

# DISTRICT COURT RULES AS UNCONSTITUTIONAL THE CAP ON PROFIT SHARING

AUGUST 2023

## EXECUTIVE SUMMARY

- On August 3<sup>rd</sup>, 2023, the Judge from the Eighth District Court in Labor Matters in Mexico City granted an Amparo to a group of workers in connection with the Decree that establishes a maximum limit on the profit sharing for workers ("PTU" per its acronym in Spanish).
- The protection granted to the relevant workers regarding the Decree was issued exclusively in favor of those workers who signed the Amparo and evidenced the payment of PTU with such cap.
- This resolution only is applicable to the group of workers who received such favorable Amparo, thus being as of this moment merely an isolated precedent.

On August 3<sup>rd</sup>, 2023, the Judge from the Eighth District Court in Labor Matters in Mexico City, granted an Amparo to a group of workers belonging to the Section 120 of the Ciénega, in Santiago Papasquiari, Durango, as part of the union named Sindicato Nacional Minero Metalúrgico "Frente", in connection with the "Decree by which several provisions on labor subcontracting were reformed, added or derogated", that was published on April 23<sup>rd</sup>, 2021, in the Official Federal Gazette (the "Decree"), and which added a new section VIII in Article 127 of the Federal Labor Law, to establish a maximum limit on the profit sharing for workers ("PTU" per its acronym in Spanish), equal to 3 months of the employee's salary or the average received during past 3 years, whichever is more beneficial for the worker.

In terms of the resolution, the workers who appealed the Decree (considering the first time it was applied when paying the PTU from fiscal year 2021, which was limited to the average of the last 3 years, and covered in April 2022) proved an affectation derived from the aforementioned rule, since "...the Constitution orders that profit sharing within a company shall be paid in full to the workers...", and moreover "...the right to receive profit sharing is established in Article 123 of the Constitution, on which, the law shall not establish any cap, in view that the Mexican Constitution does not include any limitation". To reach this determination, the Judge also considered the rationale supporting the subcontracting reform of 2021.

In this sense, the protection granted to the relevant workers regarding the Decree, was issued exclusively **in favor of those workers who signed the Amparo and evidenced the payment of PTU with such a cap**, so that:

*“The Section VIII, of Article 127 of the Federal Labor Law, which was added in the Decree, is not observed within the legal sphere of the complaining workers, since it limits the payment of profit sharing.”*

It is important to highlight that this resolution is only applicable to the group of workers who received such favorable Amparo, thus being as of the moment in which this document is published, merely an isolated precedent.

Likewise, it is relevant to consider that this resolution could still be challenged through an appeal motion (“Recurso de revision”) which, if filed, should be settled by the Supreme Court of Justice, considering this is a constitutionality issue.

Considering the relevance of this criterion, we recommend following up closely on the related procedural repercussions, since the same could eventually generate a definitive and binding precedent on the constitutionality aspect of the PTU cap.



**Andrés Rodríguez**

Partner  
Mexico City  
+52 55 5279 5413  
[arodriguez@s-s.mx](mailto:arodriguez@s-s.mx)



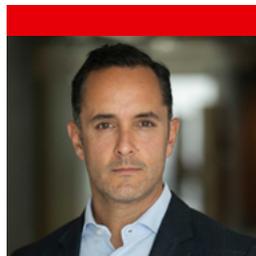
**Francisco Udave**

Partner  
Mexico City | Monterrey  
+52 55 5279 5435  
[fudave@s-s.mx](mailto:fudave@s-s.mx)



**Juan Carlos de la Vega**

Partner  
Mexico City | Monterrey  
+52 55 5279 5429  
+52 81 8133 6005  
[jdelavega@s-s.mx](mailto:jdelavega@s-s.mx)



**José Ramón Ayala**

Partner  
Querétaro  
+52 442 290 0291  
[jayala@s-s.mx](mailto:jayala@s-s.mx)