

CCN NEWSFLASH

Foreign Employees - Return of Investments in AFORE Retirement Funds

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On November 13, 2020, the Plenary Court on Labor Matters of the First Circuit issued a ruling in contradiction of ruling number PC.I.L. J/67 L (10a.) entitled: "Foreign employees. Such are entitled to the return of the accumulated funds in their individual Retirement Fund Administrator (AFORE) accounts, as well as contributions to the housing subaccount fund when they permanently return to their country of origin, and without being subject to the requirements otherwise outlined in the law." In its ruling, the court held that the funds corresponding to the retirement subaccounts, advanced age, and old age unemployment funds, as well as housing funds, must be paid to foreign employees who permanently return to reside in their country of origin, "to fully safeguard their rights to social security and guarantee the actual enjoyment of the social benefits they earned through their employment in Mexico." The court considered that in recognition of human dignity and taking into account fundamental rights, it is appropriate to distinguish between the treatment of domestic and foreign employees to avoid prejudicial treatment accorded to foreign employees. This is especially true considering that foreign employees are unable to comply with the applicable regulations required to access the accumulated funds in their accounts. Based on the court's decision, foreign employees working in Mexico who are enrolled with the Mexican Social Security Institute may recover the sums deposited in their respective individual accounts currently held in the AFORES and the Employees' National Housing Institute Fund.

Contacto:

Adrián Salgado

Partner

asalgado@ccn-law.com