



Decree N° 6.068 – Decree with Rank, Value and Force of Law of the National Institute for Socialist Training and Education (INCES)

Venezuela

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On June 23, 2008, the Decree with Rank, Value and Force of Law N° 6.068³ dated May 14, 2008, was published in the Official Gazette. Such Decree issued the Law on the National Institute for Socialist Training and Education (“INCES Law”), previously known as the “National Institute for Education Cooperation (INCE)”.

The Institute may now be abbreviated with the acronym “INCES” for all legal purposes. The Decree also establishes that the INCES will have the participation of the productive and social sectors of the country, pursuant to the guidelines issued by the People’s Ministry for Communal Economy, approved pursuant to the National Government’s planning.

The INCES Law was published with its Explanatory Preamble. Such Preamble states that the transformation of the INCE is the result of the construction of a new model of production, the appearance of new areas of self-management and forms of organization fostered by the Bolivarian Revolution. This way, the Institution will be positioned within the ideological principles of Socialism and will accompany the construction of Bolivarian Socialism. The INCES, in the spirit of solidarity, co-responsibility, cooperation and with the collective conscience to overcome pseudo capitalist values will offer programs to transcend a behavioral curriculum model to a new constructivist model, where the teacher becomes a facilitator in a learning process which allows integration.

The INCES Law includes the transformation of the training centers into Socialist Training Centers. These will operate as a space for socialist construction in the education process, integral training and articulation with the Bolivarian Missions.

³ *Decree with Rank, Value and Force of Law on the National Institute of Socialist Training and Education* Official Gazette of the Bolivarian Republic of Venezuela N° 38.958, dated June 23, 2008.

It also broadens the scope of associated taxpayers to those who provide services or professional advice, and to workers and employees that work for individuals or legal entities, industrial or commercial, in the private sector.

Participants and Apprentices

The INCES Law introduces the figure of “Participants”, which refers to all persons, especially those which have no professional education, adolescents with special education needs, indigenous communities, persons with restrictions of freedom, as well as all those that require socio-productive inclusion. (Article 5)

For purposes of the INCES Law, Apprentices are all adolescents between 14 and 17 years old who have not received previous training in the skill they are developing, as long as they have an education level corresponding to the skill for which they will be trained.

National Learning Program

The companies and establishments under private or collective property have the obligation to employ and teach a productive skill to a number of Apprentices. This number of Apprentices shall be determined by the Regulations to the INCES Law, which must be issued within the 180 days after the publication in the Official Gazette of the INCES Law. (Article 10)

Until such Regulation is issued, the number of Apprentices to be employed shall be a minimum of 3% and a maximum of 5% of the total number of workers, as long as the employer has hired an average of 15 or more workers during the last twelve months. In order to determine the number of Apprentices, the average amount of workers for the previous twelve months shall be

taken into account. The INCES has the obligation to issue a certificate to employers, showing compliance with such program.

Contributions

The INCES Law establishes the contribution obligation for all employers with five or more workers, whether they are individuals or legal entities, industrial or commercial in nature, or providing services or professional advice, that do not belong to the Republic, States or Municipalities. In this sense, the INCES Law establishes that the employer must pay a contribution equivalent to 2% of the total of the **normal salary**⁴ paid to its workers. The previous Law established as a calculation base for these contributions, the total amount of salaries, wages, daily payments, and compensations of any type. However, the INCES Law clearly limits the taxable base of these contributions to the normal salary, pursuant to Article 133 of the Organic Labor Law⁵. (Articles 14 and 15)

Workers must contribute the equivalent of 0.5% of the amount they receive for profit-sharing, including the end of the year payment or end of the year bonuses. The employer is in charge of withholding such contribution from its employees and then paying it to the INCES. (Article 14)

The employer must pay the contributions and withholdings to INCES within the first five days following the expiration of each Quarter. (Article 21)

The INCES will issue a certificate of compliance for the contributions, for which it will verify the compliance of the employer's and workers' obligations. The certificate will be necessary to enter into contracts or agreements with the State. (Article 16)

Exceptions

INCES contributions shall not be paid by: (i) State entities and organisms; (ii) production means under collective property; (iii) cooperatives; (iv) foundations; (v) associative economic units; (vi) rural and mutual savings entities; (vii) family production units; (viii) social production companies; (ix) co-management companies; (x) communal banks; (xi) communal production units; and, (xii) any other form of non-profit association that develops the principles and values of social, solidary, participative and communal economy. (Article 5)

⁴ Normal Salary is understood as the compensation received by the worker in a regular and permanent manner for the provision of a service. (Article 133 of the Organic Labor Law).

⁵ *Organic Labor Law*. Special Official Gazette of the Bolivarian Republic of Venezuela No. 5.152, dated June 19, 1997.

Deductions

Pursuant to the INCES Law, all individuals or legal entities that offer courses or have academies for their workers, different than those for beginning education established in the Regulation to the Organic Labor Law⁶, shall have the right to deduct from the contributions the amounts effectively incurred.

The deductions must be approved by the INCES Board of Directors, to which employers must present on an annual basis, on the dates indicated by the INCES, the training and education programs and their corresponding budgets.

Fines

The INCES Law establishes different fines, depending on whether: (i) if there is a breach of the contributions established in such law, it will be fined under the Organic Tax Code ("OTC")⁷. This fine may be appealed following the OTC; (ii) if there is a breach of the National Apprentices Program, the fine shall range from the equivalent to the financial amount that the company should have provided for the execution of such program until twice such amount, without prejudice of ordering the temporary closure of the work center; and (iii) if there is a breach with the registry in the National Contributors Registry, the companies shall be fined for the breach of formal duties, pursuant to the OTC.

The imposed fines shall be paid pursuant to the terms and modalities established in the OTC and the Regulations to the INCES Law, to be issued for these purposes.

Derogatory Provision

The INCES Law derogated the INCE Law dated August 22, 1959, and the INCE Law of January 8, 1970. Likewise, it abrogates all provisions included in the Regulation to the Law on the National Institute of Cooperative Education of November 3, 2003, which collide with this Decree.

For further information, please contact:

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⁶ *Regulation to the Organic Labor Law*. Official Gazette of the Bolivarian Republic of Venezuela No. 38.426, dated April 28, 2006.

⁷ *Organic Tax Code*. Official Gazette of the Bolivarian Republic of Venezuela No. 37.305, dated October 17, 2001.

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