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EY LAW Flash

The mining industry union's appeal against the application of the PTU limits was resolved in favor of the company



On August 3, 2023, the 8th District Judge in Labor Matters in Mexico City resolved an indirect appeal filed by 312 employees who are part of the Sindicato Minero Metalúrgico Frente against the discussion, approval, issuance, promulgation, and order of publication of the labor subcontracting reform of April 23, 2021, specifically article 127 section VIII.

The judge conducted a **constitutionality analysis through the proportionality test** and argued that the limit established in Section VIII lacks a legitimate purpose from a constitutional perspective. This is because the challenged provision affects human rights by interfering with the right of employees to receive a share of profits and limiting their access to the payment of such share. This payment is calculated on the basis of three months' salary, or the average of the share received during the last three years of service, depending on what is more favorable to the employee. However, this interference is not justified according to the examination carried out, since it contravenes Article 1° of the Constitution by infringing on the principle of progressivity, to the detriment of the rights of the labor party filing the complaint.

Likewise, the judge determined that the right to profit sharing is a right recognized in Article 123 of the Constitution, with respect to which the law should not establish any limit, since the Political Constitution of the United Mexican States itself does not establish any limitation; therefore, all secondary regulations (Federal Labor Law) must respect the contents of the Constitution regardless of the subject matter and substantive or procedural institution regulated therein, since the constitutional precepts establish the minimum parameters that the secondary regulations must respect, guaranteeing their absolute respect.

It is important to mention that this **judgment has not become final and may be appealed**; likewise, its effects are **only applicable to those who filed an appeal (complainants) and to the company that distributed the profits**. For the other employees who are not part of this lawsuit or who did not file an amparo, it has no legal effects.

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