

EMPLOYMENT LAW OVERVIEW

MEXICO 2021-2022

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TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	07
III.	EMPLOYMENT CONTRACTS	11
IV.	WORKING CONDITIONS	13
V.	ANTI-DISCRIMINATION LAWS	17
VI.	PAY EQUITY LAWS	19
VII.	SOCIAL MEDIA AND DATA PRIVACY	21
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	23
IX.	RESTRICTIVE COVENANTS	26
X.	TRANSFER OF UNDERTAKINGS	28
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	30
XII.	EMPLOYEE BENEFITS	34



I. GENERAL OVERVIEW

1. INTRODUCTION

Mexican Labour Law grew out of an armed revolution that concluded with the adoption of the current Federal Constitution in 1917. Article 123 of the Federal Constitution, entitled “Labour and Social Welfare”, expressly recognises and protects the basic inalienable rights of employees. This was the first constitutional recognition of labour rights in world history. Thereafter, in 1931, the first Federal Labour Law was enacted to regulate employer-employee relations nationwide, later replaced by the 1970 Federal Labour Law, which improved working conditions for employees. The 1970 Law was, for all practical purposes, the federal government’s “political reward” to workers’ organisations for not supporting the 1968 student movement.

In September 2012, the President of Mexico, Felipe Calderon, introduced a bill to amend the Mexican Federal Labour Law, which after much debate before both the House of Representatives and the Senate, was approved by the Congress on 13 November 2012 and enacted by the President of Mexico on 30 November 2012 becoming effective on 1 December 2012. The reform amends and includes important provisions to the Mexican Federal Labour Law (herein after the “FLL”), which has extensive implications for employers with operations in Mexico.

In April 2016, President Enrique Peña Nieto sent to the Senate a bill to substantially amend the Constitution on labour justice. The bill proposed discontinuing the Conciliation and Arbitration Labour Boards, which have been the agencies in charge of labour justice, and their replacement by federal labour courts belonging to the federal judicial branch and by local labour courts belonging to the local judicial branch. This initiative was discussed and approved by both the Senate and the Chamber of Representatives and was sent to the local congresses for their approval. The proposed constitutional reform was approved by 17 local congresses.

On 24 February 2017, the bill amending several provisions of Sections 107 and 123 of the Mexican Constitution was published in the Official Gazette and became effective on 24 February 2018. As a result of this constitutional reform, Labour Justice will be provided by labour courts belonging to the Federal or Local Judicial Branch, which will give them more Independence in relation to the Executive Branches. This reform created a decentralised organism, independent of the Federal Administration and similar bodies in the States, which will be in charge, in the federal jurisdiction, of substantiating a mandatory pre-trial instance for the parties, which aims to fasten labour proceedings. Also, this organism will be in charge of the registration of union and collective bargaining agreements. This Constitutional Reform necessarily involves adjustments to the Regulatory Law, especially on procedural labour matters.

On 1 July 2018, Mexico had federal and local elections for several political positions, including the President, State Governors and Majors, among others. Andrés Manuel López Obrador (AMLO), candidate of the National Regeneration Movement (MORENA, by its acronym in Spanish) won the Presidential election with 53% of the votes. For the first time in modern history, Mexico will be governed by a leftist President. MORENA, with its ideology based on social equality and egalitarianism, also won the majority of both Chambers of the Congress. As a result, MORENA unveiled a highly ambitious, multi-faceted labour and employment reform agenda for the next six years:

Young people: Empower young people by providing them universal access to education and granting economic scholarships to all students.

Minimum wage: Increasing the minimum daily wage. This topic has been addressed during TPP and NAFTA's negotiations by the governments of the U.S. and Canada.

Outsourcing: This topic has been regulated by the Mexican tax and labour authorities in the past to avoid violations to labour rights and tax fraud. Therefore, MORENA has proposed to regulate this further to guarantee labour rights to all employees.

Collective Bargaining Agreements: There has been international pressure to abolish the practice of executing non-active collective bargaining agreements CBAs. Mexico ratified the Convention 98 of the International Labour Organisation (ILO) to guarantee the right to collective bargaining, as well as to apply ILO Convention 87 regarding freedom of association.

New Union Confederations: During AMLO's administration it is probable that there will be new Union Confederations, led by Napoleón Gómez Urrutia, leader of the Mining Union, who has been in exile in Canada since 2006. He was registered as MORENA's elected Senator on 27 August 2018.

Labour Ministry: AMLO appointed Luisa María Alcalde as Labour Secretary. She is in charge of implementing the Constitutional reform and the application of Conventions 87 and 98 of the ILO.

Constitutional amendment to reform the FLL: The reform to the Mexican Federal Labour Law (herein after the "FLL"), came into effect on 1 May 2019. The amendment did include pro-employees and pro-union provisions in order to create a better system.

It is important to mention that this amendment arose as part of Mexico's obligations after the signing of the United States Mexico Canada Agreement (USMCA) that came into effect on 1 July 2020. In this sense, there was a necessity to make substantial changes in labour and union matters in order to adapt to the terms of the agreement.

The three main pillars of the 2019 amendment to the FLL are:

- **A new Labour Justice system:** The parties are now obliged to attend the Conciliation Center before filing for trial; if no agreement is reached the Labour Justice will now be provided by labour courts belonging to the Federal or Local Judicial Branch. The new procedure is governed by the principles of orality, immediacy, continuity, concentration and publicity.
- **Union democracy:** A new democratic procedure came into effect to guarantee the unionised employees their right to a personal, free, secret and direct vote for choosing their union leaders, as well as knowing about and approving their collective bargaining agreements.
- **The kick off for the Federal Conciliation and Labour Registry Center:** Beside the conciliation part, this Center will keep the records of unions and collective agreements at the national level. Moreover, it will ensure that union rights and the collective interests of employees are respected, through free and democratic processes.

2. KEY POINTS

- Employers dealing with operations in Mexico should be aware that labour relations are highly regulated in our country and that Mexican employees generally have greater rights than their American counterparts.
- Job stability principle. Any individual employment relationship is subject to the principle of 'job stability', that is, subject to the employee's right to keep his job as long as the employment relationship so requires. If the employment relationship is for an indefinite term, the employee cannot be laid off without cause. In other words, there is no employment-at-will in Mexico.
- Duration of the employment contract. The Mexican Federal Labour Law assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the nature or the particular type of service to be provided calls for an employment agreement for a specific job or term, or if the parties agree to execute an employment agreement for initial training or subject to a probationary period.
- Restrictive Covenants or Non-Competes. In the strictest sense, non-compete agreements are void under Mexican law; specifically, under Article 5 of the Mexican Constitution. Notwithstanding the foregoing, pursuant to an opinion issued by a Circuit Court, Covenants not to compete are fully enforceable provided they are limited in time, geographical scope, clients and activity, products and services, and consideration is paid in exchange.
- Outsourcing. Although strictly ruled, the FLL currently allows for the subcontracting of specialised services or 'outsourcing'. This type of work must comply with the following conditions: (a) It cannot cover the totality of the activities, whether equal or similar in whole, undertaken at the work centre; (b) It is justified due to its specialised character; (c) It cannot include tasks equal or similar to the ones carried out by the customer's workers. If any or all of these conditions are not met, the customer will be deemed to be the employer for purposes and effects under the Law, including as it applies to obligations related to social security. It is important to mention that on 12 November 2020, AMLO issued an amendment proposal for the FLL, to entirely prohibit the subcontracting of services or 'outsourcing'. This

proposal to eliminate outsourcing is now pending the approval and ratification of the Mexican Congress. It is very likely that the amendment will enter into force before 2021, and those who continue subcontracting employees could face an imputation for tax fraud.

3. LEGAL FRAMEWORK

The Mexican legal system is based on the Civil Law tradition; which is highly systematised and codified. Thus, the main sources of law are codified texts that derive from the provisions of the Mexican Constitution. As the utmost source of law in Mexico, the Constitution, has specific provisions set forth to protect the rights of citizens. These rights, previously referred to as Individual Guarantees in the civil tradition (Constitutional Rights) and now regulated as Human Rights, are classified in relation to the right they safeguard: (i) constitutional rights of equality; (ii) constitutional rights of freedom; (iii) constitutional rights of due process of law (or legal certainty); and, (iv) constitutional social rights – which by definition are those that were created with the intention to protect the common interests of a specific group collectively (e.g., workers, students, common land farmers). Applicable legislations for Labour law in Mexico derive from the Constitutional provisions on social rights for workers in Article 123.

Furthermore, Article 123 of the Mexican Constitution provides protection for the collective interests of workers by establishing general employee rights that seek a balance in the employer-employee relationship; including but not limited to: (a) setting maximum limit of working hours per week; (b) equality rights; (c) weekly rest days; (d) mandatory rest days in the year (holidays or long weekends); (e) employees' right to profit sharing; (f) maternity leave; (g) limitations on work of minors; (h) limitations on work of pregnant and breastfeeding mothers; (i) paid vacation periods; (j) right to unionise, to strike and lockout, and right to collective bargaining; (k) minimum salaries; (l) limitations on work shifts; (m) overtime; (n) social security rights (such as the establishment of a housing fund for workers); (o) Christmas bonus; (p) mandatory training; (q) Labour authorities (competence and jurisdiction); amongst others.

The following laws govern all labour relationships in Mexico, regardless of the worker's nationality: **FLL, 1970**; **Social Security Law, 1997**; and the **National Workers Housing Fund Institute's Law, 1972**.

A. FEDERAL LABOUR LAW

The FLL is the most important employment legislation in Mexico. It defines a 'labour relationship' as the rendering of a subordinated personal service by one person to another, in exchange for a wage. The main element of any labour relationship is subordination, which the Mexican Supreme Court of Justice has defined as the employer's legal right to control and direct the employee and the employee's duty of obedience towards the employer. Once a labour relationship exists, the rights and obligations provided for by the FLL automatically apply, regardless of how the agreement is defined by the parties.

