

## REFORM TO THE GENERAL LAW TO PREVENT, PUNISH AND ERADICATE CRIMES IN CONNECTION WITH HUMAN TRAFFICKING AND FOR THE PROTECTION AND ASSISTANCE TO VICTIMS

On June 8, a reform to the General Law to Prevent, Punish and Eradicate Crimes in Connection With Human Trafficking and for the Protection and Assistance to Victims went into effect, as of which working hours that exceed, on a permanent basis, the limits established in the Federal Labor Law will be considered as labor exploitation and may be sanctioned with imprisonment and fines.

Specifically, Article 21 of the aforementioned ordinance was amended to establish a new section, in the following terms:

***“Article 21. Whoever exploits one or more persons for labor shall be sanctioned with imprisonment of 3 to 10 years and a fine of 5,000 to 50,000 days.***

*Labor exploitation exists when a person obtains, directly or indirectly an unjustifiable benefit, economic or otherwise, in an unlawful manner, through the work of others, subjecting the person to practices that go against their dignity, such as:*

- I. Dangerous or unhealthy conditions, without the necessary protections in accordance with labor legislation or existing standards for the performance of an activity or industry;*
- II. Existence of a notorious disproportion between the amount of work performed and the payment made for it,*
- III. Wages below what is legally established.*
- IV. Working hours exceeding those stipulated by law.***

***In the case of people belonging to indigenous and Afro-Mexican groups and communities, the penalties will be from 4 to 12 years of imprisonment and from 7,000 to 70,000 days of fines.”***

In regard to criminal penalties, the reform does not make it clear whom may be considered active subjects or co-perpetrators. This legal void does not make clear whether the mere participation in the corporate structure of the employer company or the performance of positions considered by the Law as representatives of the employer can be considered sufficient to presume their involvement in the criminal conduct.

However, the addition to the aforementioned article must be interpreted along with the Federal Labor Law and the considerations of the reform decree, in order to understand the legislator's intention regarding the length of the workday. In this sense, the Law establishes that the workday is the time during which the employee is under the employer's command, with a limit of 48 hours per week for the daytime shift (from 6:00 a.m. to 8:00 p.m.), 42 hours for the night shift (from 8:00 p.m. to 6:00 a.m.) and 45 hours for the mixed shift (up to 3 and a half hours at night). Additionally, it establishes the following:

**“Article 66.-** *The working day may also be extended for extraordinary circumstances, without ever exceeding three hours a day or three times a week.*

**Article 68.-** *Workers are do not have the obligation to render their services for a longer time than that allowed in this chapter [That is to say, more than 9 hours per week].*

*The extension of overtime in excess of nine hours a week, obligates the employer to pay the worker the excess time with two hundred percent more than the salary corresponding to the hours of the workday, regardless to the penalties established in this Law.”*

Therefore, the Law establishes the possibility of extending the workday due to extraordinary circumstances –not on a continuous or permanent basis–, without exceeding 3 hours a day or 3 times a week (9 hours) and these hours must be paid with an extra 100% of the corresponding hourly wage. Notwithstanding that the Law establishes the hypothesis for exceeding 9 hours of overtime per week, this does not imply that it is permitted, since in addition to obligating the employer to pay it with 200% more than the corresponding hourly wage, the Law establishes in article 1002 a fine for the equivalent of 50 to 5000 times the Standard Unit of Measurement and Update.

Although with this reform, companies must ensure that the working hours of their employees do not continuously and permanently exceed the limits contained in the Federal Labor Law, the considerations of the reform decree are clear in establishing that the additions to Article 21 of the General Law seek to protect and guarantee the human rights of the victims of trafficking, most of whom are vulnerable groups. Consequently, if a person voluntarily chooses to work longer hours, they will be entitled to remuneration for the exceeding time and this would not constitute a form of labor exploitation, unless it is a conduct that violates the above-transcribed labor provisions.

Therefore, we consider that the crime of labor exploitation is triggered when: (a) the working day exceeds the ordinary legal limits on a continuous and permanent basis, insofar as it violates the worker's dignity and possibility to rest; (b) the employees work overtime against their will, or without their consent; or (c) in addition to having excessive working hours, they are not paid according to the terms established by law.