

México

Introduction

Historical Background

Union organization in Mexico can be clearly linked to the European socialist movement of the 19th century, and there is clear evidence of Spanish influence in the organization of guilds and primitive union groups. Since colonial times, workers have been organized by groups of different trades and different work or employment areas and specialties. Therefore, unionism is not a creation of domestic ideology or socio-political philosophies, but rather the result of the global organization of labor and its influence in Mexico, and a natural and necessary form of expression and organization of an exploited social class.

The origins of more formal trade unions in Mexico can be traced to 1906 when the *Gran Círculo de Obreros Libres del Estado de Veracruz* was formed.

In the years prior to the 1910 Mexican Revolution, labor organizations expanded from guilds to factory unions, somewhat following the European model of organization. Additionally, two very important strikes occurred: the copper miners' strike in Cananea, Sonora, and the textile workers' strike in Rio Blanco, Veracruz. Hard repression against the striking workers was a common denominator in these strikes - union leaders, who were also active politicians at the time, were persecuted for their involvement in the process. As a result of this persecution, a more directed and political ideological labor movement was born.

Beginning in 1920, Mexico began to stabilize politically, and the backing of workers' organizations played a prominent role. Due to the political structure at the time, it became evident that in order to bring the working classes closer together, strong unions had to be created and politicized so that they could be incorporated into the system of the "ruling" party, which is why Mexican labor legislation and its strike system are so unique.

As a result of the labor unions political success, they naturally began to obtain a more advantageous position vis-à-vis the employer through the ability to collectively negotiate benefits and salaries that would never be considered on an individual basis. In short, it meant that under Mexican law, the spirit and essence of a union

and a union agreement was and is to achieve an economic balance between the different factors involved in production of goods and services (capital and labor). A union is, by law, the only entity with sufficient legal standing to represent workers, negotiate collectively, and execute a collective bargaining agreement in Mexico.

Overview

The Mexican Federal Labor Law (“FLL”) regulates employment relationships in Mexico. The FLL applies to all employees who provide their personal subordinated services in Mexico, regardless of nationality or the place the worker is employed. The FLL contains detailed provisions concerning the minimum employment conditions and rights that must be granted by the employer to its workforce.

The FLL establishes two general types of employment relationship: individual and collective. An individual employment relationship is created automatically upon a person being hired to perform a task in a subordinated condition (i.e., subject to the control of the employer), whether on a temporary basis or for an indefinite term.

Collective employment relationships are established when the employees are organized by a certified and duly registered trade union and that union represents the employees in terms and scope of a collective bargaining agreement executed with such employer.

Chapter Seven of the FLL regulates the collective or union aspects of the employer-worker relationship. It contains rules in connection to coalitions, unions, union federations and confederations, collective bargaining agreements, law-contracts, and internal labor regulations.

Chapter Seven also regulates situations of conflict and processes in the collective agreements, as well as suspension and termination of the collective employment relationship.

Other chapters of the FLL regulate the strike procedure before the labor courts.

Trade Unions

Coalitions

A coalition is the initiation of a trade or professional association, and its existence is guaranteed by the constitutional principle of freedom of association. It is legally

defined as “the temporary agreement of a group of workers and employees oriented toward the defense of their common interests.” However, coalitions have enjoyed little popularity in Mexico.

Trade Union Definition

Unions in Mexico are voluntary workers’ organizations, incorporated for the research, improvement, and defense of their respective interests. Under the FLL, labor unions may be classified under:

1. Guilds, which are formed by workers of one particular profession, grade, or specialty;
2. Company unions, which are formed by workers rendering services to one particular employer or company;
3. Industrial unions, which are formed by workers performing services in two or more companies of the same industrial sector;
4. National industrial unions, which are formed by workers rendering services in one or more companies of the same type of industry located in two or more states; and,
5. Miscellaneous specialty unions, which organize workers of different specialties, as long as no specialty has more than 20 workers.

Constitution Of The Trade Union

In Mexico, trade unions (like any other legal entity or person, including businesses, civic associations, cooperatives, and all other non-governmental organizations} require a public act of registration by the state in order to function legally.

