



Decision of the SCJN on the constitutionality of the profit-sharing limit

On April 3, 2024, the Second Chamber of the Supreme Court of Justice of the Nation (SCJN) determined that section VIII of article 127 of the Federal Labor Law is constitutional, which establishes that the amount of profit sharing has a maximum limit of three months of the employee's salary, or the average of the participation received in the last three years, applying the amount that is most favorable to it.

In the amparo lawsuit, the complainant claimed the unconstitutionality of said limit, as well as the issuance of the "Guide to comply with the obligations in terms of profit sharing, of March 28, 2022", arguing, among other reasons, that the Congress of the Union does not have the power to designate the percentage of profit sharing. However, the Second Chamber specified that in this matter the Congress of the Union does have the power to legislate

on labor matters and, therefore, can issue provisions related to the distribution of profits.

Regarding the limit of three months' salary, the Court pointed out that it is not an absolute limit since it admits the possibility of considering the average of the profit sharing received in the last three years, and the option most favorable to the employee must be chosen.

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In addition, the provisions of the Guide are constitutional with respect to the fact that, in the event that the employee does not have the three years of seniority, the average amount of the last three years in the category or position currently occupied by the person who will benefit must be considered.

Finally, since it is an expectation of right and not an acquired right, the reform on subcontracting that established such amounts in the distribution of profits did not violate the principle of non-retroactivity .

The project was approved unanimously, so the reasons justifying the supreme court's decision will constitute a binding precedent.

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