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Peru’s New Youth Employment Law Sparks Protests, Calls For Repeal

by Elsa Chanduví Jaña

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Thousands of young people have taken to the streets of Peru in recent weeks demanding the repeal of what they call the "young and cheap labor law," a new youth-targeted labor regime that scales back workers’ rights.

The Ley que Promueve el Acceso a Jóvenes al Mercado Laboral y a la Protección Social (Ley 30288), as the law is formally known, was enacted on Dec. 16 and applies to young people between the ages of 18 and 24—with or without completion of high school, university, or technical school educations—who have no formal work history or have been unemployed for at least 90 days. The norm was designed to reduce labor informality. It exempts employers from paying benefits such as the Compensación por Tiempo de Servicio (CTS), life insurance, and household allowances that are otherwise mandatory under Peruvian labor law. The new regime also reduces the number of vacation days normally allowed Peruvian workers from 30 to 15.

"We don’t want our young people to be mistreated. We’re creating a voluntary mechanism, not an obligatory one, so that employers will have more incentives for hiring more youths," said President Ollanta Humala. He noted as well that the norm is temporary and will only be in effect for five years.

President Humala said the legislation is directed at the estimated half-million young people in Peru who do not have solid work qualifications because they ended their studies either before or just after high school and are thus vulnerable to exploitation within the informal employment sector. The unemployment rate among young people (aged 18-24) is 9.2%, well above the national average, according to official numbers.

Bare-bones benefits

Young people contracted under the new regime must be hired for at least a year (with a 60-day trial period). From there, provided the employee is still aged 18 to 24, contracts can be renewed for consecutive six-month periods. Up to 25% of a company’s work force can be contracted under the new regime.

Participating workers receive the minimum monthly salary (equivalent to approximately US$253) in exchange for eight-hour workdays with weekly rest days and national holidays off. The contracts also dictate that employees be registered with the Seguro Social de Salud del Perú (EsSalud), the country’s public health insurance system. Businesses are obliged to provide complementary workplace-accident insurance as well. In cases where a company decides unilaterally to break a contract, the young person receives an indemnity equivalent to 20 daily wages for every month left on the contract. The maximum a fired employee can receive is 120 daily wages. The maximum under Peru’s standard labor regime is 360 daily wages.

"In Peru, more than 70% of the EAP [economically active population] works in the informal sector," Peru’s Minister of Production Piero Ghezzi told reporters last month. "Four out of every five young
people lack adequate formal work conditions. The unemployment rate among young people (18 to 24) is four times higher than it is for people who are older (than 24). We want the young people who don’t have jobs to work."

Companies hiring young people under the special regime will be eligible for an income tax credit equivalent to the amount spent training the new employees. The state will also cover EsSalud costs for micro and small businesses that provide young people with their first formal, one-year contracts. Together the two subsidies are expected to cost the state some US$215 million.

"The program looks to give young people better tools, with training paid for by the state, and give them benefits they don’t have. It’s a transition regime, and it’s not for everyone but rather for those who have never been formally employed," said Economy Minister Alonso Segura.

**Widespread opposition**

On the night of Dec. 18, a large group of university students, members of various social collectives, young political-party activists, and others who oppose the law because it benefits business at the expense of workers’ rights took to the streets of Lima. Demonstrations also took place in other cities in Peru. Two more large protests were held in Lima on Dec. 22 and Dec. 29. The Coordinadora Juvenil para el Trabajo Digno, an organization that groups together young people from labor unions, university federations, and progressive and left-wing political parties, is organizing a national day of protest for Jan. 15.

"We’re mobilizing to demand that this youth labor regime be repealed because it is a discriminatory norm that will erode labor rights and put young workers in a more precarious economic situation," Jorge Rodríguez, a leader with the Foro de Izquierda de Juventudes, told the newspaper Diario Uno. "This is not a solution for youth employment. All it will accomplish is the large-scale hiring of cheap labor."

Speaking to the same newspaper, Libertad Casavilca, a youth leader with the leftist Frente Amplio (FA), said young people are outraged because they were never consulted about the implications of the law. "We will protest this law because it is discriminatory and therefore unconstitutional and because it doesn’t solve the problem of labor informality or the difficulties young people have accessing jobs," she said. "Labor rights aren’t negotiable. They can be expanded but not reduced."