For unions subject to federal jurisdiction, the registry resides in the Ministry of Labor. In the case of those under state or local jurisdiction, registration is obtained by the State Conciliation and Arbitration Board (“CAB”). Under the law, granting of registrations is purely an administrative act, as long as the union complies with filing requirements. However, unions are not subject to dissolution, suspension, or cancellation of their registration by a similar administrative act.

Union registration is key to collective bargaining. Any group of 20 or more workers, even if they are a minority of the workforce, may register their union with labor authorities and thus are able to conduct collective bargaining.

The Scope Of Trade Union Rights In Businesses

Unions are free to form federations or confederations at the local or federal level. Union federations and confederations are basically associations of unions; their functions are purely of a political nature in a particular geographical area or in the country. However, the associations do not have the legal standing to negotiate or execute collective bargaining agreements or to petition or declare a strike, which disqualifies them from any direct worker representation.

Unions have legal authority and standing to:

1. Acquire assets;
2. Acquire real estate, directly and immediately earmarked for the accomplishment of the purpose of the institution; and,
3. Defend their rights and exercise any and all legal actions therewith before any type of authority.

Furthermore, unions have the right to draft their by-laws and articles of incorporation and internal rules, to freely elect their representatives, and to organize their administration and activity programs. Unions are typically represented by the General Secretary of the union as duly elected by its members and pursuant to the by-laws of each particular union.

With respect to third parties, unions are legal entities with very precise limitations as to their legal capacity. Commercial activities and intervention in religious matters are off limits to unions.

The Scope Of Trade Union Rights In Relation To Individual Workers

In Mexico, union dues or quotas are determined by the union's own constitution and by-laws. The FLL also allows for a union and the employer to agree on how and when such dues should be deducted from the salaries of union members and remitted to the union.

While no worker in Mexico may be legally obligated to join an organization, the FLL permits unions and employers to negotiate a “closed-shop agreement.” Workers hired after such a clause is established must be union members prior to their employment.

The FLL also allows the parties to negotiate an “exclusion clause,” which requires an employer to dismiss a worker expelled from the union, when that union holds title to the collective bargaining agreement. Absent this clause, an employer or union may not dismiss a worker at-will. The FLL lists 15 specific permissible reasons for terminating a worker’s employment with cause.

The Right To Strike

The right to strike in Mexico is protected as a constitutional right and is regulated by the FLL. Therefore, a no-strike clause is legally prohibited in a collective bargaining agreement. In terms of the FLL, a strike is deemed to be the temporary suspension of work carried out by a union, but such strike is limited only to a mere and simple act of suspending work.

Legally, strikes should have a specific objective and may only occur in connection with the petition by a union to have an employer execute a new collective bargaining agreement or a contract revision, or, in case of a contract violation, during its term.

In all cases, the CAB must determine whether a strike complies with procedural requirements and whether it has the objective of ultimately achieving the economic balance between the factors involved in the production process and “harmonizing the rights of labor with those of capital” as legally required. If not, the CAB may declare a strike “non-existent” and require workers to return to work (replacement of striking employees is not allowed). If certain procedural requirements are not complied with, a strike can also be found to be illegal and workers ordered back to work.

Strike Procedure

A union intending to strike must comply with the following procedure as provided in the FLL:

