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Employment 2021

Mexico: Law & Practice
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Cannizzo, Ortíz y Asociados, S.C.

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MEXICO

Law and Practice

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1. INTRODUCTION

1.1 Main Changes in the Past Year

In Mexico, three amendments to labour law have been enacted in the last twelve months, as follows.

- On 2020, Mexico ratified Convention C189 (Convention on domestic employees) to adopt various provisions relating to decent work for domestic employees. The decree promulgating this decree was published in the Official Federal Gazette (*Diario Oficial de la Federación*) on July 2, 2021.
- On January 11, 2021, the decree by virtue of which Article 311 was amended and Chapter XII Bis was added to the Federal Labour Law on teleworking was published in the Official Federal Gazette. See **1.2 COVID-19 Crisis** for more information.
- On April 23, 2021 the Mexican Government published in the Official Federal Gazette a decree amending and derogating, among others, several provisions of the Federal Labour Law (*Ley Federal del Trabajo*), the Social Security Law (*Ley del Seguro Social*), the Law of the National Workers' Housing Fund Institute (*Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores*), the Income Tax Law (*Ley del Impuesto sobre la Renta*) and the Value Added Tax Law (*Ley del Impuesto al Valor Agregado*), as well as the Federal Tax Code (*Código Fiscal de la Federación*). Some of the main changes implemented are as follows.
  - (a) Outsourcing of personnel (*subcontratación de personal*) is now officially prohibited. Pursuant to this reform, the law regulates the insourcing, that is, the scheme where a company provides or make its employees available to another company belonging to the same group. The entity which renders to another entity belonging to its corporate group must comply with some requirements including that the rendered services are not comprised within the corporate purpose or preponderant activity of the entity receiving such services, and its register in the registry of specialised contractors.
  - (b) The contracting of specialised services or specialised works in which a company provides or makes its employees available to another company for the performance of such services is permitted as an exception, provided that: (i) such services or works are not comprised within the corporate purpose or the preponderant activity of the individual/legal entity receiving them and (ii) the contractor is registered in the registry of specialised contractors. Any breach of the enacted provisions relating to outsourcing and/or contracting of specialised services will imply, as the case may be, (i) the joint responsibility of the entity receiving the services for the labour liabilities associated with the employees of the entity rendering the services; (ii) non-deductibility of the fees paid to the contractor or the inability to credit the corresponding VAT, as the case may be; (iii) fines against all the parties involved in the unlawful scheme; and (iv) criminal consequences in certain cases (mainly in case of fraudulent schemes).
  - (c) Participation of the employees in the profits of the employer (profit sharing, *Participación de los Trabajadores en las Utilidades*, known in Mexico as "PTU") will be limited to a maximum of three months of the current salary of each employee or the average of the profit sharing paid to such employee during the last three years, whichever is higher.
- In addition to the above, to have a clear picture of the present and future of labour legislation in Mexico, we must take into account the execution of the new Agreement between Mexico, the United States and

Canada (T-MEC or USMCA), which will result in various adjustments and modifications to Mexican labour provisions in the near future. This treaty entered into force on July 1, 2021.

1.2 COVID-19 Crisis

No temporary legislative measures in employment matters were adopted due to the COVID-19 pandemic.

The most significant legislative action on labour issues apparently taken to cope, in part, with the pandemic caused by COVID-19 was the publication in the Official Federal Gazette on January 11, 2021, of the decree by virtue of which Article 311 was amended and Chapter XII Bis was added to the Federal Labour Law on teleworking.

By virtue of this reform, the definition of teleworking was added to include the work that is usually performed for an employer, in the employee's home or in a place freely chosen by the employee, without immediate supervision or direction of the person providing the work, using primarily information and communication technologies, for the contact and control between the employee under the teleworking modality and the employer.

The provisions added to the Federal Labour Law regarding teleworking by virtue of the reform apply to labour relations that are developed more than 40% in the domicile of the employee under the modality of teleworking, or in the domicile chosen by the employee, not being possible to consider as teleworking that which is performed occasionally or sporadically. Please note that if the work at home is consequence of an act of God or force majeure (as in the COVID-19 crisis), such work at home is occasional so is not considered as teleworking.

2. TERMS OF EMPLOYMENT

2.1 Status of Employee

Although, of course, in practice there is a difference between blue-collar and white-collar employees, this difference does not derive from the law. The Federal Labour Law provides for several types of employees, namely the following.