On Dec. 29, in a move that many interpreted as a step back, Labor Minister Fredy Otárola announced that, as part of the process of finalizing the law, which must be approved within 120 days of its enactment, specific details will be added regarding profit sharing (something the norm does not currently include) among employees. He also said the law will be modified so as to make it clear that companies can only offer these types of contracts for new positions. The clarification comes in response to concerns that companies will take advantage of the new regime to replace existing employees with less costly newcomers.

The secretary-general of the Confederación General de Trabajadores del Perú (CGTP) Mario Huamán said in an interview with Diario Uno, "The government ought to repeal the law and instead debate a general labor law that would tie together and centralize the country’s various labor norms, which do nothing to solve the problems of informality and unfair wealth distribution."

Javier Neves, a former labor minister, pointed out that Peru already has a youth-focused labor law, the Ley de Modalidad Formativa Juvenil, implemented in 2005. "It would have been enough just to
reform that law and add some of the more positive incentives," he said. "They didn’t need to draft a new law that, truthfully speaking, won’t help generate quality jobs."

"More and more precarious"
For many, the fact that the new norm does not even mention its 2005 predecessor shows that the real motive behind the new regime is simply to reduce labor overhead costs. Media reports note how the law contains some of the very proposals business associations put forth in a campaign last October for greater labor flexibility. Business owners deny that they participated in drafting the law. President Humala insists, too, that there was no coordination with the business associations.

Labor attorney Javier Mujica sees the new labor regime for young people as essentially a subsidy for businesses. He also expects it to follow the pattern set by other "special" norms such as the temporary contract regime for the agroexport sector or the textile workers’ regime, which were supposed to apply for just a few years but ended up being permanent. Currently, some 70% of payroll workers are contracted under one of the various special regimes that limit labor rights. "With the youth regime it’s the same thing: everything gets more and more precarious," Mujica told the daily La República.

Another area of concern for Mujica and other labor experts are new rules—included in a recently approved packet of legislation aimed at spurring investment and reactivating the economy—regarding the Superintendencia Nacional de Fiscalización Laboral (Sunafil), Peru’s labor-oversight body. The changes limit Sunafil’s reach and thus allow businesses an even freer hand, not just with the new youth workers regime but also with all the various labor regimes.

Companies found to be in breach of labor law, for example, used to be subject to fines. Under the new rules, they now have a three-year grace period during which Sunafil can only issue "warnings." Sunafil can still fine companies in cases of serious infractions, but at a significantly reduced rate (penalties were lowered by 75%). In December, furthermore, Congress approved a measure giving the Ministerio de Economía y Finanzas and the Ministerio de Producción representation within Sunafil’s director’s council. Members will be both judge and judged.

A change of heart?
Some members of the legislature have also raised objections to the new youth labor regime as well. Yonhy Lescano, vice president of the congressional labor committee, told La República that the law is "blatantly unconstitutional" since it creates a "discriminatory regime with mutilated labor rights." Lescano and others in Congress, from various political groups, have presented a challenge to the norm before the Tribunal Constitucional. Discrimination in general and discrimination as it pertains to workplace opportunities are outlawed in Articles 2 and 26 of the Peruvian Constitution.

Five different congressional groups favor revising the norm and have submitted corresponding bills. They are hoping to convene a special full session to debate the future of the law. To do so they will need the signatures of 78 legislators. Congress already approved the law on Dec. 11. But the recent protests have caused many lawmakers to change their minds. Major political figures such as ex-Presidents Alan García (1985-1990, 2006-2011) and Alejandro Toledo (2001-2006)—who both scaled back labor rights during their terms in office—and Keiko Fujimori of Fuerza Popular (FP) have also come out against the norms, perhaps as a way to court young voters ahead of the 2016 presidential elections, in which all three are likely to participate. Together, young people between 18 and 24 represent approximately 3 million votes.
The Humala administration continues to staunchly defend the norm, saying it will be perfected prior to final approval. Congress, in the meantime, plans to revisit the initiative—and the possibility of repealing, modifying, or suspending it—in a session of the Comisión Permanente scheduled for the third week of January. The debate will be open to all legislators, not just members of the committee.

"There’s more than just a labor regime at stake here. This is about a model of development that places economic growth above all else, above labor rights, the environment, and rights regarding health, protest, and indigenous territories," Deputy Verónica Mendoza of Acción Popular-Frente Amplio (AP-FA) explained in a Diario Uno column. "We can’t keep following this model. The thousands of young people who have taken to the streets all across the country have made that perfectly clear."

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