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A New Age for Mexico's Labor Law: New Protections for Labor Unions and a New Labor Justice System

What's changed?

On April 29, 2019, the Mexican Senate approved a Bill mandating significant reform of the Federal Labor Law of Mexico ("FLL") (the "Reform"). The Reform adds new provisions to secure the rights of freedom of organization, freedom of association, and collective bargaining, and also introduces a new labor justice system to expedite all procedures under the FLL. The Reform is the culmination of the following related developments:

- Amendments to Mexico's Constitution in February 2017;
- Ratification by the Mexican Senate in September 2018 of Convention 98 of the International Labor Organization ("ILO") related to the Right to Organize and Collective Bargaining; and
- Execution by the Mexican government in November 2018 of the new Trade Agreement between the United States, Mexico and Canada ("USMCA");

What it means for you?

The Reform comes into effect one day after its publication in the Federal Official Gazette. Once in effect, the following changes will be in force:

- **Union-related matters**
 - **New rules for union certification.** A new framework will apply for the formation and operation of labor unions that seeks to protect the right of freedom of association and union certification. Among other things, the framework includes protection against employer interference in union organizing activities, prohibition of being forced to join a labor union, election of union leaders by personal, free, direct and secret vote, as well as full and detailed accountability to union members (for example, the union will be required to document and file minutes of meetings with the Federal Center for Conciliation and Labor Registration (*Centro Federal de Conciliación y Registro Laboral*) and deliver copies to each member of the union). Employers can request the cancellation of a union if it engages in extortion or demands payment in cash or in kind to withdraw a strike call or to refrain from initiating or prosecuting any claim related to rights over the collective bargaining agreement (union certification process).
 - **New prohibitions for unions.** The following conduct will be prohibited:
 - Engaging in schemes intended to evade compliance with employer obligations and in simulated actions assuming the capacity of employer, in order to assist the actual employer in evading the employer's obligations.
 - Using violence against unionized employees, the employer, their representatives, property and third parties.
 - Engaging in extortion or demanding offerings from the employer that are not included in the collective bargaining agreement.
 - **Certificate of representation of unions.** In order to request the execution of a collective bargaining agreement and submit a strike call for the execution of the collective bargaining agreement, unions will be required to obtain a certificate of representation issued by the Federal Center for Conciliation and Labor Registration. The certificate can be obtained once the labor union proves that it represents thirty percent of the employees that will be covered by the collective bargaining agreement. If more than one union argues that they represent the employees, then the employees shall be required to vote and the union appointed by the majority vote will obtain the certificate of representation.
 - **Collective bargaining agreements.** The content of a collective agreement will be subject to review and approval by the employees and the majority of employees must approve the agreement. Collective bargaining agreements in force must be reviewed at least once during the four-year period following the effective date of the Reform.
 - **Employee consultation process.** As part of the union democracy principles, the amendment introduces a consultation process requiring free, personal, direct and secret vote of employees, in the event several labor unions claim having the representation of such employees in order to obtain the certificate of representation as well as to execute, review (integral review) and terminate collective bargaining agreements.
- **Labor justice**
 - **Labor Courts.** Conciliation and Arbitration Boards will be replaced for Courts of the Federal Judicial Power and State Courts, which shall be in charge of resolving labor disputes arising between employees and employers. Federal Courts shall come into office within four years following the effective date of the Reform, while State Courts will start operations within three years following such date.
 - **Federal Center for Conciliation and Labor Registration.** This new agency will be in charge of conciliation at a federal level, as well as resolving actions and procedures concerning registration of unions, collective bargaining agreements, Compulsory Bargaining Agreements (*contratos-ley*) and internal labor regulations. This agency will start performing registration activities within two years after the effective date of the Reform, and the conciliation function will start within four years after such date.
 - **Local conciliation centers.** These agencies will be mainly in charge of the conciliation process at a local level and will start operations within three years following the effective date of the Reform.
 - **Conciliation stage.** The parties shall exhaust the conciliation stage with the relevant Conciliation Center before taking their dispute to the Labor Courts, and if the parties reach a settlement, they shall execute an agreement which will be deemed as a final judgment not subject to appeal. If the parties fail to reach an agreement during the conciliation stage, then the Conciliation Center shall issue a certificate of no conciliation and the parties could file the complaint before the Court. The conciliation stage is not mandatory in specific cases, for example, in cases of discrimination, appointment of beneficiaries, union freedom, disputes between labor unions and objection to the by-laws of the union. This conciliation procedure may not exceed 45 days.
