Contingent Worker Misclassification Risk Map & Comparison Tool - Mexico

Contingent worker misclassification risk information

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# Is there any specific legislation that determines that contingent workers should be treated as employees for (a) employment, (b) tax/social security or (c) pension purposes?

(a) No (except in case of employment misclassification)

(b) No, the social security and income tax legislation set forth the specific rules applicable to contingent workers

(c) Same as (b)

# Is there a safe harbor for contingent workers for (a) employment, (b) tax/social security or (c) pension purposes? Safe harbor means being expressly excluded from the legislation or a particular category/classification under the legislation if certain conditions are met.

(a) No. If employment elements are present, contingent workers could be considered as employees for employment purposes.

(b) If the elements of an employment relationship are not present, specific tax rules apply. As of 1 January 2022, misclassification of employees is considered tax fraud subject to criminal sanctions for the party classified as "employer." If the elements of an employment relationship are not present, the social security sets forth specific rules applicable to contingent workers (i.e., If the employment elements are present, contingent workers will be considered as subject to the mandatory social security regime in Mexico. If they are considered as contingent workers, the employees may voluntarily register in the "Voluntary Social Security Regime" in Mexico).

(c) Pensions are part of the Social Security Mexican System, therefore response (b) above applies.

# How clear is the law on classifying contingent workers from an employment perspective, based on a rating of 1-5, with 1 being clear and 5 being unclear?

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# How clear is the law on classifying contingent workers from a tax / social security perspective, based on a rating of 1-5, with 1 being clear and 5 being unclear?

2

# Are there any new developments coming up in relation to contingent workers? If so, please briefly describe along with the timing.

As of 1 January 2022, a new provision was enacted in the Mexican Fiscal Code, which provides that simulating an independent professional relationship with an individual that should be classified as employee is considered tax fraud.

With the rise in digital platform services, we are seeing an increasing global trend in case law and legislation aimed at protecting platform workers' labor rights. For more insight on these developments, along with other employment law updates, click [here](https://insightplus.bakermckenzie.com/bm/employment-compensation).

# Outline the maximum penalties from an employment perspective.

Payment of benefits and severance

Fines applied by the Labor Ministry in the range of 50 to 5,000 times the value of Unity of Update Measure per employee (for 2023, equal to MXN 103.74 per day).

# Outline the maximum penalties from a tax perspective.

As of 1 January 2022, the Mexican Tax Code provides that simulating an independent professional relationship with an individual that should be classified as employee is considered tax fraud.

There are also criminal sanctions in certain outsourcing schemes.

# Outline the maximum penalties from a social security perspective.

Payment of unpaid contributions as of the effective date of the relationship, plus charges and surcharges

Payment of a fund to provide the employee with in-kind and in-cash benefits for the provision of the mandatory social security benefits they would be entitled to

Fines of 20% to 125% of the Unity of Update Measure per employee (for 2023, equal to MXN 103.74 per day)

Criminal sanctions

# Outline the maximum penalties from a pensions perspective.

See social security penalties.

# Are there any wider tax compliance risks, e.g., senior accounting officer or corporate criminal offense of facilitating tax evasion?

Yes, every officer of the company involved in the decision and execution of the conduct related to the misclassification of the employee will be criminally charged.

# What is the risk of criminal sanctions applying?

As of this date, moderate, but this may change with the new administration.

# What are the main employment law risks that may arise for contingent workers?

The contingent worker may claim the existence of an employment relationship and therefore be entitled to all labor benefits established in the Mexican Labor Law (benefits and severance applicable to terminations).

Fines applied by the Labor Ministry in the range of 50 to 5,000 times the value of Unity of Update Measure per employee (for 2023, equal to MXN 103.74 per day)

If the contingent worker is classified by the Social Security authorities (Social Security Institute and Housing Agency) as an employee, the company will be required to register the employee retroactively to the effective date the relationship was in effect and pay the omitted contributions for the full period, plus charges, surcharges and fines. Moreover, in case of an accident or illness, the Social Security authorities could require the company to pay the cost of all cash and in-kind benefits provided to the employee by the Social Security Institute. In addition, misclassification is considered as fraud to the social security regimes that carry criminal liability.

# What are the main tax risks that may arise for contingent workers?

That the contingent worker is classified as subject to an employment relationship and the conduct constitutes tax fraud as of 1 January 2022.

# What are the main social security risks that may arise for contingent workers?

The worker will not to be covered by the Social Security Mandatory regime (no access to in-kind and in-cash benefits established in the Social Security Law including pensions).

# What are the main risks from a pensions (or other regulator) perspective?

Refer to response above. Pension is part of the mandatory social security regime.

# Risk commentary - Employment

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The new administration has enacted more strategic labor inspections procedures and is applying new criteria in connection with misclassification.

Penalties for misclassification of employees have increased with the current administration.

# Risk commentary - Pension

8

Please refer to the comments in the social security section. Pensions are part of the Social Security System in Mexico.

# Risk commentary - Social Security

8

The new administration has enacted more strategic audit procedures, has increased its activities on reviewing compliance by employers, and is applying new criteria in connection with the misclassification of employees.

Determination of misclassification of employees and sanctions for the above conduct may become more common as a result.

# Risk commentary - Tax

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Tax authority audits rarely lead to reclassification of contingent workers, but this may change with the new administration.

As of 1 January 2022, misclassification of employees is considered tax fraud subject to criminal sanctions for the party classified as "employer."

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