of the 250-day term set to that effect in a transitory article in the Executive Order.

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