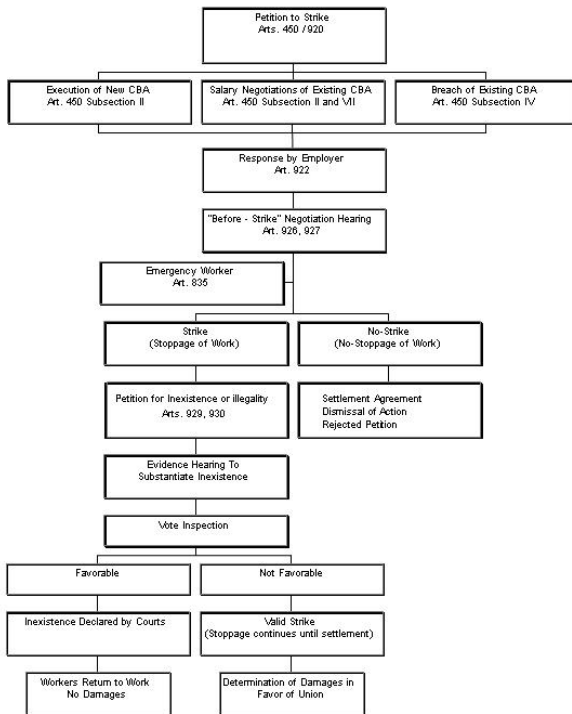
1. It has to file a strike call notice stating the objective of the same before the Labor Board;
2. In the strike call, the union has to enumerate the list of demands, announcing the intention of going on strike if the demands are not met; and,

- It has to establish the specific time and date for the suspension of work, which shall be given at least six days for non-public service industries, and 10 days for employers dedicated to a public service, prior to the date of strike. Such term shall run as of the date on which the Labor Board officially serves the employer with the union’s petition.

After the Labor Board receives a strike call, it has to appoint a conciliatory hearing before the date of the strike, in order to obtain a settlement agreement between the parties. If the parties do not reach an agreement, the union is allowed to proceed with the strike. At this stage, the Labor Board shall not rule with respect to the legality of the strike and shall act only as an observer in the conciliatory stage.

Once the strike takes place, the employer is not allowed to perform any kind of work and it is forbidden to cross the “picket line.” The employees are not allowed to be inside the employer’s premises during the time of strike.

Strike Procedure Flow Chart



* Collective Bargaining Agreement (CBA)

Legality Of A Strike

After the strike, the employer has the legal right to petition for a ruling on the legality or illegality of the strike. Strikes are not legal in the following cases:

1. If the suspension of work was started with consent from less than the majority of the unionized workers;
2. If the strike does not comply with the objectives referred to above; or,
3. If the union did not comply with the strike procedure described above.

The employer has a period of 72 hours after the strike to petition for the Labor Board to have the strike formally declared illegal.

The Labor Board, after receiving the petition of the employer, must serve such petition to the union and appoint a hearing in which the union has to respond to the petition, and both parties are obligated to submit evidence in support of their corresponding allegations.

In order for the employer to prove the strike illegal, it must ask for an election in which the employees will express their will on whether or not they approved of the strike.

Enforcement Issues

The Federal Labor Ministry is the competent authority in Mexico for the enforcement and administration of social and labor related laws. The “judicial” organs charged with enforcing labor laws and resolving labor-management related disputes are the Conciliation and Arbitration Boards. They include a Federal Conciliation and Arbitration Board based in Mexico City, which has 18 special boards for specific sectors, as well as decentralized boards located in different states of the Republic.

In each state there are central and decentralized boards for matters that fall under state or local jurisdiction. These boards resolve claims of unjustified dismissals and disputes over wages and working conditions. They also determine the legality of strikes and claims of employers’ unilateral and illegal changes in terms and conditions of employment.

The Conciliation and Arbitration Boards are tripartite entities composed of a government representative appointed by the federal or state government, one representative from organized labor, and one representative of management elected by constituent organizations.

Agreements Between Unions And Management

The FLL defines the collective labor (bargaining) agreement as a mutual understanding of one (or more) union and one (or more) employer, or one or more employers' unions with one or more workers' unions, for the purpose of establishing the conditions under which labor is to be performed in one or more companies or employment establishments.

Mexican law, however, does not use the “duty to bargain” concept. Legally, an employer may refuse to bargain with a union that forms and seeks title to a collective bargaining agreement, seeks to revise salaries or benefits, or alleges violations to an existing collective bargaining agreement. If this occurs, the union has the recourse of striking to compel the employer to execute a union agreement, revise salaries and benefits, or remedy any violation, whichever the case may be.

By permitting the right to strike, Mexican law presumes that the force of events – not a formal legal duty – will compel bargaining.