B. SOCIAL SECURITY LAW

Additionally, the Social Security Law is the legislation that contains the stipulations intended to provide further social benefits for the collective; specifically aimed for the employers and the employees. The Social Security Law covers the various rights and duties of both employee and employer with respect to retirement funds and healthcare benefits provided for by the authorities.

C. NATIONAL WORKERS HOUSING FUND INSTITUTE'S LAW, 1972

The National Workers Housing Fund Institute's Law was created with the purpose of providing support for the employees in order to acquire their own homes. A National Housing Fund was created for employees in order for them to have access to a government run mortgage (credit institution) and acquire their own homes.

4. NEW DEVELOPMENTS

A. BILL AMENDING AND SUPPLEMENTING DIVERSE CONSTITUTIONAL PROVISIONS ON LABOUR JUSTICE

On 28 April 2016, President Enrique Peña Nieto sent a bill to the Senate to amend and supplement several Articles on labour justice. This reform intends to consolidate the autonomy and effectiveness of labour justice administration, being the most relevant after the Constitution was enacted in 1917.

Although adjustments to the Regulatory Law are still pending, the initiative proposes a deep transformation of procedural labour law, beginning with three essential premises:

- i. Labour Justice will be further administered by the Federal or Local Judicial Branch, which should focus on their jurisdictional duties.
- ii. A pre-judicial conciliatory stage is inserted during the labour proceeding, which will be mandatory for the parties and will be responsibility of decentralised agencies named Conciliation Centres, which will be provided with legal capacity and own budget, as well as with technical, operational, financial, deciding and acting autonomy. This new stage will consist in one sole mandatory hearing, which date and time will be promptly set by these new decentralised agencies; the subsequent hearings will only take place with agreement between the parties.
- iii. A new decentralised agency of the Federal Public Administration is created, which will be in charge of registering all Collective Bargaining Agreements and union organisations, as well as of the administrative processes inherent to those subjects; furthermore, it will be in charge of the conciliatory role at the Federal level.

The implementation of this Federal Conciliation and Labour Registry Center will be executed in three stages. In the first stage, the following Centers will start operating: Campeche, Chiapas, Durango, Estado de México, San Luis Potosí, Tabasco and Zacatecas. The second stage will carry on with: Aguascalientes, Baja California, Baja California Sur, Colima, Guerrero, Guanajuato, Morelos, Puebla, Oaxaca, Queretaro, Quintana Roo, Tlaxcala and Veracruz. Finally, the last stage will launch operations in: Chihuahua, Coahuila, Mexico City, Jalisco, Michoacan, Nayarit, Nuevo Leon, Tamaulipas, Sonora, Sinaloa and Yucatan.

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

The FLL allows for the employment of foreign nationals in Mexico, declaring in Article 7, “in every enterprise or establishment, the employer shall employ at least 90 per cent of Mexican workers.” This same provision states that with regard to categories of technicians and professionals, “the workers shall be Mexicans unless there are none in that particular specialty, in which case the employer may employ foreign workers temporarily, in a ratio not to exceed 10 per cent of those employed in that specialty.” There are two additional conditions in Article 7: (1) employers and foreign workers have a joint obligation to train Mexican workers in the specialty of the foreign workers; and (2) physicians working in enterprises must be Mexicans. The provisions of Article 7 of the FLL do not apply to directors, administrators, or general managers of enterprises. The FLL’s limited authorisation for foreign nationals to work in Mexico is also subject to the requirements of the Migration Law, in force as of 25 May 2011. The Migration Law establishes the following types of immigration status for foreign nationals in Mexico:

- visitors;
- temporary residence;
- temporary residence with work permission; and
- permanent residence.

A. VISITORS

The immigration status of visitors mainly subdivides into a) tourists (and other non-business-related visitors); and b) businesspersons. Neither may pursue employment in Mexico. The maximum length of stay for foreign nationals arriving in Mexico under this type of status is 180 continuous days. The status of visitor tourist describes itself. The status of visitor businessperson allows foreign nationals to engage in business-related activities;

however, they may not be paid, either in cash or in kind for these activities.

B. TEMPORARY RESIDENCE

This type of residency is granted to those foreign nationals who have a family bond (either Mexican or foreigner) or otherwise in Mexico. They may not pursue employment—although they may file for work permission—and the length of their stay is linked to the person to whom they are linked in Mexico, not to exceed four years.

C. TEMPORARY RESIDENCE WITH WORK PERMISSION

This type of residency is granted to those foreign workers whose work visa is sponsored by a Mexican company. The maximum length of a temporary residence card is four years. The Mexican company is the one to start the process and request the work permission on behalf of the worker before entrance of the foreign national to Mexican soil. Once the maximum four-year period has elapsed, the foreign national may pursue a permanent-resident status. Students fall into the category of temporary residents. They may file for work permission, as long as the job offer is related to the field they are studying in Mexico. Their stay in the country may be extended until they complete their studies and obtain the necessary credentials attesting to the completion of their schooling, not to exceed four years.

D. PERMANENT RESIDENCE

This type of residency is granted to those foreign nationals who meet the following requirements:

- they have been married to a Mexican national for more than two years (and the marital bond persists);
- they have Mexican children; or
- their temporary residency has reached the four-year period.

All foreign nationals holding a status of permanent residence are allowed to work in Mexico. A permanent residence card does not expire. Foreign nationals under this status may start accruing time in order to file later for the naturalisation process.

Article 33 of the Constitution grants foreign nationals the same individual guarantees as Mexican citizens, but it also authorises the Executive of the Union (the President of the Republic) to force them to leave the country “immediately and without a trial” whenever the President deems their presence to be inconvenient. Under no circumstances may foreign nationals engage in domestic politics.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

Foreign employers that do not have a presence in Mexico must be aware of the following before hiring an employee to perform in Mexico:

According to Article 123 of the Federal Constitution, the FLL protects every employee within Mexico, regardless of the nationality of the employer or employee, the place of execution of the labour agreement or payment of salary. Once an employment relationship exists, all the rights and obligations under the FLL automatically apply, regardless of how the agreement is characterised by the parties.

By virtue of the foregoing, if an individual, expatriate or a Mexican national, renders his personal, subordinated services to a company in Mexican territory, pursuant to Article 20 of the FLL, a labour relationship exists between the individual and said company.

The FLL and the SSL grant all employees rendering services in Mexico certain fundamental and minimum rights, which cannot be waived by the employee. In turn, employers have the corresponding statutory obligations to satisfy such rights. Neither the FLL nor the SSL make any distinctions as to the nationality of the employer,

employee, place where an agreement is executed or where the salaries are paid, if the employee’s performance is in Mexico.

However, there might be a risk that Mexican tax authorities consider that the foreign employer has a permanent establishment in our country, derived from having owned or leased employees rendering services in Mexico on its behalf. This risk would be enhanced if the individual renders services in Mexico for more than 180 days.

Also, the tax treatment applicable to individuals rendering services in Mexico will depend on their tax residence. If it is determined that they are Mexican residents for tax purposes, then they would be subject to pay income tax in Mexico on their worldwide income.

Consequently, if the individual qualifies as a resident for tax purposes in Mexico and receives his wages directly from abroad, he shall be required to calculate and pay the monthly tax directly in Mexico.

Finally, it is of utmost importance to review the specific activities that the individual will carry out during his stay in Mexico in order to determine the appropriate visa.

3. LIMITATIONS ON BACKGROUND CHECKS

There is no express impediment or restriction for employers to request a criminal record certificate or carry out background checks (i. e. credit) under Mexican legislation. On the other hand, the Mexican Federal Law on the Protection of Personal Data Held by Private Parties (the “Data Privacy Law”) governs the legitimate, controlled and informed treatment of personal data to guarantee the individual’s privacy and their entitlement to decide who, why and for which purposes their personal data may be processed (informational self-determination). There is a reasonable expectation of privacy in every data processing, being understood as the confidence that any person deposits in another regarding the personal data provided. According to the Data Privacy Law, criminal and financial/economic data is considered confidential information; any violation to this duty

can entail civil and/or criminal liability. Moreover, financial/economic data is deemed as 'sensitive data' under the law and requires express consent from the 'data owner' (in the case at hand, the employee). One main obligation that employers must observe when gathering employees' or incumbents' personal data is delivering a Privacy Notice to each of them upon acknowledgement of receipt, containing the purposes of data processing and express authorisation for the processing of sensitive data by the 'data owner' (the employee).

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

In general terms, the employer has the freedom to ask the questions it considers convenient to a candidate in all phases of the recruitment process; in other words, there is almost no limitation to the scope of such questions from a legal standpoint. However, company policy and international guidelines might require global corporations to adhere to stricter procedures in the recruitment, interview and screening processes.

Recruiting: Given that there are no specific laws or rules applicable to recruitment, employers may, in their own judgment or interests or in accordance with company policy and interests; determine all necessary requirements for employment. Laws regulating discrimination are not extensively developed in Mexico, but the FLL states that workers shall not be discriminated against on grounds of race, nationality, sex, age, disability, religion, political opinion, migratory condition, health, sexual preferences, or social rank. Even though the FLL prohibits discrimination, in practice there is unfortunately no action against employer discrimination.

Employment Applications: On the employment application, employers can request information from an applicant regarding his socioeconomic data, educational background, prior employment, drug screening, medical conditions, family situation and even criminal background. The employer is even allowed to require the applicant to provide a certificate issued by the Attorney General's office (federal or state) evidencing that the applicant has no prior criminal record. Notwithstanding the

above, it is advisable to include a specific provision in the application form whereby the applicant acknowledges and agrees to the background check and the employer attests that the information provided will be kept confidential. Employers shall also be mindful of compliance with data privacy law and regulations.

Pre-employment Inquiries: As mentioned previously, employers have great flexibility regarding the information that may be gathered about applicants except pregnancy status for working women or any other information that may imply a discriminatory practice.