- Employees in positions of trust. Those who perform management, inspection, supervision and oversight functions, when they are of a general nature, and those related to personal work of the employer within the company or establishment. It should be noted that the law is clear in determining that the category of trustworthy employee depends on the nature of the functions performed and not on the designation given to the position.
- Employees who render their services for a Mexican employer outside the national territory for whom the Federal Labour Law provides particular rights in Article 28.
- The Federal Labour Law contains specific chapters that distinguish between various types of employees and grant different rights and protections to each of them, for example, women's work, minors' work, trust employees, employees on ships, aircraft crew work, railway work, auto transportation, public service manoeuvres, farm work, commercial agents, professional sportsmen, musicians and actors, home employees, mine employees, employees in hotels, restaurants, bars and other similar establishments, family industry, doctors, employees in educational institutions, etc.
- Employees for a specific task, on fixed term, seasonal and for indefinite term. See **2.2 Contractual Relationship** for more information.

2.2 Contractual Relationship

In Mexico, employment relationships may be: (i) for a specific task (*obra determinada*) that may only be stipulated when its nature so requires; (ii) on a fixed term (*por tiempo determinado*) only when required by the nature of the work to be performed, when its purpose is to temporarily replace another employee; and in the other cases provided by the Federal Labour Law (for example, labour relationships for the exploitation of mines lacking affordable minerals or for the restoration of abandoned or paralysed mines, which, in express terms, the law allows them to be for a fixed term); (iii) seasonal (*por temporada*); and (iv) for an indefinite term (*por tiempo indeterminado*). The latter, in turn, may be subject to a qualification period (*prueba*) or initial training (*capacitación inicial*).

In the absence of express stipulations, the employment relationship is understood to be for an indefinite term.

In terms of the Federal Labour Law, working conditions must be in writing when there are no applicable collective bargaining agreements and shall be executed in at least two copies, one of which shall remain in the possession of each party. This document must contain the following minimum requirements:

- name, nationality, age, sex, marital status, Unique Population Registry Code (*Clave Única de Registro de Población*), Federal Taxpayer Registry and address of the employee and the employer;
- whether the employment relationship is for a specific task or time, seasonal, initial training or indefinite period and, if applicable, whether it is subject to a qualification period;
- the service or services to be rendered, which shall be determined as precisely as possible;
- the place or places where the work is to be performed;
- the duration of the working day;
- the form and amount of the salary;
- the day and place of payment of the salary;
- the indication that the employee will be trained in the terms of the plans and programmes set forth or to be determined in the company;
- other working conditions, such as rest days, holidays and others agreed upon by the employee and the employer;
- designation of beneficiaries for the payment of wages and benefits accrued and not collected upon the death of the employees or those generated by their death or disappearance derived from a criminal act.

The existence of the labour relationship does not depend on the existence of the aforementioned document, the existence of which is considered as the employer's obligation.

2.3 Working Hours

Although the employer and the employee may agree on the duration of the working day, in no case may it exceed the legal maximums.

The legal limits are: (i) for the day shift, ie, that between 6am and 8pm, of eight hours per day; (ii) for the night shift, ie, that between 8pm and 6am, of seven hours per day; and (iii) for the mixed shift, ie, that which comprises periods of time of the day and night shifts, provided that the night period is less than three and a half hours, seven and a half hours per day.

Additionally, during the continuous working day, the employee must be granted a rest of at least half an hour, and if the employee cannot leave the place where he/she renders his/her services during rest or meal hours, the corresponding time will be computed as effective time of the working day.

With respect to overtime, the law sets forth that the workday may be extended for extraordinary circumstances, but may never exceed three hours per day and three times in a week. These hours of extraordinary work must be paid at 100% more than the salary corresponding to the hours of the workday and, in the event that the extraordinary work exceeds nine hours per week, the employer must pay it at 200% more than the salary corresponding to the hours of the workday, without prejudice to the applicable penalties.

Although there is no particular regulation for part-time contracts, in terms of the provisions of the law, the employees and the employer may divide the working hours freely. The only guideline that the law contains in this regard is the preference to allow employees, to the extent possible, to rest on Saturday afternoon or any equivalent modality.

2.4 Compensation

In Mexico, the minimum wage is the lowest amount that an employee must receive in cash for services rendered in a workday.

The minimum wages in Mexico are set forth by the National Minimum Wage Commission (*Comisión Nacional de los Salarios Mínimos*) (composed of representatives of the employees, employers and the government), whose last resolution was issued on December 16, 2020 and published in the Official Federal Gazette on December 23, 2020. This resolution contains the general minimum wages (which apply to all employees in the geographic area or areas of application to be determined, regardless of the branches of economic activity, professions, trades or special jobs) and professional minimum wages (which apply to all employees in the branches of economic activity, professions, trades or special jobs to be determined within one or more geographic areas of application) in force in two geographic areas into which, for purposes of the application of such wages, the country has been divided: (i) Northern Border Free Zone (*Zona Libre de la Frontera Norte*), ie, the 25 km strip south of the US border; and (ii) the rest of the country. The general minimum wage in effect for 2021 in the Northern Border Free Zone is MXN213.39 and in the rest of the country it is MXN141.70.

The annual fixing of minimum wages, or the revision thereof, in terms of the law, may never be below the inflation observed during the period of its validity.

