

AMENDMENTS TO REGULATIONS GOVERNING LABOR OUTSOURCING SERVICES

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Introduction

Through Supreme Decree No. 001-2022-TR, the Peruvian Government has amended part of the regulations governing labor outsourcing services. Said amendments limit outsourcing scenarios by introducing the concept of “core business”.

It is worth mentioning that outsourcing is a type of provision of services whereby a company (i.e., the main company) transfers or delegates one or more parts of its main activity (which are linked to the different stages of the production process of goods and the provision of services) to one or several outsourcing companies, which provide the main company with works or services related or integrated to said main activity.

Below is a comparison of certain key aspects which have been amended with respect to the previous regulations.



ASPECTS AMENDED	AMENDMENTS INTRODUCED (SUPREME DECREE NO. 001-2022-TR)			PREVIOUS REGULATION	
DEFINITIONS	Specialized activities or works 	Important fact: None of these can be aimed at the core business.	Specialized activities	Activities which are linked to the main activity of the main company (i.e., the entity transferring or delegating such activities) and which require a specific level of technical, scientific, or particularly qualified knowledge.	Services or works rendered in an outsourcing context, whose performance does not imply the mere provision of personnel.
	Core business 	It is a part of the company's main activity which has particular characteristics. It does not correspond to the specialized activities or works that may be outsourced and that require the transfer of employees. It is identifiable by the following elements, among others:	Works	Execution of a specific work specified in a civil contract between the main company (i.e., the entity transferring or delegating such work) and the outsourcing company, with respect to the main activity of the main company.	
SCOPE OF APPLICATION	The scope of application of this regulation includes the main companies (i.e., the entities transferring activities) which outsource specialized activities or works. It should be noted that the enforceability of this regulation requires the continuous transfer of employees from the outsourcing company to the workplaces or operations centers of the main company. The referred regulation prohibits the outsourcing of activities that are part of the core business.			The outsourcing of the main activity was mentioned in general terms, always involving the continuous transfer of employees.	
DISTORTION OF OUTSOURCING SERVICES	Without prejudice to the assumptions currently in effect, new scenarios where the nature of the outsourcing services can be deemed as distorted have been included: <ul style="list-style-type: none"> • When the outsourcing services do not comply with the new definitions set out in the relevant regulation. • When employees are transferred to perform activities that are part of the core business. In addition, the regulation sets out that this distortion causes the transferred employees to be considered as employees of the main company, unless there is proof to the contrary as to the time when such distortion arose; without prejudice to the corresponding penalties that may be imposed.			The previous scenarios remain in effect, such as: (i) Absence of business autonomy of the outsourcing company, after a reasoned analysis; (ii) Subordination of the employees of the outsourcing company to the main company.	

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EMPLOYMENT CONTRACTS	Outsourcing companies are required to include, in employment contracts, the business activity to be performed, as well as the respective production unit or the scope within which such activity will be performed by the transferred employee.	The possibility of other information mechanisms, not just the employment contract, was contemplated.
RIGHT TO INFORMATION	The main company must inform in writing to the labor union or the delegates representing the employees, regarding the identity of the outsourcing company and of the transferred employees, as well as the activities these will perform, within 5 days of the calendar month in which the transfer occurred or within 24 hours of the request made by the labor union.	Such written requirement was not contemplated.

Validity and period of adaptation

This regulation requires companies to abide by its provisions in 180 calendar days, counted since February 24, 2022 (i.e., by August 22, 2022). In case of failure to abide by these amendments, the nature of the outsourcing services will be deemed to be distorted, without prejudice to the penalties that may be imposed.

Regarding the prohibition to dismiss employees

During the referred adaptation period, outsourcing companies cannot terminate the employment contracts of the employees who were transferred to perform the activities forming part of the core business, due to reasons related to the adaptation referred to by this regulation, unless such employees are directly hired by the main company.

Recommendations

- ▶ With respect to the main company's business object, determine its core business in accordance with the new provisions.
- ▶ Review contracts with third parties to identify restrictions, if applicable.
- ▶ Implement the necessary adaptation measures within the period prescribed by the regulation.
- ▶ Continually review service agreements to verify compliance with applicable regulations.

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