Pre-employment Tests and Examinations: Drug screening and pre-employment physicals for applicants are generally permitted, with the applicant's consent. Additionally, the results of tests and information provided in interviews must be kept confidential and in accordance with the Privacy Notice delivered to the employee or applicant. Employers may make inquiries regarding the consumption of alcohol or tobacco, without restrictions.

Background, References and Credit Checks: Letters of recommendation are usually required by employers. Credit checks are mandatory only for certain executive positions in the banking and finance sector, but not for other positions or other industries, therefore, denying a job due to a bad credit history may be considered as discriminatory. Background and reference checks are generally allowed, but are subject to the applicant's consent; the law is silent to this particular respect, but it is recommended that the employer secures the applicant's consent. The information obtained has to be handled in a confidential manner and in accordance with the privacy notice delivered to the employee or applicant. The FLL allows employers to terminate any employee, without any further liability to the employer, within thirty days following the employee's first day on the job or hiring date, if the employee used false documentation or false references to obtain employment, or deceives the employer about qualifications that he does not have.

Interviewing: The employer has the freedom to ask any questions in any phase of the recruitment process. There is no real limit set by law as to the pertinence of the questions allowed,

however common sense is applied under these circumstances. During interviews, employers may ask for and corroborate any financial information, educational or employment information, drug screen results, medical condition, family situation and criminal history.

Hiring Procedures: The FLL does not provide for any special hiring process; therefore, employers do not have to follow any specific guidelines, unless agreed with the Union in the CBA (such as hiring only union members). However, depending on the position, normal practice dictates that all possible employees must first fill out an employment application, whereby all those interested in working for a company provide certain information, such as personal information, academic background, references, qualifications, skills and job experience. A second phase involves an interview with the applicant and, for some companies, criminal, work history and economic background checks, directly or through third parties. Since the company will gather personal data on the applicant, employers are also required to deliver a privacy notice to the same, in order to comply with the Federal Law for the Protection of Personal Data in the Possession of Private Parties.

III. EMPLOYMENT CONTRACTS

Written employment agreements in Mexico are mandatory. Every employee must enter into an individual employment agreement with the employer and set out the terms and conditions of the employment. There is no 'employment-at-will' in Mexico. An employer must have justified cause (as defined by the FLL) in order to terminate the employment relationship, if not, employer must compensate the unjustly terminated employee accordingly (FLL stipulates the amount for severance payments). Notwithstanding the previous statement; in the given case that an employment relationship exists and there is no written agreement; the employee's constitutional and statutory rights are not waived or affected by this omission.

In the case of Unions, there is an additional agreement that is negotiated and entered into by the Union and the employer in order to promote the creation or improvement of the labour conditions for the employees as a collective and in turn the employer obtains a loyal and solid workforce. The Collective Bargaining Agreement (hereinafter 'CBA') is renewable and cannot contain provisions that stipulate the waiver of the basic constitutional and statutory rights or benefits for the employees as a collective. It can always be more favourable than the constitutional and statutory requirements but never less than the latter.

1. MINIMUM REQUIREMENTS

Article 24 of the FLL provides that working conditions must be established in writing, and each party must be provided with a copy of the employment agreement. In addition, Article 25 states that the individual employment agreement must contain the following information:

- name, nationality, age, sex, civil status, CURP, tax id number, and domicile of the employee and the employer, if applicable;
- whether employment is for a specific job or term, initial training, permanent, and if it is subject to a probationary period;
- the service or services to be provided, as specifically as possible (job description);
- the place or places where the employee will work;
- the work schedule;
- amount of salary and any fringe benefits;
- date and place where salary is to be paid;
- an indication that the employee will be trained according to the plans and programmes established by the employer;
- amount of rest and vacation days, and any other conditions agreed to by the employee and the employer.

Every employment agreement contains an implied relationship of mutual trust and confidence. Furthermore, employment agreements cannot contain an employee's acceptance to waive the necessary legal grounds for justified dismissal on the part of the employer and the minimum mandatory benefits provided by the FLL. On the other hand, CBAs must also be in writing and contain the following information:

- names and domiciles of the parties executing the CBA;
- the address of the facilities where the CBA will be applicable;
- duration or whether it is for an indefinite term or specific job;
- work schedules;
- rest days and holidays;
- salary amounts;
- employee training;
- initial training for new hires;

- integration and operation of the Employee/ Employer Committees as established by law;
- other conditions agreed upon by the parties.

CBA's must be filed in the Local or Federal Conciliation and Arbitration Board, depending on competence and jurisdiction. Competence and jurisdiction of the Conciliation and Arbitration Boards is determined by the employer's main business activities in accordance with the applicable FLL provisions.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

Any individual employment relationship is subject to the principle of 'job stability', that is, subject to the employee's right to keep his job as long as the employment relationship so requires. The FLL assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the nature or the particular type of service to be provided calls for an employment agreement for a specific job or term, or if the parties agree to execute an employment agreement for initial training or subject to a probationary period. The FLL provides that employment agreements for an indefinite term are for continuous work, but the parties may agree that the services be provided for a fixed term and for periodic work with a discontinuous character in cases where the services are required to be provided during a season, or are not required for an entire week, month or year.

3. TRIAL PERIOD

The initial training employment relationship is the relationship whereby the employee agrees to provide his subordinated personal services, under the control and supervision of the employer, in order to acquire the necessary knowledge and skills to perform the services for which he is hired. This agreement must establish a training period of 3 months, as a general rule, and 6 months, for executive positions.

Employment agreements executed for an indefinite term or for a specific job or term of more than 180 days, may be subject to a probationary period of 30

days, or up to 180 days for executive positions, in order to verify that the employee has the necessary knowledge and skills to perform the services for which he has been hired.

Both, the initial training agreement and those agreements subject to a probationary period, cannot be executed on a consecutive basis and their term cannot be extended. It is mandatory to execute these agreements in writing, establishing that the employee will be entitled to all social security benefits. If the labour relationship continues once the effective term of these agreements has elapsed, the labour relationship will be considered for an indefinite term and the seniority accrued during the training and probationary period shall be recognised.

4. NOTICE PERIOD

There is no notice period under the FLL. However, the employer must notify the worker in writing of the cause or causes for dismissal. Notice may be delivered directly by the employer at the moment the dismissal takes place or communicated to the Conciliation and Arbitration Labour Board within 5 work days, in which case the employer must provide the employee's last domicile registered in its files so the conciliation and arbitration labour board notifies the employee in person. If neither is done, the dismissal will be considered unjustified. Failure to execute a dismissal within one month after the employer knew about the event that gave rise to the cause for dismissal will invalidate the action.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

The FLL provides for the following minimum benefits, which may not be waived whatsoever:

- i. Social Security Benefits: all employees must be registered with and contribute to the:
 - Mexican Institute of Social Security (IMSS);
 - National Workers Housing Fund Institute (INFONAVIT);
 - Retirement Savings Programme; and
 - National Fund Institute for Workers' Consumption (INFONACOT), which is a governmental institution that provides financial aid to employees for the acquisition of goods and services. This is mandatory as of 1 December 2013.
- ii. Profit Sharing: employees are entitled to share in the employer's profits, currently fixed at 10% of the company's gross, pre-tax income;
- iii. Paid Mandatory Holidays: FLL requires that employees be paid for government holidays;
- iv. Vacation Premium: employees are paid an extra 25% of the salary to which they are entitled during their vacation period;
- v. Christmas Bonus: employees have the right to a bonus of at least fifteen days of their daily base salary, which must be paid by no later than 20 December of each year.

2. SALARY

A. MINIMUM SALARY

The minimum salary is defined as the lowest minimum cash payment that a worker may receive for services rendered in a given time period. Since 1 October 2015, minimum general salaries and minimum professional salaries are established in one unique region throughout the country.

As of 1 January 2014, the minimum general salary in Zone A was MXN\$67.29 (approximately US\$3.60) per day, and the minimum general salary in Zone B was MXN\$63.77 (approximately US\$3.41) per day.

As of 1 January 2015, the minimum general salary in Zone A was MXN\$70.10 (approximately US\$3.75) per day, and the minimum general salary in Zone B was MXN\$66.45 (approximately US\$3.56) per day.

As of 1 October 2015, the minimum general salary in the Unique Zone was MXN\$70.10 (approximately US\$3.75) per day.

As of 1 January 2016, the minimum general salary in the Unique Zone was MXN\$73.04 (approximately US\$3.91) per day.

As of 1 January 2017, the minimum general salary in the Unique Zone was MXN\$80.04 (approximately US\$4.21) per day.

As of December 2017, the minimum general salary in the Unique Zone is MXN\$88.36 (approximately US\$4.65) per day.

As of January 2020, the minimum general salary in the Northern Border Zone is MXN\$185.56 (approximately US\$9.04) per day, and the minimum general salary in the rest of the country is MXN\$123.33 (approximately US\$6.19 per day).

The minimum general salary is set by the tripartite National Commission for Minimum Salaries, considering the basic amount necessary for the satisfaction of, among other things, the following needs of each family:

- material needs such as housing, household furnishings, food, clothing, and transportation;
 - needs of a social and cultural nature, such as attendance at athletic events, training schools, libraries, and other cultural presentations; and
- needs related to the education of children

The minimum salary is set annually and becomes effective on 1 January. Under special circumstances, it may be modified during the year at the request of one of the parties in the tripartite National Commission, if it is deemed by the Commission as a whole, that the economic circumstances warrant it.

On 28 January 2016 a constitutional reform on deindexation of the minimum salary entered into force, pursuant to which said wage ceased to be the unit of account, index, base, measure or reference to determine the amount of the obligations and hypothesis established in federal and local laws, as well as any other legal provisions arising therefrom. Such is the case of Title Sixteen of the FLL, which takes the general minimum salary as reference for calculation of fines deriving from violations to labour standards.