 - **Ordinary proceedings.** The Reform introduces new ordinary proceedings to resolve both individual and collective labor disputes, intended to expedite law enforcement. Upon exhausting the conciliation procedure, the plaintiff shall file his/her action with the Court by including any evidence available in the initial complaint, and the defendant shall answer the complaint by also including the evidence defendant deems convenient. Then, the Labor Court shall hold a preliminary hearing to purge the procedure (e.g. the Court shall verify the capacity of the parties, admit and dismiss motions and evidence). Finally, all evidence admitted will be analyzed during the hearing named "court hearing" ("*audiencia del juicio*") and once the hearing is concluded, the parties shall submit their allegations and the Court shall issue a resolution.
 - **Special collective procedure.** This consists of a more expedited procedure than the ordinary proceedings and shall be implemented when the freedom of organization, freedom of association, and the right to collective bargaining are at risk, or in the case of union disputes for rights over the collective bargaining agreement, review of internal labor regulations, among others, are the main cause of action.
- **Other relevant aspects**
 - **Gender equality and work environment free of discrimination.** This principle acknowledges equality between men and women. It states that work must be carried out under conditions that assure dignity and health for employees and their dependent family members. It assures respect for freedom and dignity of employees and states that creating a work environment free of discrimination and violence is of a social interest.
 - **Conducts contrary to the public order.** This amendment includes specific conducts that contravene the public order by disguising the existence of an employment relationship in order to avoid compliance with labor and social security obligations, and registration of employees with salaries lower than the actual salary earned.
 - **Appointment of beneficiaries.** The amendment requires individual employment agreements to include the appointment of beneficiaries in case of death of the employee or if the employee is declared as a missing person.
 - **Private agreements.** Agreements entered into without the involvement of the authorities shall be valid and may only be claimed null and void with respect to any employee waiver of rights, but the remaining provisions of the agreement shall remain in full force and effect.
 - **Notice of termination (wrongful dismissal).** Failure to deliver the notice of termination of employment directly to the employee or through the labor authorities shall be deemed as a wrongful dismissal; however, the employer shall be entitled to produce evidence to the contrary to prove that the termination of employment was based on reasonable cause.
 - **Actions not admissible in court.** Actions not admissible in court shall include, without limitation: (i) demanding employer to sign blank pages when initially hired or throughout the employment relationship; (ii) making false statements of facts regarding salary, work shift or seniority; (iii) claiming over collective bargaining agreements without having employees affiliated to the union operating at the workplace.
 - **Deposit of the employee's severance amounts in the event the employee refuses to be reinstated.** Employers shall be responsible for depositing the wrongful dismissal severance amounts if the employee claims a reinstatement of employment as main cause of action and the employer refuses to do so. However, if there is no evidence that the employee falls within the scope of such defenses, then the deposit shall be null and void and the Court may use such amount to enforce the final judgment. If the amount deposited by the employer is not sufficient to cover the employee's severance is entitled to, then the Court shall order the employer to pay any difference plus the applicable interest.
 - **Protection for pregnant employees and discrimination cases.** With respect to possible cases of infringement of constitutional rights, such as dismissal as a result of pregnancy or discrimination, the Court may order sufficient measures to avoid suspension of constitutional and social security rights.
 - **Pay slips.** This amendment sets forth that digital tax receipts issued via Internet ("CFDI" or *comprobantes fiscales digitales por internet*) may substitute printed pay slips.
 - **New obligations for employers.**
 - To provide copy of collective bargaining agreements and reviews thereof within 15 days following the filing before the Federal Center for Conciliation and Labor Registration;
 - To implement a discrimination prevention protocol, including discrimination on the grounds of gender, to address violence and sexual harassment cases and to eliminate forced and child labor;
 - To define and disclose documents regarding the consultation procedure for the execution of a collective bargaining agreement at the workplace, including comprehensive review and termination thereof and to obtain the certificate of representation to be issued by the Federal Center for Conciliation and Labor Registration to unions.
 - **New prohibitions for employers.** Any action or omission that infringes the right of employees to elect representatives or intended to control the union of which such employees are members will be prohibited.
 - **Household workers.** The amendment includes the obligation of employers to register household workers with the Mexican Social Security Institute ("IMSS" or *Instituto Mexicano del Seguro Social*) and to pay the applicable social security contributions.
 - **Electronic platform.** Some of the technological innovations included in the Reform involve the implementation of a platform by the Labor Court that allows the Labor Courts to electronically serve the parties.

Actions to take

We are facing a historic change to Mexico's labor law. Employers need to consider the impact of adapting to the substantial legislative changes and the current political climate. The first step is to analyze your organization's individual and collective employment relationships, including how these relationships are documented. How the employer should proceed from there will depend on the particulars of the industry, the individual workplace, the union environment and activity, among other things. We will be pleased to assist you in such analysis.

Read more

For more information regarding this important issue, please review the following Client Alerts:

- [How to prepare your company for the shifting union environment in Mexico](#)
- [Companies doing business in Mexico now need to revisit union relationships](#)
- [USMCA: A True Change for Labor Relations in Mexico](#)

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