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Law n. 2014-790 of July 10, 2014 or the reinforced regulations on subcontracting under labor law

To be lawful, the regulatory process with which an entrepreneur (client or contractor) must comply when subcontracting the performance of the entirety or part of a service assumes, specific know-how on the part of the subcontractor, flat-rate remuneration of the subcontractor (this, as opposed to a price calculated based on the number of hours necessary for the performance of the service), the management of employees by the subcontractor alone, the use of the subcontractor's resources and the absence of economic dependence by the subcontractor in relation to the client.

In addition to the abovementioned general terms, provisions are in place to protect employees in the performance of the subcontracted service.

A law of July 10, 2014 reaffirms and reinforces these provisions, particularly by reinforcing the responsibility of the client or contractor in case of violation of labor laws by its subcontractor or the subcontractors of the latter ("cascade subcontracting").

These provisions may be summarized as follows:

- In case of assignment of employees to France:

Prior to the assignment of its employees to France, a subcontractor established abroad must complete a declaration to the labor inspectorate of the place where the employees are to be based.

Said declaration must provide information enabling the identification of the assigned employees and the appointment of a "representative" capable of acting as intermediary with French government agencies.

For its part, the client or contractor is required, under penalty of a fine imposed by the labor inspectorate, to verify that the subcontractor has fulfilled his/her obligation to complete a preliminary declaration and to appoint a “representative”.

It should be noted that the client or contractor is required, every six months, to verify that the subcontractor is up-to-date in his/her obligations in terms of declarations and the payment of social contributions, under penalty of being liable for the payment of said contributions.

- In all cases of subcontracting, with or without assignment of employees to France:

The client or subcontractor is required, upon notification by the labor inspectorate:

- o of collective housing conditions of employees incompatible with human dignity,
- o of any violation of the imperative provisions of labor laws, such as those regarding, particularly, working hours, minimum salary, health and safety in the workplace,

to order his/her subcontractor or contracting parties to put an end to the situation and to inform the labor inspectorate of the actions resulting from said orders.

Any failure to comply with this obligation to give orders to rectify the situation and to inform the labor inspectorate is punishable by an administrative fine.

Moreover, the client or contractor shall be held jointly liable for violations of labor laws committed by his/her subcontractor or subcontractors or contracting parties of the latter. In short, the client or contractor may be required to assume responsibility for the housing conditions of employees or even to pay remuneration, compensation or contributions due.

The law of July 10, 2014 is to be completed by a decree the publication of which is scheduled for February 2015.

These new regulations, however, have already been called into question by the so-called Macron draft law which, in particular, calls for the increasing of fines by 1500% or even the possibility for the labor inspectorate to order the “suspension of execution” of the subcontracting contract for a period of time, while maintaining the employees’ rights under their employment relationship.