On 10 January 2018, the National Institute of Statistics and Geography (INEGI) announced the new value of the Unit of Measure and Update (UMA) that will govern from 1 February 2018 to 31 January 2019: the daily value will be MXN\$80.60, MXN\$2,450.24 monthly, and \$MXN 29,402.88 annually; this is US\$4.24 daily, US\$128.96 monthly, and US\$1,547.47 annually.

B. OTHER REQUIREMENTS CONCERNING SALARIES

Salary includes cash payments for wages, plus bonuses, housing provided by the employer, premiums, commissions, in-kind benefits, and “any other amount or benefit that is given to the worker for his work”; it does not include profit-sharing payments. Salaries of workers may not be

set below the minimum established by law. Salaries are established on the principle of equal pay for equal work, provided productivity is the same.

Manual labourers must be paid at least weekly; other workers must be paid every two weeks. A Christmas bonus, consisting of at least 15 days’ salary, is considered as part of the salary and should be paid each year before 20 December.

The right to collect a salary is irrevocable. Salaries must be paid directly to the worker in cash, in currency of legal tender. Workers need to authorise in writing an alternative payment option like direct deposit or check. In-kind benefits (e.g., lodging and board) must be appropriate for the personal use of the worker and his family. Fines may not be collected from workers’ salaries, and only some specific deductions, listed in Article 110 of the FLL, are permitted.

Under no circumstances may an employer charge interest on workers’ debts to the employer, nor may workers’ salaries be garnished except for alimony payments to a spouse or other family members. In the case of insolvency of a business, salaries earned over the last year of operation and the compensation due workers have priority over any other credit, “including those backed by real estate, tax liabilities, and amounts owed the Mexican Institute of Social Security, and especially over all the assets of the employer.” Workers may collect debts from the employer directly, through the conciliation and arbitration boards, without need of becoming party to insolvency, bankruptcy, or probate proceedings.

3. MAXIMUM WORKING WEEK

The work shift is the time in which the worker is at the disposal of the employer in order to perform work. In most instances, the work shift corresponds to the time interval the worker actually spends working, but the two concepts may differ where the worker is unable to complete the work shift because of reasons outside of his control.

A. WORK SHIFTS

Mexican labour law recognises three work shifts:

- the day shift, with a length of eight hours, between 6:00 a.m. and 8:00 p.m.;
- the night shift, lasting seven hours, between 8:00 p.m. and 6:00 a.m.; and
- the swing or “mixed” shift, lasting seven and one-half hours, divided between the day and night shifts, provided that less than three and one-half hours of the time is during the night shift.

B. REST PERIODS

Workers are given a rest period of at least one-half hour during a work shift.

C. HOURS PER WEEK

The principle of a 48-hour workweek, which presupposes one complete day of rest with full pay, is officially the law of the land. However, in some employment relationships, such as in government service, the banking sector, and in much of the private sector, a 40-hour workweek has been established. The arrangement of the 40 hours of work may be over five and one-half days or any other equivalent arrangement.

4. OVERTIME

It is incumbent on the employer to maintain records of the effective length of the workday should the worker claim to have worked overtime. Section XI of Article 123 of the Constitution limits overtime to 3 hours per day and provides that it may not be performed on more than 3 consecutive days. However, pursuant to a binding opinion issued by the Supreme Court of Justice, overtime must be calculated and paid on a weekly basis; this means it should not exceed 9 hours a week.

Furthermore, overtime must be paid at twice the hourly rate of pay. Article 68 of the FLL establishes that if overtime extends beyond 9 hours per week, the overtime beyond 9 hours must be paid at triple the hourly rate. Persons under 16 years of age and pregnant or nursing mothers, if it endangers the worker or the child’s life, are not permitted to engage in overtime work.

5. HEALTH AND SAFETY IN THE WORKPLACE

Title IX of the FLL deals with occupational safety and health. Under these provisions, employers have the obligation to set up enterprises in accordance with the principles of worker safety and health, and to take necessary actions to ensure that contaminants do not exceed the maximum levels allowable under the regulations and instructions issued by competent authorities. Employers are also obligated, when required by the authorities, to make physical modifications in facilities to accommodate the safety and health of workers. Likewise, employers must keep first aid medications and medical supplies at the workplace and instruct personnel on how to administer them. If there are more than 100 workers in a given enterprise, an infirmary with appropriate staff must be established. Enterprises employing more than 300 workers must have a hospital staffed with adequate medical and auxiliary personnel.

A. EMPLOYER’S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

According to the FLL, companies with over 100 workers are required to have a preventive program for safety and hygiene; companies with fewer workers must provide the Ministry of Labour and Social Welfare (STPS, by its acronym in Spanish) with a list of their safety and hygiene obligations. Companies not in compliance could be given up to a year’s grace upon submission of a written plan detailing how they plan to come into compliance. Independent private sector units, such as insurance companies, may certify compliance with workplace standards, following authorisation by the STPS, forestalling the need for inspections.

Under the FLL, employees have the right to perform their duties in a safe workplace. It is also the employee’s right and obligation to require the employer to form an employee Safety and Health Committee within each facility, and to participate in it. Similarly, employees have the right to refuse to perform dangerous work.

The provisions of the FLL have been implemented through the new Federal Occupational Safety and Health Regulations (the “Regulations”), issued by the STPS on 2014, which entered into effect in February 2015. These Regulations obligate employers to ensure workers’ safety and to keep them informed of risks in the workplace. In addition, the Regulations require periodic tests on various equipment, risk studies concerning matters such as noise levels and air quality, communication with workers concerning risks, worker training, and in some cases, the purchase of additional equipment to comply with the various requirements. The Regulations also cover transportation of primary materials and hazardous materials, including biohazards, and safety in the agricultural sector, and establish rules concerning labour by pregnant women and minors.

Moreover, the Regulations provide for the following employer’s obligations:

- the employer – employee Safety and Hygiene Committee has to prepare an annual job programme.
- keep monthly inspection certificates of a six-month period or annual report.
- conduct a study to determine the risk level of fire or explosion for each substance or material handled while on the job;
- keep certificates of training and teaching to prevent, protect from and extinguish fires;
- prepare and keep an emergency evacuation plan in case of fire;
- implement operation and safety procedures to avoid fire risks;
- keep a list of the type of fire equipment, including instructions on how to use and reload the equipment;
- have a certificate of brigade against fire;
- highlight emergency exits within the facilities, adequate for handicapped persons working in the company;
- conduct a fire drill at least once a year; and
- keep a record and statistics of occupational injuries during the last year and certificate of notice to the safety commissions.

Finally, many technical rules regarding occupational safety and health are set out in workplace safety standards known as Official Mexican Standards (NOMs, by their acronym in Spanish). These Standards are mandatory, and the Secretary has the authority to enforce their compliance. The most recent one is the NOM-035 on psychosocial risk factors at work, identification, analysis and prevention.

From 23 October 2020, all employers are obliged to prevent work-related stress by constantly evaluating the organisational environment; applying control measures, such as the practice of medical examinations and records.

B. COMPLAINT PROCEDURES

The Federal Conciliation and Arbitration Board is responsible for resolving conflicts that arise from employer noncompliance with occupational health and safety responsibilities. The state authorities must cooperate with federal authorities.

Employees may also raise a claim to the Workers’ Protection Agency or to the Labour Inspection of the STPS (the “Labour Inspection”) against the employer’s failure to comply with its health and safety responsibilities.

The Ministry may impose Administrative Sanctions for breach to the Federal Regulations or to the provisions of the FLL on health and safety matters, consisting of fines that may range from 50 to 5,000 times the Unity of Measure and Update (UMA), per violation and per employee affected, regardless of the sanctions of a different nature that may proceed according to the laws.

C. PROTECTION FROM RETALIATION

There is no special protection against retaliation under Mexican laws.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

In Mexico, discrimination laws in labour matters are not extensively developed. The FLL states that no worker may be discriminated against on the grounds of race, nationality, gender, age, disability, religion, migratory condition, health, sexual orientation, religion, sexual preferences, political opinion or social status.

Article 3 of the FLL establishes as a general principle, among other matters, that: ‘any distinction made against employees based on race, nationality, sex, age, disability, religion, migratory condition, health, sexual orientation, religion, political affiliation or social status is strictly prohibited’.

Article 132, VI further requires employers to: ‘treat employees with due consideration and avoid mistreatment by word or conduct’, while Article 133, Section I prohibits employers from: ‘refusing employment (to an applicant) based on age or gender’. Article 164 provides that: ‘women have the same rights and obligations as men’.

The Federal Law to Prevent and Eliminate Discrimination prohibits any discriminatory practice that infringes on the principle of equal opportunity. The federal government’s interpretation of this law must be consistent with international treaties on discrimination to which Mexico is a party.

Notwithstanding the above stated laws and legal provisions; there are no stipulations with respect to concrete sanctions or legal actions, should the employer incur in discriminatory acts. Therefore, regardless of the existence, in paper, of these laws

and provisions, the lack of enforcement thereof represents a standstill in the evolution of non-discriminatory legislation in Mexico.

2. EXTENT OF PROTECTION

Protected characteristics include ethnic or national origin, gender, age, disability, social or economic condition, health, pregnancy, language, religion, opinions, sexual preferences, marital status or any other that impedes or nullifies the recognition or exercise of rights and real equality of opportunities among individuals. The law does not prohibit retaliation; however, most companies include such a provision in their compliance programmes and policies. Employers must avoid any practice such as asking for non-pregnancy certificates to women or health certificates to employees and, in general, any practice that may imply a distinction between two or more individuals who apply for the same job.

3. PROTECTIONS AGAINST HARASSMENT

The General Law for the Equity of Men and Women aims to regulate and guarantee gender equality. It sets up the guidelines and mechanisms for the fulfilment of equality in the public and private sector, by encouraging women’s empowerment. The FLL however, does not specifically regulate sex discrimination aside from general discrimination. Federal and state criminal codes have established harassment as an offence. Under the Criminal Code for the Federal District, it is an offence for any person to harass another person repeatedly for sexual purposes.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

In August 2009, the General Law for Handicapped People was published. This law states that those with a physical handicap must be included in society on equal grounds. Nonetheless, the FLL does not provide anything specific regarding disability discrimination, except that it falls into the general discrimination prohibited by the FLL. In order to promote equity and diversity within the workplace, the FLL establishes the obligation for employers with more than fifty employees to have appropriate facilities for the performance of the services of employees with disability.

