



Newsletter

Labor, Social Security and Immigration Practice Group

Overtime and its relationship with Labor Exploitation in Mexico

On June 7, 2024, a reform to the General Law to Prevent, Punish, and Eradicate Crimes of Human Trafficking and to Protect and Assist Victims of These Crimes (hereinafter the "Human Trafficking Law") was published in the Official Gazette of the Federation. This law is regulatory of Article 73, Section XXI of the Political Constitution of the United Mexican States. This constitutional article establishes the Congress's power to issue laws that define criminal offenses and their penalties, regarding kidnapping, forced disappearance, human trafficking, torture, and other cruel, inhuman, or degrading treatments or punishments.

It is important to distinguish between the constitutional origin of the Human Trafficking Law and that of the Federal Labor Law ("LFT"), as the latter derives from the Congress's power established in Article 73, Section X of the Constitution, to issue regulatory laws of Article 123 of the Constitution. Thus, both laws apply nationwide and are of public interest. However, they have different origins and protect different human rights.

This distinction is relevant because the Human Trafficking Law reform bill amends Article 21, which imposes a penalty of 3 to 10 years of imprisonment and fines from 5,000 to 50,000 days' wages on anyone who performs acts of labor exploitation. Said Law defines "labor exploitation" with the following elements:

- Obtaining an unjustifiable benefit, economic or otherwise, directly or indirectly;
- That the benefit obtained is illicit;
- That it involves someone else's labor; and
- Utilizing to practices that violate the person's dignity, such as:

- Dangerous or unhealthy conditions without the necessary protections according to labor legislation or existing standards for the development of an activity or industry;
- A manifest disproportion between the work performed and the payment made;
- A salary below what is legally established; and
- Workdays exceeding what is stipulated by the "Law," defined as the Human Trafficking Law.

This last point, added in the decree published on June 7, 2024, could be interpreted as the possibility of classifying as a crime any act by an employer that requires their workers to work beyond the limits in terms of work shifts established in the LFT. However, considering the origin and purposes of both the LFT and the Human Trafficking Law, the latter establishes the criminal offense in cases of "labor exploitation" when the elements described above, which the legislation itself establishes, are present. In other words, the labor relationship regulated by the LFT, which sets limits and penalties for exceeding maximum workshifts, should not be confused with labor exploitation, which involves obtaining an unjustifiable benefit, illicitly, through someone else's labor, in ways that violate human dignity.

It is also important to highlight that Article 10 of the Human Trafficking Law defines the crime of human trafficking as intentional actions aimed at capturing, luring, transporting, transferring, retaining, delivering, receiving, or harboring another person with the intent of exploiting them. The same provision states that exploitation includes labor exploitation as defined in Article 21 described above, reinforcing a possible interpretation that the Human Trafficking

Law does not intend to criminalize labor relations in Mexico, but rather to protect and eradicate other types of illegal, inhuman, and degrading practices.

Regardless of the above legal analysis, it should be noted that there can always be different interpretations regarding the application and scope of the Human Trafficking Law, whether by administrative or judicial authorities, workers, or unions. Therefore, it is critical that companies conduct a thorough review of their work structures to comply with all Mexican and international legislation.

At Sánchez Devanny, we can support this comprehensive analysis to ensure compliance with your labor obligations and to eliminate any potential risks.

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Labor, Social Security and Immigration Practice Group

This practice advises clients on compliance with labor and social security laws, and in the design and implementation of labor structures to avoid risk. We assist in processing immigration documentation for top-level executives and their families, with employment agreements, terminations, and fringe benefit planning, and represent clients in employment litigation.

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