

REDUCES RIGHTS AND CONTRADICTS THE OBLIGATIONS ESTABLISHED IN THE FTA WITH THE UNITED STATES: L.D. N° 1086



Implementation of the FTA broadens and perpetuates the precariousness of labour, imposing a new labour regime: Law on Medium and Small Companies (SME)¹

- In the framework of the implementation of the US-Peru FTA, the Peruvian government passed L.D. N° 1086, the SME law, which broadens and perpetuates the precarious labour situation that predominates in Peru, going against the spirit of the agreed-upon labour appendices.
- L.D. N° 1086 expands a special labour regime with fewer rights than the common labour regime. It regulates the labour rights of more than 3.3 million workers, which is to say four out of every five salaried workers in Peru will come under this regulation, which in practice constitutes a new general labor regime.

New Regulation of the SME reduces labour rights

The new SME law affects basic rights (vacation period, compensation for time of service or CTS, bonus payments and causes for layoffs) for more than 1.3 million workers, including workers and employees from the Peruvian business sector, which is to say 31% of all workers and employees at a national level.

Labour Regime	PRIOR General Labour Law (L.D. N° 728)	NOW L.D. N° 1086
	General Regime	Special Labour Regime
Vacations	30 days a year	15 days a year
CTS	1 salary per year	1/2 salaries per year
Bonus	2 salaries per year	2 two bonus payments a year of 1/2 salary each
Unjustified firing	1/2 salary per year worked (maximum 12). Fractions in twelfths	20 daily remunerations per year. Maximum 120 remunerations (4 salaries)

Source: Plades, www.plades.org.pe

This new “special” regime in practice will end up including 80% of private salaried workers and therefore will become a “general regime” for labour, leaving aside the General Labour Law, which will only cover 20% of employed workers, which is to say 900,000 workers.

¹ Sources: Javier Mujica, labour expert, consultant of RedGE-CEDAL; Alfredo Villavicencio, former deputy minister of Labour and member of the Justicia Viva consortium and the Programa Laboral de Desarrollo - Plades.

It violates the FTA and the commitments that Peru has assumed in the ILO

This SME law brings into doubt the commitments assumed in the FTA, which in article 17.2.2 indicates “Neither party shall waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.”

According to this norm, the Peruvian State is committed to respecting labour regulations regarding fundamental labour rights recognized by diverse protection instruments from the International Labour Organization – ILO.

Despite this, L.D. N° 1086 or the SME law affects:

- The **right to union association and collective bargaining** to the extent that the protection framework against arbitrary layoffs has been substantially reduced. This is a fundamental mechanism to ensure that workers can join unions without fear of reprisals. The right of workers unions and business organizations to be consulted to modify norms related to the labour rights of workers.
- The **right to equal treatment and non-discrimination**, in establishing a special labour regime in which the labour rights of a vast labour collective are reduced² since they were not consulted in drafting the L.D.
- The **differences of treatment established** in L.D. N° 1086 are not based on real labour demands or the skills or intensity of effort required for this labour but rather are based on the unique and exclusive fact that its beneficiaries are occupied in a determined group of productive activities carried out by this sector³.

Legislative Decree N° 1086 is a step backwards in the debate on the General Labour Law, whose discussion for years was the product of a consensus reached in the forum of the National Accord where different political organizations and civil society backed these discussions. At the same time, it contradicts the minimum standards established in the FTA. As a result, this legislative decree should be repealed and emphasis should be placed on a General Labour Law that guarantees the rights of workers.

² Given that it violates what is established in ILO Convention 122, ratified by Peru in July 1967 which in article 1.1 indicates: “With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as major goal, an active policy designed to promote full, productive and freely chosen employment,” and in article 3, “In the application of this Convention, representatives of the persons affected by the measures to be taken, and in particular representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their co-operation in formulating and enlisting support for such policies.”

³ The Constitutional Tribunal, according to the Constitution of Peru indicates that special labour regimes are admissible when and if they are of a transitory nature and admit a differentiated treatment between employees to the extent that they are successfully submitted to the equality test referenced by the CT in different rules, such as the one in File 0016-2002-AI. L.D. N° 1086 opposes this criteria.

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