5. REMEDIES

Employers who violate any of the anti-discrimination provisions shall be subject to a fine of 250 up to 5,000 times the UMA in effect. Article 1916 of the Federal Civil Code (FCC) states that a person must be indemnified in cash for 'moral damages' when he is affected in his feelings, affections, beliefs, honour, reputation, private life, shape and physical appearance, or in the consideration that others have of such person. Furthermore, the same provision assumes that moral damage exists when a person's freedom or physical or psychological integrity is violated or diminished. Despite this assumption, in practice it is difficult to prove the essential elements of the action that causes moral damage, taking into consideration its subjectivity.

Internal Dispute Resolution Process: Companies may have internal dispute resolution processes; however, they are not mandatory, as the parties will always be entitled to raise their actions with the Conciliation and Arbitration Boards.

Mediation and Conciliation: There is no mediation and conciliation except for the formal conciliation process performed by the Conciliation and Arbitration Boards.

Arbitration: Arbitration is performed by the Conciliation and Arbitration Boards, as it is not possible for the parties to agree to a third-party arbitration. For a labour-related ruling to be enforceable, it must be issued by the competent labour authority, Conciliation and Arbitration Board or a Court of Appeals.

Litigation: Conciliation and Arbitration Boards are the administrative agencies in charge of solving labour disputes. When dealing with individual litigation cases, a Board will encourage the parties to reach a settlement agreement before the actual proceedings take place. If the parties refuse to reach an agreement, a Board will initiate the process; however, the parties may reach an agreement at any moment before the final award is issued.

Fines, Penalties and Damages: The Social and Welfare Department can impose fines of different amounts on employers for breach to the FLL.

6. OTHER REQUIREMENTS

For any employer, at least 90% of its employees must be Mexican nationals. In addition, all technical and professional employees must be Mexican nationals, unless there are no Mexican nationals qualified in a particular specialised field, in which case the employer is allowed to temporarily employ technical and professional foreign nationals, but in a proportion not exceeding 10% of those working in the relevant field of specialisation. Also, all physicians, railway employees and employees on a Mexican-flagged ship must be Mexican nationals, Mexican civil aviation crews must be Mexican by birth. The recruiting, screening and hiring process is the same as for nationals; however, foreign employees must have a valid work permit before being hired.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

The main protection given to employees regarding equal pay is provided by the Mexican Constitution, in both sections, A and B. Section A, applicable to all non-governmental employees, establishes in its subsection VII that for equal work, an equal pay must be paid, without taking into account either gender or nationality. Section B, applicable for governmental employees, determines in its subsection V that equal pay must be paid for equal work, without taking into account the gender of the employee. Consequently, article 86 of the Federal Labour Law establishes that when two employees carry on the same job and have the same category, working day and conditions, equal pay is due.

It is also important to highlight that article 1 of the Mexican Constitution states that all forms of discrimination are prohibited, especially if based on ethnic origin, nationality, gender, age, disabilities, social status, health conditions, religion, opinions, sexual preferences, marital status or any other attacks on human dignity, which has the objective to cancel or undermine human rights and freedoms. This perspective is adopted by article 3 of the Federal Labour Law, with one exception, that is when the difference or preference is based on the particular requirements demanded by a specific labour.

In view of the above, in the Federal Labour Law there are certain exceptions to the general rule when employees may receive a different wage even though they develop the same activities. For example, when two employees have the same position and develop the same activities, but work in a different category of ship or plane, or when the routes are different; when employees who work on railway or bus lines that have different levels of importance; when the employees are professional sportsmen, athletes, actors or singers; and when employees work at universities and have different academic credentials.

2. REMEDIES

An employee who discovers that he has received a lower pay, despite performing the same work, under similar conditions and with comparable results, can initiate a litigation seeking an “income equalisation”. These cases will be carried out in the local or Federal Labour Courts, depending on the company’s objects and activities.

It is important to mention that as from 18 November 2020, the Labour Amendment will start to be applied in several states (others in October 2021 and all of them by May 2022); therefore, the employee will have to participate in a mandatory conciliation before a trial is started. This will give the employee an opportunity to have a dialogue with the company’s representatives in order to solve the issue prior to litigation.

3. ENFORCEMENT/ LITIGATION

There has not been any significant litigation concerning equal pay practices in Mexico, but there are a few cases involving demands for equal pay and government employees claiming “income equalisation”. However, the majority of these cases have failed to achieve anything beneficial for the workers, due to the fact that courts have established that the burden falls on the employee to prove that he/she actually developed parallel skills, performed corresponding activities, had the same working days/hours, and that the conditions were similar in terms of efficiency, based on the quantity and quality of the work product, but still earned less than a colleague performing the same work (for more money). This however, can be very difficult for employees to actually prove. Consequently, in most cases, the courts have denied the employee’s demand for income equalisation, with the result that the employee’s circumstances

remain stagnant; the employee will thus have to maintain his/her current salary, benefits and job category.

4. OTHER REQUIREMENTS

Finally, there is a Mexican Norm (NMX-R-025-SCFI-2015) regarding standards for labour equality and non-discrimination, however the norm is not actually binding, rather it sets certain guidelines for workplaces in Mexico and allows employers to receive a certification if they comply with all guidelines. The Mexican Norm has established that companies ought to have a wage list to set minimum and maximum salaries for different categories, as well as defined criteria and requirements for each salary and for salary raises; which would ensure that the identical salaries are paid for the same work. Employers in compliance with this Norm have essentially fulfilled their obligations under the pay equity laws which apply in Mexico.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

In Mexico, there is no comprehensive legislation on social media; however, the Data Privacy Law and its secondary regulations, among other laws, apply to the processing of personal data that is carried out within social media platforms (including job advertisements), as well as to the processing of personal data that is obtained from social media. Processing is understood as the collection, use, disclosure or storage of personal data by any means. All processing of personal data must observe the principles of legality, consent, information, data quality, purpose specification, loyalty, proportionality and accountability.

Despite major reform in 2012, the FLL does not specifically address access to or use of the Internet and social media. According to the FLL, the employer has the obligation to provide employees with the work tools necessary for the performance of their duties. The FLL further states that the employee may not use work tools for anything other than their intended use. Electronic equipment and devices such as computers, mobile phones, and laptops are similarly provided to the employee during employment to assist the employee in the performance of his duties and responsibilities in the workplace. Considering the obligations established in the FLL and in the Data Privacy Law and its regulations, the employer has the right to ensure that the employee is using the work tools in accordance with the intended work purpose and, therefore, to forbid the employee's access to social media, using these devices and equipment for non-work-related purposes.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

According to the FLL, employees should be committed to perform their jobs with the utmost diligence and efficiency, as well as to safeguard those working tools provided by the employer to ease the accomplishment of their duties, which are not intended for personal use. Thus, employees may have access to social media if the employer so allows, either during their work shift or out of it. Breach of the foregoing may lead to justified termination of employment. Depending on the nature of the job, access to social media may be necessary. The employer may have access to the employees' communications by these means with supervision purposes and only if agreed in writing with the employees. According to the most recent opinions issued by the Supreme Court of Justice, the right to privacy of private communications includes social media.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

Employees have a duty of loyalty towards the employer, which means that employees must refrain from carrying out actions that may harm company's reputation, other employees, or the company in general. The contrary may give grounds

for termination with cause. Employers can, at their sole discretion, stipulate their requirements for employment. One such requirement could be the execution of a confidentiality agreement in addition to the employment agreement. The confidentiality agreement could include an obligation not to use, reveal, publish or in any other way disclose the industrial secrets and confidential information of the employer to its past, present, or potential clients.



VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

An employer may dismiss an employee only where the latter gives cause for dismissal. Under Mexican labour law, “integrity at work” is mandatory behaviour for the employee. An employee is deemed to act with integrity when the work is carried out with intense effort, care, and attention, in the agreed-upon time, place, and manner. “Lack of integrity” is a generic cause for dismissal. Additionally, Article 47 of the FLL specifies particular kinds of conduct that are causes for dismissal:

- use of false documentation to gain employment;
- dishonest or violent behaviour against the employer or the employer’s family;
- dishonest or violent behaviour against co-workers that disrupts work discipline;
- acts of harassment or sexual harassment directed toward any person in the workplace;
- sabotage of the workplace;
- negligence;
- carelessness that threatens the safety of the workplace and of other workers;
- immoral acts in the workplace;
- disclosure of trade secrets;
- more than three unexcused absences in a 30-day period;
- insubordination;
- failure to adopt preventive measures or to follow procedures to avoid accidents or illnesses;
- reporting to work under the influence of alcohol or narcotic drugs; and
- incarceration.

2. COLLECTIVE DISMISSALS

According to the FLL, there must be a legally permitted cause of termination that substantiates the collective dismissal. The severance payment and the subsequent procedure will be determined depending on the cause.

The first step is to determine whether the company has unionised workers and confidential employees. If it does, the working conditions of the union workers are governed by the CBA. Therefore, both the termination of the union workers and the CBA must be negotiated with the Union.

The aggregate salary of union workers must include: (1) the base salary; (2) any other benefit in cash or in kind (such as life insurance, savings fund, food coupons, vacation premium, year-end bonus, etc.); and (3) any other benefit provided to the employee for services rendered.

In practice, some labour unions claim the payment of a four-month indemnity plus twenty days of aggregate daily salary for each year of services rendered, arguing that the termination of the employment relationship is a consequence of the implementation of new working procedures by the parent company. In other cases, the union claims an additional premium for the closing of industrial operations that may represent an additional percentage to the indemnity contemplated by law.

