



## Mexico: New Regulations Clarify the Requirements for Outsourcing

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Mexico's Federal Conciliation and Arbitration Board recently published regulations to set a uniform standard which all labor boards must follow when determining whether outsourcing has occurred. These regulations, entitled **"Employment Relationship within the Outsourcing Framework"** ("Relación de Trabajo en el Régimen de Subcontratación"), interpret the new outsourcing requirements established in the labor law reform of 2012 and serve as guidance to determine who --- whether the contractor that hired the worker to perform services or the contractor's customer (the business that benefits from the services) --- is liable for any employment obligations owed to that worker.

### Employment Relationship within the Outsourcing Framework

The labor law reform of 2012 introduced heightened restrictions on outsourcing, defining "outsourcing" as follows:

Outsourcing occurs when work is performed or services are rendered through workers hired by and working under a contractor's control, for the benefit of a customer, whether the customer is a legal or natural person, and the customer supervises and sets the tasks for the contractor in rendering the services or performing the contracted work:

This type of work must comply with the following conditions:

- (a) It cannot cover the totality of the activities, whether equal or similar in totality, undertaken at the center of the workplace.
- (b) It is justified due to its specialized character.
- (c) It cannot include tasks equal or similar to the ones carried out by the customer's workers.

The new regulations clarify that when a business (customer) hires a service provider (contractor) in order to outsource a service, the relationship between that customer and the contractor must be governed by a written contract. Further, all conditions --- factors “a,” “b” and “c” outlined above --- must be met. That is, if the labor board finds that one of these factors has not been met, the activity does not meet the outsourcing requirements under the law. Where it is determined that the activity was outsourced to avoid the customer’s employment obligations under the law, the labor boards may deem the customer to be an employer, for purposes of holding the customer responsible for any wages or benefits owed under the law to the workers who performed the services.

Further, the regulations clarify that where a customer has been found to be an employer, secondary liability (as opposed to joint liability) applies. Secondary liability (known in Mexico as “subsidiary liability”) means that the labor court may impose liability only for any employment-related obligations not paid by the contractor as the primary party responsible to pay the workers.

## Recommendations

A company hiring service providers should ensure that the services agreements properly reflect a lawful outsourcing arrangement. Moreover, such company should be prepared to establish that the outsourced activity was not part of its core business and was of such “specialized” nature that it cannot be performed by the company’s own employees.

Further, companies that outsource activities should be mindful of their obligations to monitor their service providers’ compliance with the employment and social security laws. Under the law, companies must make sure that the contractors are registered with the appropriate governing bodies and paying the necessary wages and contributions on behalf of the workers that are performing the services. This obligation is permanent through the life of the contract.

In Littler, De la Vega y Conde, we are at your service to review their structures, in order to provide services (internal and external) to comply with the new regulations issued by the Federal Board of Conciliation and Arbitration.

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