670

13 February 2024

Is the participation in the company's profits (also called "Bonificación") payable to an employer who is a natural person, or is it only payable to an LLC or an SA?

The Supreme Court ruled that a natural person was liable in the same way as a company: case Milvio José Rodríguez vs. Pedro Julio Leonardo, 3rd SCJ, 20 Jun. 2007, No. 20, B.J. 1159.

However, it seems to us that this case law is unwise, unfeasible and disturbing.

It is unwise because it equates a natural person with a company (legal person). In this sense, the case law is contrary to the statue law, because if the Legislator or Congressman had wanted to cover all employers, he would have called this right "profit sharing of employers". However, it limited itself to using the term "company" to make it clear that it is a benefit to be paid by companies, not individuals.

On the other hand, it is an unworkable decision. For example: A natural person could be working for an employer, have his own business, have shares in the company of another, have received an inheritance, and a long etcetera. In such a case, how could the "Bonificación" of the claimant worker be determined? Putting it into practice is chaotic.

Finally, it is a disturbing judicial precedent: How to apply to him the legal presumption of article 16 of the Labor Code, which is conceived for a company, defined as an "economic unit of production or distribution of goods or services", while a natural person has everything but "unit": a marital community, if married; income from his employment; other income of any other kind already mentioned?

It is necessary to add the Dominican reality: The most affected by this misleading interpretation of the statue law will be the micro-businesses and the "self-employed" who are assisted by an assistant.