Upon conclusion of the negotiations, an agreement will be filed before the Local Conciliation and Arbitration Board for the liquidation of all union workers. The above will enable the employer to freely dispose of its real estate and goods

(machinery, raw materials, buildings, etc.). Additionally, it is a common practice to liquidate confidential employees using the same basis as for the union workers. In some cases, those who actively participate in the closing operations will receive a 'stay-on' bonus.

3. INDIVIDUAL DISMISSALS

An employer may dismiss an employee only where the latter gives cause for dismissal. Concerning the termination of individual employment relations with union workers, the FLL sets forth a formula to calculate the amount of severance to be paid to each employee. The employer also has the obligation to pay a seniority premium to each employee being terminated. This premium is equal to twelve days of salary for each year of service rendered, with a cap at the equivalent of two times the minimum daily salary. Mandatory fringe benefits must be paid in arrears at the time of termination.

A. IS SEVERANCE PAY REQUIRED?

The termination payment is calculated depending upon the cause of termination:

Voluntary resignation: The employer must pay all benefits due, including sales incentives, on a prorated basis up to the termination date. If the employee has at least fifteen years of seniority, he is also entitled to a seniority premium of twelve days' salary for each year of service, capped at twice the minimum daily salary in force.

Termination with cause: The employer must pay all benefits due, including commissions, on a prorated basis until the date of termination, and the seniority premium of twelve days of salary for each year of service (but with a cap of twice the minimum daily salary per the terms above).

Termination without cause: Employees who are terminated without cause are entitled to the following lump sum severance: (1) three months of the employee's daily aggregate salary, plus; (2) twenty days of the employee's daily aggregate salary for each year of service; (3) a seniority premium of twelve days' salary for each year of service (but with a cap of twice the minimum daily salary in the same terms as explained before); and (4) benefits due.

4. SEPARATION AGREEMENTS

According to Article 53, Section I of the FLL, the mutual consent of the parties is a cause for termination of the employment relationship with no responsibility for either the employer or the employee, and therefore is subject to the will of the parties.

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

As mentioned above, the execution of a separation agreement comes down to the parties' consent provided it does not contain a waiver to the employee's minimum rights, earned salaries, indemnities and any other benefits derived from the services rendered, regardless how it is characterised or the name given to it.

Furthermore, in terms of Article 33 of the FLL for any agreement or settlement to be valid, it must be entered into in writing and contain a detailed description of the facts that motivated it and the rights therein contained. It must be ratified before the competent Conciliation and Arbitration Labour Board, which will approve it as far as it does not contain a waiver of the employee's rights.

By virtue of the above, a separation agreement may be considered best practice. However, it must be ratified before and approved by the Conciliation and Arbitration Labour Board in order to be valid.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

The standard provisions of a separation agreement are:

- reciprocal acknowledgement of the parties' status and representation, and legal capacity.
- employee's statement containing the employer's name, hiring date, position, work shift and salary.
- express consent by the parties to terminate the employment relationship and the termination date.

- total settlement of obligations and acknowledgement of receipt on behalf of the employee of the net and gross amounts due by the employer, including a breakdown of the concepts that are being paid, applicable taxes and deductions.
- full release by the employee of all labour and social security obligations in favour of the employer, its parents, subsidiaries or affiliates, predecessors, successors or assigns, as well as their respective current and / or former partners, directors, shareholders / stockholders, officers, employees, attorneys and / or agents, all both individually and in their official capacities.
- employee's statement under oath of the working conditions and benefits enjoyed while in service with the employer.
- confirmation by the employee of the last day worked for the employer.
- ratification of the agreement and request for the Labour Board's approval.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

The employee's age makes no difference.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

Other provisions to consider in the separation agreement are those related to:

- company's files, documents and property.
- no disparagement.
- confidentiality clause.
- non-compete and/or non-solicitation.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

According to the FLL, employees who have been wrongfully terminated can file a complaint with the Conciliation and Arbitration Board for: (a) constitutional severance consisting of three months of aggregate salary; or (b) reinstatement to

the same position he held, plus back wages (which is the salary the employee is not earning during the labour proceedings capped to one year, if the litigation is not concluded after twelve months, the plaintiff will be entitled to request 2% monthly interest over a fifteen- month salary base).

6. WHISTLEBLOWER LAWS

In Mexico, there is no specific statutory protection for employees who alert or provide information about possible breaches of the law or good corporate governance policies.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

Although Mexican legislation does not provide for a specific concept of restrictive covenants, they may be defined as any contract, covenant, or agreement having as scope the restriction, loss or irrevocable sacrifice of the personal freedom. Mexican law does not expressly prohibit clauses or covenants of this nature during the employment relationship. In fact, if a worker engages in activities that result in competition against the employer's business during the course of employment, that conduct would constitute just cause for termination of the work relationship, even in the absence of a non-compete covenant.

2. TYPES OF RESTRICTIVE COVENANTS

Non-competes, non-solicitation of customers and non-solicitation of employees are clear examples of restrictive covenants. Execution of restrictive covenants has become more common in Mexico as a means to protect the employer's confidential information and trade secrets, as well as to ensure the companies' right to loyal competition.

A. NON-COMPETE CLAUSES

Covenants not to compete may be incorporated as one among various clauses in an individual work contract, or may take the form of an altogether separate or standalone agreement between the employer and the worker.

On the other hand, both the validity and enforceability of covenants not to compete that seek to survive an individual's work relationship are

more difficult to ascertain. Mexico's Constitution protects its citizens' freedom to engage in lawful work. Moreover, the FLL expressly provides that work constitutes a "social right and duty" and, as such, to "preclude any person from carrying out work, or from engaging in a profession, industry or trade of choice, so long as it is lawful," is not permitted in principle.

As a general rule, other than the self-evident requirement that the work, profession, industry, or trade be considered lawful, the right to freely choose work may only be limited or denied "by resolution of competent authority when the rights of a third party are infringed, or when those of society are offended." Notwithstanding the foregoing, pursuant to an opinion issued by a Circuit Court on Civil Matters in Mexico City, Covenants not to compete are fully enforceable provided they are limited in time, geographical scope, clients and activity, products and services, and consideration is paid in exchange.

By virtue of the above, Mexican employers that require certain workers to enter into non-compete covenants must narrow down the scope of the worker's post-employment restrictions by (a) setting limits to the duration of the covenant, such as a maximum of one year after the conclusion of the work relationship; (b) defining the type of competitive activities from which the former employee is to refrain; and (c) specifying the competitors and the geographic area or market segment in which the former worker cannot accept employment.

In addition, employers must make a payment to the former worker in exchange for the commitment not to engage in direct competition with its business.

Another alternative for the parties is to agree on dividing an overall payment into periodic

“instalments” after pre-defined periods have elapsed in which the former worker has opted not to accept employment with a competitor or to engage in direct competition. Ultimately, however, the absence of express regulation on this subject can always lead to legitimate questions regarding the validity or enforceability of covenants not to compete.

- Non-solicitation of customers: the general rules described above apply.
- Non-solicitation of employees: the general rules described above apply.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

In principle, restrictive covenants are only “enforceable” during the employment relationship as a cause for termination and without liability on the employer. From a labour standpoint, post-employment restrictive covenants are null and void under Mexican legislation and therefore, unenforceable; the only possibility for “enforcement” is before the Civil Courts as explained above.

If the non-compete and non-solicitation agreement is declared null and void for the reasons provided in Article 5 of the Mexican Constitution, both parties are able to retrieve their prior status, meaning the employee will be requested to pay back any and all moneys received for performance of the obligations established in the agreement.

The employer could also exercise a civil action claiming damages derived from such infringement or even take criminal action if the employee had access to confidential information and/or trade secrets while performing his duties. Note that an injunction to prevent someone from rendering services or working in a certain field or activity cannot be issued because, as mentioned above, Article 5 of the Mexican Constitution and 4 of the FLL bar such relief.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Mexican legislation does not provide for garden leave.

X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

In connection with the sale of a business or transfer of undertaking, the FLL generally requires the acquiring entity to retain the selling entity's workers, as well as to assume existing benefit liabilities, regardless of whether the benefits are privately sponsored (e.g., company-sponsored medical insurance) or legally mandated (e.g., paid vacation and vacation premium). This is known under Article 41 of the FLL as a substitution of employer:

The substitution of the employer shall not affect the work relations of the enterprise or the establishment. The substituted employer shall be jointly responsible with the new employer for the liabilities derived from the work relations and the Law, which originated prior to the date of the substitution, for a term of up to six months; upon expiration of such term, only the responsibility of the new employer shall subsist. The six-month term shall be computed as of the date of notice of such substitution to the union or the workers.

As a corollary of this retention obligation, the acquiring entity must recognise the workers' length of service, so as to ensure that changes in the legal structure or the ownership of the employer do not undermine the workers' vested rights. If the sale of a business in Mexico is structured as a stock purchase or a merger agreement that does not affect the seller's corporate entity, a substitution of employer does not come into play. In these cases, the buyer automatically becomes the employer of the seller's workers.

Article 41 of the FLL likewise contemplates continuity of the work relations in the event of an asset sale. When the buyer or substitute employer, assumes the workers' terms and conditions of employment in effect prior to the substitution, the FLL does not require consent from, or consultation with, the workers. For a substitution of employer to apply, pre-substitution terms and conditions of employment – as established in the individual employment contract or collective agreement – must remain unaltered. If the substitute employer unilaterally implements detrimental changes to existing employment conditions, the employee can rescind the employment relationship and demand statutory severance. During the first six months following an employer substitution, both employers remain jointly liable for labour claims.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

However, in order to consummate the transfer of workers through an employer substitution and properly allocate responsibility for labour liabilities associated with the asset sale transaction, both the seller and the buyer are required to comply with important procedural formalities, including the following:

- delivery of a notice of employer substitution to individual workers and to the union, if the workers are covered by a collective agreement; the notice of substitution is typically signed by both the seller (substituted employer) and buyer (substitute employer);
- delivery of notices to the Mexican Social Security Institute (IMSS) to ensure amendment to the existing registry to show the substitute employer as employer of the existing registry;

- delivery of similar notices to the National Fund for Worker Housing (INFONAVIT) and the National Fund for Development and Guarantee of Workers' Consumption (INFONACOT);
- with respect to labour claims against the seller (substituted employer) pending before the courts or before an arbitration and conciliation board, each parties' legal representatives must notify the corresponding authorities.