An employer must appear before the relevant Conciliation and Arbitration Board if the union gives notice of a strike, which generates a bargaining dynamic with the involvement of the Conciliation and Arbitration Board.

Collective bargaining agreements are usually executed with no specific term or duration. However, salaries can only be negotiated yearly. All other contractual terms or additional benefits are negotiated at two-year intervals.

In order for a collective bargaining agreement to be enforceable, the agreement must be formalized in writing and has to be filed at the Conciliation and Arbitration Board with jurisdiction over the industrial activity performed by the employer. In terms of the FLL, a collective bargaining agreement must, at a minimum, contain: (i) the name and domicile of the parties; (ii) the employment establishments covered by the agreement; (iii) the term of the agreement; (iv) the days of rest and vacation

periods; (v) salaries; (vi) working schedules; (vii) regulations on training; and (viii) the rules for the constitution of the joint commissions on health, safety, and on job training as provided by the Federal Labor Law.

Mexican labor law also provides for “law-contracts” or compulsory collective agreements, with salaries and conditions of employment that are mandatory for all companies and workers in certain sectors of industry located in the country or within specified geographic regions. These law-contracts can apply in areas subject to state or federal jurisdiction, whether or not the covered workers and companies are unionized or participated in the actual bargaining. Organizations of employers’ associations and union groups in the affected area or industry are convened by the Labor Department or by the state government to establish and perform under such law-contracts. There are several law-contracts in Mexican branches of industry, including sugar, rubber, radio and television, and textiles.

In some sectors, however, economic pressure in recent years has led to concessions in certain contract provisions, diluting the mandatory effect of law-contracts.

Works Councils

There are no provisions in Mexican law for Works Councils.

Trade Union Employee Protection Rights

The Mexican Constitution explicitly guarantees freedom of association and the right to organize and to strike.

The Mexican Constitution also specifies basic conditions of labor regarding minimum wages, hours of work and work shifts, overtime pay, minors’ labor, maternity leave, vacation and holidays, profit-sharing, housing, training, safety and health, just cause for discharge, equal pay for equal work, seniority promotions, and other minimum labor standards.

These minimum conditions of employment cannot be waived by individual workers or bargained away by unions, and all employers in Mexico must comply with such minimum standards, regardless of whether they are contained in a bargaining agreement or not.

Employers may voluntarily enhance the minimum benefits required by law or provide additional benefits as they deem convenient. It is also common for specific industries

or service sectors to provide special benefits, such as productivity bonuses designed specifically for the needs of that sector. Benefits such as savings funds, punctuality and attendance bonuses, cafeteria and transportation subsidies, enhanced medical coverage, etc., are also provided voluntarily by many employers in order to remain competitive.

Mandatory Employee Benefits And Social Benefits

The FLL mandates a series of minimum benefits that must be provided by the employer to its employees as of the time of the establishment of the employment relationship, both for individual and collective relationships. Such minimum benefits consist of the following:

1. Profit sharing: all employers must distribute among their employees an amount equal to 10% of the employer's pre-tax profit, within 60 days after the employer is required to file its year-end income tax return. Fifty percent of that amount is to be distributed in proportion to the number of days worked by each employee during the year, and the remainder according to the wages of each employee. Newly created companies are exempted from this obligation during the first year of operations.
2. Christmas bonus: all employers must pay their employees a year-end bonus equal to at least 15 days' wages, prior to December 20 of every year.
3. Paid holidays: there are seven paid legal holidays that must be observed. An employee required to work on any of these holidays must be paid overtime at the rate of at least three times his or her normal wage.
4. Vacation days and vacation premium: employees with more than one year of seniority are entitled to six days of paid vacation. Employers must pay vacation days at the normal wage, plus a premium of 25% of that wage. The six-day period is increased by two days per subsequent year of seniority, up to the fourth year, for a total of 12 days vacation. After the fourth year, vacation days are increased by two days every subsequent five years.
5. Training: all employers are required by law to provide training to their employees. The employer must have a training program approved by the Ministry of Labor.

