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Newsletter

Labor, Social Security and Immigration Practice Group

Labor Reform regarding Digital Platform Workers

On December 24, 2024, the reform adding section VI to article 49; section IV to article 50; section IX to article 127; and chapter IX Bis and Article 997-B of the Federal Labor Law (hereinafter "FLL") regarding work on digital platforms (hereinafter "the Reform"), was published in the Official Federal Gazette ("DOF").

The main purpose of the Reform is to recognize an employment relationship for those schemes that involve the performance of paid activities that require the physical presence of the worker for the provision of the service, which are managed by a natural or legal person on behalf of third parties through a digital platform, using information and communication technologies to exercise command and supervision over the worker.

- From the analysis of the approved text, it is clear that activities that fulfil the following elements will be considered to constitute an employment relationship:
- Performance of a remunerated activity.
- The physical presence of the worker.
- Activities managed by a natural or legal person in favor of a third party.
- Management through a digital platform.
- Information and communication technologies used to exercise command and supervision of the worker.

Thus, those companies that use digital platforms to manage services in favor of third parties with the above elements to carry out their operation will be subject to the new provisions set out in the reform.

Note that, according to the elements of an employment relationship, there is no express limitation that the Reform is only applicable to platforms involved in mobility services (transport or delivery).

The reform proposes various rights and conditions that will regulate the work of digital platforms, among which the following stand out:

I. Recognition of an employment relationship.

The regulation establishes that the provision of personal services through the control and management of a digital platform is considered an employment relationship.

Likewise, the users, consumers or final beneficiaries are not considered liable as employers or jointly and severally liable. The legal entity that administers or manages the services shall be considered the sole responsible party.

II. Minimum monthly net income as a base for the classification of the employment relationship.

The Reform stipulates that, for the purposes of recognizing the employment relationship between the digital platform worker and the platform, the individual must earn a net monthly income equivalent to at least one minimum monthly wage in Mexico City.

In addition, the text mentions that the salary in digital platform works will be fixed by task, service, job or work performed, and such payment will include the proportional weekly rest day, vacations, vacation bonus, year-end bonus ("aguinaldo") and overtime.

However, in cases where digital platform workers do not reach the minimum net income mentioned above, during the period and for the actual time worked, the rights contained in the new special chapter regulating work on digital platforms will be extended to them, with the exception of social security prerogatives.

III. Registration and approval of the employment agreement.

The Reform makes it compulsory to have Individual Employment Contracts, which must be approved and registered by the Federal Conciliation and Registration Center ("CFCRL"). These will imply little freedom to establish working conditions, as they will be subject to the approval of the registration authority. Likewise, any modification to the terms of the Individual Employment Contract will have to be submitted to the CFCRL for approval.

IV. Participation in profit sharing ("PTU") distribution.

It is envisaged that digital platform workers will have the right to participate in the company's profits, provided that they carry out a minimum of 288 hours of effective work during the fiscal year subject to distribution.

However, there is little clarity on the criteria used to determine the 288 hours of effective work, since according to the Fifth Transitory Article of the Reform, the factor of 288 hours is obtained by considering the working time in 45 minutes for each hour, and fifteen minutes of waiting time for the reception of tasks, services and works; which translates into a factor of 0.75 of effective work for each hour. Applying the factor to a working day of 8 hours results in 6 hours per day, which represents 36 hours per week or 144 hours per month, so that when taking into consideration the temporary nature established in section VII of article 127 (which is 60 days), it is equal to 288 hours of effective time worked.

V. Work shift flexibility.

The reform establishes that the working hours for digital platform workers will be flexible and discontinuous, and the worker will be free to set the hours during which he/she will work and the time during which he/she can freely connect and disconnect from the platform. However, subordination will only exist during the time in which they are carrying out a service or task.

Likewise, the initiative itself establishes mechanisms to define certain conditions regarding the manner of carrying out the services under agreed times, conditions and places.

VI. Enrollment at the Mexican Social Security Institute ("IMSS") and the National Workers' Housing Fund Institute ("INFONAVIT").

Companies that manage digital platforms must register digital platform workers and pay contributions to the Mexican Social Security Institute ("IMSS") and the National Workers' Housing Fund Institute ("INFONAVIT"), provided that their net monthly income is equal to or greater than one minimum monthly wage in Mexico City.

However, in all cases, companies that manage digital platforms will be responsible for the payment of insurance under the social security regime when an occupational risk occurs during the effective work.

VII. Transparency in the use of algorithms.

Companies must have clear policies on the use of algorithms that affect the allocation of tasks, and provide information on how these policies influence the conditions and services of the digital platform workers.

As part of these transparency obligations, the digital platform will be required to issue an Algorithmic Management Policy that has to be made available to digital platform workers.

VIII. Sanctions.

This Reform proposes high fines ranging from MXN$27,000.00 to MXN$2,700,000.00 if a digital platform fails to comply with its new obligations.

The Reform will enter into force 180 days after its publication in the Official Federation Gazette ("DOF").

Within 5 days of the entry into force of the reform, the General Rules to ensure compliance with social security obligations related to work on digital platforms will be published through a pilot program.

Within 180 days following the publication of such General Rules and based on the outcome of the pilot program, initiatives shall be prepared that further define the aspects related to compliance with such social security obligations.

It is recommended that companies that operate through a digital platform analyze their current structure in order

to evaluate if they fall under the scope of the Reform. Sánchez Devanny has ample experience implementing changes to the labor structure of companies to comply with complex reforms, preventing sanctions and contingencies.

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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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