The procedural requirements listed above are accompanied by a host of administrative activities, such as changes to personnel management documentation (e.g., pay checks, business cards, identification badges, new employment and other form agreements for post-substitution hiring, vacation documentation, facilities' signage, permits, shifts, attendance records, loan documents, and the like), revocation of pre-substitution powers of attorney (by the substituted employer), and issuance of new powers of attorney (by the substitute employer) for representation in labour matters, among others.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

Article 356 of the FLL defines a union as “the association of workers or employers for the study, advancement, and defence of their respective interests.” It follows from this definition that labour unions may not include both workers and management members.

Labour unions can be organised as follows:

- trade unions, encompassing workers of the same profession, skill, or specialty;
 - enterprise unions, encompassing workers employed in the same enterprise;
 - industrial unions, encompassing workers who work in two or more enterprises in the same industry;
 - national industry-wide unions, formed by workers employed in the same industry but who are located in two or more states (including the Federal District) and various trades; and
- multi-craft unions, established in municipalities that do not have 20 or more workers of the same profession, trade, or specialty.

Similarly, there are different types of employers' unions or associations:

- those formed by employers in one locality who are engaged in one or more activities; and
- national associations, comprising employers in several states.

Among other activities, labour unions may do the following:

- challenge the annual tax declarations filed by employers
 - initiate a collective dispute on economic issues;
 - sign collective agreements on behalf of workers;
 - determine participation of individual workers in profit sharing;
 - oversee the operation of training systems;
 - establish general seniority scales;
 - participate in the drafting of work rules; and
- deal with occupational safety and health problems.

A union can be established with at least 20 workers in active service, or by the association of at least three employers. Previous authorisation is not required for the establishment of a labour union. Workers occupying positions of trust cannot belong to the same labour unions with other workers, although they may establish their own labour unions.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Even though the official political party (the ‘Institutional Revolutionary Party’ or ‘PRI’) has changed to MORENA, trade unions are still a substantial and important player in the political organisation of Mexico. They strongly influence the Mexican Congress and have introduced and supported most of the social legislation. Trade

unions in Mexico have representatives on all the bodies responsible for the election of members of state and the federal labour boards.

Trade (or craft) unions may enter into their own collective agreements provided they represent the majority of the workers engaged in that trade within the company.

A labour union may lose its right to represent workers in a collective agreement if the conciliation and arbitration board determines that it no longer represents a majority of the workers, and, in such cases, another union acquires that right.

In May 1999, the Supreme Court held that provisions of the Federal Law of Workers in the Service of the State (LFTSE), which allow only one union within each government agency, were unconstitutional.

The Court concluded that the limits on representation violated Article 123 of the Constitution, because they restricted the rights of workers to associate freely and negotiate collective agreements. However, the Court upheld a requirement that a minimum of 20 workers was required to form a union. Following this ruling, there has been a tendency to form new unions (e.g., the air traffic controllers) and this trend is likely to continue.

In a 2000 decision, the Supreme Court held that Article 75 of the LFTSE, which prohibited any automatic renewal of appointments within a trade union, was unconstitutional because it prevented the re-election of labour union leaders. This was the first such ruling, so it does not constitute a compulsory ruling.

Labour Unions were one of the greatest opponents of the Federal Labour Law Reform, as they filed more than 900 amparo proceedings against it, claiming that provisions included in the legislation threatened the union's freedom and autonomy. This is primarily due to the fact that many unions lack any real representation and democracy, and two of the cornerstones of the reform are Union Democracy and Real Representation.

3. TYPES OF REPRESENTATION

Unions may represent its members at either the national or local levels. In order to gain official recognition, unions must register with the Secretariat of Labour and Social Welfare in cases where the federal government has jurisdiction, and with the local conciliation and arbitration board in cases of local jurisdiction. Legal registration of a union requires the following:

- a certified copy of the bylaws
 - in the case of labour unions, the names and addresses of the members and their employers;
 - a certified copy of the minutes of the general meeting at which the union was constituted; and
- a certified copy of the minutes of the general meeting at which the board of directors was elected.

Once these documents are submitted, the registering authority (Federal Center of Conciliation and Labour Registry) has 20 days to issue the registration or deny it. Registration may be denied only in the following circumstances:

- the union does not fulfil the lawful purposes spelled out in Article 356 (i.e., for labour unions, “the study, advancement, and defence” of workers’ interests);
 - the union does not have the minimum number of members (20 workers or three employers) required by Article 364; or
- the union fails to submit all the documents required by Article 365.

In those cases where the registering authority has not reached a certification decision within the 60-day period, the prospective union may demand that registration be carried out. If the authority does not act within 3 days of the demand, the registration is automatically granted, and the authority is required to issue the appropriate documentation. However, a problem arises when the above procedure is followed and the authority does not formally grant registration. Article 692, Section IV provides that: Union representatives will accredit their status by means of the certification issued by the registration authority, indicating that the Board of Directors of the union has been registered.

Clearly, if registration has not occurred – and the STPS or local conciliation and arbitration board has not issued a certification – then the union will not be able to pursue legal proceedings, which include, for a labour union, calling a strike or entering into a collective agreement. Where certification has been delayed, the union may initiate a writ of amparo suit (juicio de amparo) against the authority that has denied its registration.

A union cannot be dissolved or suspended, nor can its registration be cancelled, by administrative decision. Cancelling the registration requires a legal process that demonstrates that the union has been dissolved or it no longer complies with legal requirements. A union can be dissolved only when it is so agreed by two-thirds of its membership or when the term specified in its bylaws has expired.

A. NUMBER OF REPRESENTATIVES

The FLL does not provide how a union’s board of directors should be constituted, although reference is made to “general,” “internal,” and “recording” secretariats. This information is most commonly contained in the union’s bylaws. Non-Mexican nationals may not be members of the boards of directors of labour unions. The boards of directors must render an account to the full membership at least every 6 months regarding the administration of union funds.

Some labour unions – especially the larger ones – are divided into sections representing specific groups of workers, work areas, specialties, etc. These sections do not have, as a general rule, their own legal standing and in collective matters must act through the board of directors of the principal union.

Unions are represented by their secretary general or by a person appointed by the board of directors, unless the bylaws provide otherwise. If a member of the board of directors of a labour union is terminated by the employer, or ceases to work for reasons imputable to the employer, the worker will continue to exercise his union duties, except where the bylaws provide otherwise.

The general membership meeting is the supreme decision-making body of a union. The bylaws must specify the manner in which general membership

meetings should be convened, the intervals at which they should be held, and the required quorum.

If the board of directors does not hold a general membership meeting as specified in the bylaws, in a timely manner, one-third of the total membership of the union or the section may request that such a meeting be convened within a period of 10 days. If this is not done, in the case of labour unions, the workers may convene the membership meeting. Such a general membership meeting shall be deemed to be valid only if two-thirds of the total membership of the union or the section attend. The decisions adopted must be accepted by 51% of the total union members.

B. APPOINTMENT OF REPRESENTATIVES

In order to fulfil the requirements of the 2017 Constitutional Amendment and the obligations assumed by Mexico in relation to the signing and ratification of different international agreements, specifically, Convention 98 of the International Labour Organisation, the Federal Labour Reform established a new process to appoint the representatives. The process foresees an election through a direct, personal, free and secret vote. To do so, the bylaws must establish the following:

- the convening must be signed by the authorised people, establishing date, hour, place and any other requirements established;
- the convening has to be published in the unions locality and in places where there is more concurrency within the workplace, at least 10 days before the vote;
- the place determined for the vote to take place and the documentation and materials have to ensure that the vote will occur in a safe, direct, personal, free and secret way;
 - the documentation must specify the town and state of the vote, the position being voted, the symbol of all parties, and the names of the candidates.
 - all ballot papers must be signed by two members of the Electoral Commission
- a full list of the union members with voting rights must be updated and published at least three days before the vote takes place:

- a procedure to ensure the identification of the members with voting rights.

If the abovementioned requirements are not fulfilled, the voting process will be invalid and will have no legal effect.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

Unions are under a permanent obligation to provide the labour authorities with the required information related to their activities as a union. They are also obliged to communicate to the Registration Authority any changes in the board of directors or amendments to their bylaws, within a maximum of 10 days. They must also inform the Registration Authority, once every three months, about the changes in the union members. The aforementioned obligations can be made through electronic means.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

In Mexico, workers have no representation in the company's management.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

The organisation of mixed commissions to fulfil certain social and economic functions can be established in the collective bargaining agreements; the resolutions of said commissions will be executed by the courts when declared mandatory by the parties involved.

Employees also have the right to designate representatives to be part of the mixed commissions (safety and health, profit-sharing, training, productivity and development, and the like), for which they need not be unionised.

The FLL also provides the right to employees to create coalitions, which are temporary accords for the protection of their mutual interests. These possibilities generate the potential that groups of workers could pursue claims collectively before the authorities, although in practice, these actions hardly ever occur, at least at the present time.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

The social security system in Mexico is governed by the Social Security Law (LSS) of 1995, which went into effect on 1 July 1997. The Mexican Social Security Institute (IMSS) is responsible for administering social security programs. The IMSS is a quasi-official entity, under tripartite (government-worker-employer) management, whose executive director is appointed by the President of the Republic.

In general, social security coverage is compulsory for all workers, including members of production cooperatives, worker-run and joint worker-management-run companies, traditional agrarian communities of common ownership (ejidatarios), joint property communities (comuneros), small farmers (colonos), small property owners organised in groups, and local societies or credit unions covered by the Agricultural Credit Law.