The program must be implemented by a Joint Commission for Training and Instruction, composed of an equal number of representatives of the employees and of the employer.

6. Minimum wage: the FLL establishes a minimum amount that must be paid to all employees in cash, without deductions or withholding, on a weekly basis. The minimum wage is determined from time to time by the National Minimum Wage Commission. The minimum wage varies for each of three economic regions into which the country is divided. A general minimum wage applies to all employees within each economic region, except those employees that qualify under certain categories defined by the FLL as professional categories for whom a specific professional minimum wage applies.
7. Maximum hours and overtime pay: the maximum number of hours an employer may require its employees to work, without having to pay overtime, is 48 hours per week in the day shift, 45 in the mixed shift, and 42 in the night shift. The normal hours may be distributed throughout the week as necessary. The employer must pay the first nine hours of overtime at 200%, and overtime exceeding nine hours at 300%, of standard pay. An employer may not require its employees to work more than nine hours of overtime per week. At least one paid full day of rest per week must be observed. Sunday work is subject to a 25% premium, independent of any overtime premium that may apply.
8. Employment of minors: any worker under 18 years of age is considered an underage worker, and therefore subject to special treatment under law. Work to be rendered by a worker who is older than 14 but younger than 16 is subject to the control and protection of the Labor Inspection Office (this protection and control by the Labor Inspection Office mainly consists of a written authorization to work granted to individual workers). Furthermore, hiring people under 16 is prohibited for: (i) establishments that sell and allow consumption of intoxicating beverages on their premises; (ii) work that may affect their moral integrity or conduct; (iii) work to be carried out underground or underwater; (iv) dangerous or unhealthy work; (v) work exceeding the worker strength or that might hinder or retard normal physical development; (vi) work after 10 p.m.; and (vii) industrial night work for workers between 16 and 18 years of age. Also according to the FLL, workers under 16 years of age shall not exceed six hours a day, which must be divided into periods not exceeding three hours. Workers under 18 years of age are also entitled to a

rest period of at least one hour between the daily work periods. It is also prohibited to cause workers under the age of 16 to work overtime, or on Sundays or legal holidays, and they must receive an annual paid vacation of at least 18 days.

Furthermore, employers having workers under 16 years of age at their service are required to: (i) insist that they produce a medical certificate to the effect that they have the aptitude for the work; (ii) keep a special register available for inspection indicating the worker's date of birth, the kind of work he or she is engaged in, working hours, wages, and other general conditions of employment; (iii) assign the work in such a way that the workers have the necessary free time to comply with their school program; (iv) provide on-the-job training; and (v) provide the Labor Inspection Office such information and reports as it may require.

Additionally, those workers between the ages of 14 and 16 must undergo such medical examinations as may be periodically ordered by the Labor Inspection Office.

9. Health and safety: employers are required to provide a safe and sanitary environment for the workers. A Joint Health and Safety Commission must be created to investigate the causes of illness and accidents and to propose means to avoid them.
10. Paid maternity leave: all employers must provide their female employees with a fully paid maternity leave of six weeks prior to the approximate delivery date and six weeks thereafter. After this 12-week period, employers must offer such employees their former positions back, including any accrued rights, such as seniority and vacation pay. The employer's expense during such maternity leave will normally be covered by the Mexican Social Security Institute.
11. Employer social security contributions: in accordance with the Social Security Law, all employers must register their employees with the Mexican Institute of Social Security ("IMSS"). Such registration relieves the employer from any liability in connection with job-related accidents or illnesses and provides employees and their dependents certain benefits such as health, maternity insurance, disability, old age pension, and others. These benefits are provided by IMSS in part with funds received by employers in the form of Social Security contributions.

12. Employer's contributions to the Workers' Housing Fund: employers must contribute 5% of its employees' salaries for the national Workers' Housing Fund ("INFONAVIT"). In general terms, INFONAVIT shall provide workers with housing loans for purchase, construction, or improvement of housing.
13. Employer's contributions to retirement savings fund: employers must make a contribution equivalent to 2% of the integrated wage of the worker as part of an individual worker retirement savings plan.