A. REQUIRED CONTRIBUTIONS

The social security system is financed from contributions by workers, employers, and the government. The contributions are based on salary levels. However, workers do not make contributions if they earn the monthly minimum wage in their geographic area. The maximum salary amount used to calculate social security contributions is 25 times the monthly minimum wage in Mexico City.

Within this minimum/maximum range, employee contributions are 2.00 per cent of earnings for retirement benefits, plus 3.15 per cent of earnings for disability and survivor benefits. For employers, the contribution rate is 5.15 per cent of covered payroll for retirement benefits. Government contributions amount to 7.43 per cent of covered earnings, plus an average flat rate of MXN\$4.07 (depending on salary range) for each day a worker contributes for retirement benefits, and .125 per cent of covered earnings for disability and survivor benefits.

Contribution rates, limited to earnings up to 25 times the minimum wage, for sickness, medical, and maternity benefits currently are as follows:

	SALARIES UP TO 3X THE MINIMUM WAGE	SALARIES OVER 3X THE MINIMUM WAGE
Employer	20.40%	1.10%
Employee	N/A	.40%
Government	13.255%	National CPI
Total	33.65%	1.50%

Contributions for day-care benefits are paid entirely by the employer and are equal to 1 per cent of covered payroll, subject to the minimum and maximum earnings limits.

Workers with at least 52 weeks' worth of payments into the social security system, and who withdraw for whatever reason, are entitled to continue making voluntary payments. Should the worker obtain salaried employment again, the worker may return to the system and maintain all benefits.

The compulsory nature of social security means that workers are automatically covered by virtue of being workers, whether or not they are registered in the system. If there is an omission in registering a worker, the employer is responsible.

2. HEALTHCARE AND INSURANCES

The social security system protects workers in the following matters: 1) Occupational accidents and illnesses (old-age, retirement, and survivor pensions; disability; sickness; medical benefits; maternity; and day care for children of insured workers) and 2) Social services.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Article 74 of the FLL establishes 9 mandatory holidays:

- 1 January
- first Monday in February, in commemoration of 5 February
- third Monday in March, in commemoration of 21 March
- 1 May
- 16 September
- third Monday in November, in commemoration of 20 November
- 1 December every six years, on the day of the national presidential inauguration
- 25 December
- the election day scheduled by federal and local electoral laws.

Workers who are required to work on a mandatory holiday are entitled to double pay in addition to their regular pay –

“An employer shall be required to observe, in the installation of its establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labour, as well as to organise the same in such a way as to ensure the greatest possible guarantee for the health and safety of workers as is compatible with the nature of the work, under the penalties established by law in this respect.”

Workers are entitled to 6 vacation days after being employed for one year, and to 2 additional days for each subsequent year, up to a maximum of 12

days. As of the fifth year, the worker is entitled to 14 workdays' vacation; for each additional group of five years, two more vacation days are added. Employers must pay workers a vacation premium equivalent to 25 per cent of the salary earned during the vacation days. Vacations must be taken on the date indicated by the employer, within 6 months following the worker's anniversary with the employer.

B. MATERNITY AND PATERNITY LEAVE

Working mothers are entitled to forty-two days after childbirth as maternity leave, with the IMSS paying them 100% of their registered salary. Statutory maternity leave may be extended as necessary if work is not possible because of the pregnancy or the delivery. During the maternity leave, the employee receives her regular salary.

During the nursing period of 6 months, the new mother is entitled to two additional thirty-minute rest periods per day to feed the child, in an adequate and hygienic place set aside by the employer. When returning from maternity leave, the employee is entitled to reinstatement, provided that not more than one year has passed since the date of delivery.

Maternity leave is included in the length of service. Moreover, working mothers may request the employer transfer up to four weeks of pregnancy leave in order to enjoy them after childbirth. Male employees are entitled to enjoy a paid paternity leave of five days when the child is born or in case of adoption, as of the placement of the child.

C. SICKNESS AND DISABILITY LEAVE

An employee is entitled to sick leave depending on the type of illness and degree of disability. In case of illness or injury, an employee must obtain a doctor's order from the IMSS. The IMSS, not the employer, pays the employee's income during the leave.

There is no mandatory unpaid medical leave of absence in Mexico. If the employee needs an unpaid medical leave of absence due to a condition not recognised by the IMSS, then the employer has the discretion to grant the leave.

The FLL provides leave due to:

- **Occupational Injuries:** defined as any accident or disease to which the employees are exposed in the course of their employment, or any consequences thereof;
- **Industrial Accident:** defined as any organic injury, functional disturbance (whether immediate or subsequent) or death, occurring suddenly in the course of the employment or as a result thereof (i.e., the place where or the time when the accident occurs is related to the employment); or

- **Occupational Diseases:** defined as any pathological condition arising out of the continued action of a cause that has its origin or motive in the employment or in the environment in which the employee is obliged to render his services.

The consequences of any of the injuries described above, and the term they may last, according to the SSL, are as follows:

INJURY	PERIOD OF LEAVE
Temporary disability	52 weeks (which may be extended to an additional period of 52 weeks).
Permanent partial disability	Permanent leave. IMSS issues payment according to the amounts established in FLL.
Permanent total disability	Permanent leave. IMSS issues payment according to the amounts established in FLL.

The economic benefits paid by the IMSS due to illness are based on 60% of the employee's registered salary, and they are paid as of the fourth day of absence.

The SSL establishes the periods of leave depending on the division of the compulsory social insurance plan:

DIVISION	PERIOD OF LEAVE
Workers compensation insurance for job-related injury and illness	According to the above-mentioned outline.
Illness	1 day to 52 weeks.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

A. DISABILITY BENEFITS

For disability benefits, the IMSS retains responsibility for the management and collection of contributions, but private insurance companies provide benefits.

Workers who were first covered by the social security system prior to 1 July 1997 are eligible for a disability pension if they are assessed with a permanent 50 per cent reduction in normal earning capacity and have at least 150 weeks of contributions. Other workers are eligible for a disability pension if they are assessed with a permanent loss of at least 75 per cent of normal earning capacity and have at least 150 weeks of social security contributions, or if they are assessed with a loss of 50–74 per cent of normal earning capacity and have at least 250 weeks of contributions. The IMSS assesses the level of reduced earning capacity.

Disability pension benefits are equal to 35 per cent of the worker's average adjusted earnings during the last 500 weeks of contributions. In addition, 15 per cent of the worker's pension is paid for a wife or partner, and 10 per cent is paid for each child younger than age 16 (age 25 if a student, no age limit if disabled). If there is no wife, partner, or child, 10 per cent is paid for each dependent parent. A worker who requires the constant attendance of others to perform daily functions is also eligible to receive a constant attendance allowance of up to 20 per cent of the pension amount.

A disability pension is subject to a guaranteed minimum. Benefits are adjusted annually in February according to changes in the price index. Disabled workers also are entitled to a Christmas bonus equal to 15 days of pension benefits without supplements. If a worker is eligible for a disability pension and has an individual retirement account with a balance greater than the minimum pension, he may withdraw the amount exceeding the minimum pension, use the excess amount to purchase an annuity, or apply the excess amount to survivor benefits.

B. RETIREMENT BENEFITS

Effective 1 July 1997, the Mexican pension system was reformed from a defined benefit system, without any change for workers who were pensioned before that date. The current pension system in Mexico is a fully funded defined contribution system based on three pillars:

- a minimum guaranteed pension for low-income workers;
- mandatory individual savings accounts with competitive mutual fund management;
- voluntary savings

Normal retirement benefits are available to both men and women who have reached age 65 and who have at least 1,250 weeks of social security contributions. An early retirement benefit is available at age 60.

The first pillar of the Mexican pension system, the minimum pension guarantee is equal to the minimum wage on 1 July 1997, indexed for inflation. The second pillar is based on defined contributions and individual accounts. The IMSS collects the contributions and places them in the worker's account, but the accounts are managed by private retirement fund administrators (AFOREs).

At retirement, the worker has two options: i) receive periodic payments or a lump sum directly from the AFORE; or ii) transfer the account balance to an insurance company and buy an annuity.

Various factors determine the amount of the pension benefit: the number of contribution years; the period over which the pension is distributed; the annual average investment yield on the individual's account; and the AFORE's fees. Workers who started contributing prior to the 1997 reform can choose, at the time of retirement, the highest benefits computed under the two systems.

5. ANY OTHER REQUIRED OR TYPICALLY PROVIDED BENEFITS

A. SURVIVOR BENEFITS

Survivor benefits are payable provided that the deceased worker was a pensioner and made at least 150 weeks of contributions at the time of death. Survivor benefits are payable to a surviving widow or a permanently and totally disabled widower in an amount equal to 50 per cent of the pension that would have been paid to the worker.

Each surviving child under age 16 receives a benefit equal to 20 per cent of the worker's pension, or 30 per cent if the child is an orphan. If there is no eligible spouse or child, a benefit equal to 20 per cent of the worker's pension is paid to each person. Survivor benefits may not exceed 100 per cent of the pension that would have been paid to the worker. Upon the death of a covered worker, the social security system pays a funeral benefit to the family equal to two months of the worker's salary.

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De La Vega & Martínez Rojas, S.C. is integrated by a group of Mexican attorneys with comprehensive professional experience, who are devoted to the provision of legal counselling on labour and employment, social security and immigration matters. Our offices are headquartered in Mexico City with a network of correspondents, in order to provide our clients specialised legal services throughout the country.

Our legal team in Mexico is composed of three partners plus thirty attorneys and paralegals, who have considerable expertise in individual and collective issues, which enables us to offer our clients integral knowledge and innovative perspectives for both the prevention of, and solution to, labour conflicts.

We have established a strong working relationship with institutions and labour authorities at the federal and local levels. We also work closely and often with international organisations, pioneering satisfactory outcomes for our clients.

This memorandum has been provided by:

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