Wages, in general terms, are protected by the government through labour legislation, which includes several wage protection rules that prohibit, for example, that the minimum wage be subject to compensation, discount or reduction, except in certain cases, that the salary in cash must be paid precisely in legal tender, not being allowed to do so in merchandise, vouchers, tokens or any other representative sign that is intended to substitute the currency, etc.

What is usually recognised as thirteenth month is the Christmas bonus which, in terms of the Federal Labour Law, must be paid before December 20th to employees who have completed one year of service and which will be equivalent to at least 15 days of salary. Those who have not completed the year of service are entitled to be paid the proportional part of the bonus.

Additional incentive programmes, such as bonuses, are not mandatory or regulated by law and are usually included in employment contracts with employees.

2.5 Other Terms of Employment

Vacations

Employees who have rendered their services for more than one year are entitled to an annual

period of paid vacation, which in no case may be less than six working days, and which will increase by two working days, until reaching 12, for each subsequent year of service. After the fourth year, the vacation period will increase by two days for every five years of service.

The labour law is clear in stating that vacation cannot be compensated with remuneration.

Employees are entitled to a bonus of not less than 25% of the wages due to them during the vacation period.

Leaves

In terms of the Federal Labour Law, women are entitled to the following leaves.

- To enjoy a six-week break before and six weeks after childbirth. At the express request of the employee, with the prior written authorisation of the physician of the corresponding social security institution or, if applicable, of the health service provided by the employer, taking into account the opinion of the employer and the nature of the work performed, up to four of the six weeks of leave prior to childbirth may be transferred to after childbirth. This period may be increased up to eight weeks after the birth, upon presentation of the corresponding medical certificate, in the event that the children were born with any type of disability or require hospital medical care.
- In case of adoption of an infant, they shall enjoy a six-week paid leave following the day on which they receive the child.

For men, the law only sets forth that the employer must grant paternity permit of five working days with pay to male employees for the birth of their children and likewise in the case of the adoption of an infant.

With respect to absences due to illness, Mexican labour law distinguishes between non-work related illnesses, which are generally covered by the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*), and those derived from an occupational risk or illness, which are covered by the employer. In the chapter of the Federal Labour Law called "Occupational Risks" (*Riesgos de Trabajo*) it is clearly set forth what is to be understood by risk and occupational illness, namely, occupational accident or risk is any organic injury or functional disturbance, immediate or subsequent, death or disappearance derived from a delinquent act, suddenly produced in the course of or in connection with work, whatever the place and time in which the work is performed (including accidents that occur when the employee moves directly from his home to the place of work and from the latter to the former), and by occupational illness any pathological condition resulting from the continuous action of a cause that has its origin or motive in the work or in the environment in which the employee is obliged to render his services.

Confidentiality and Non-disparagement Requirements

Although the Federal Labour Law does not regulate expressly the confidentiality obligations that the employee must comply with before his or her employer, these are usually included in the labour agreements entered into between the parties. In this type of agreements, it is usually stated that the confidentiality obligation of the employees will last for a certain period of time after the termination of their employment relationship with the employer.

Additionally, the employee's obligation of confidentiality with respect to the employer could be interpreted as included in Article 47 of the Federal Labour Law, which provides the possibility to terminate the employment relationship, without liability for the employer, among others, for the

employee's incurrence, during his or her work, of any breach of probity or honesty against the employer, his or her relatives or the management or administrative personnel of the company or establishment, or against the employer's customers and suppliers, as well as the employee revealing trade secrets or disclosing matters of a confidential nature, to the detriment of the company, and similar conducts.

In addition, the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) regulates industrial secrets as any information of industrial or commercial application kept confidential by the person exercising its legal control, which means obtaining or maintaining a competitive or economic advantage over third parties in the performance of economic activities and with respect to which it has adopted sufficient means or systems to preserve its confidentiality and restricted access thereto. This law could be applied to employees who misappropriate any industrial secret of their employer, that is, the acquisition, use or disclosure of an industrial secret in a manner contrary to good customs and practices in industry, commerce and services involving unfair competition, including the acquisition, use or disclosure of an industrial secret by a third party who knew, or had reasonable grounds to know, that the industrial secret was acquired in a manner contrary to such customs and practices.

3. RESTRICTIVE COVENANTS

3.1 Non-competition Clauses

Non-compete clauses, ie, those clauses included in a contract by which a person assumes the obligation not to compete in a certain market or activity with another person, are not provided for in Mexican law; however, they are usually agreed between the parties in employment agreements or additional non-compete agreements.

The ordinary consequence of breaching a non-compete obligation is to compensate or indemnify the affected party with the amount of damages caused to it; amount to be determined by the corresponding jurisdictional authority. Regarding non-compete obligations, it will be important to keep in mind that in Mexico the protection of damages is very limited, contrary to what happens in other countries. In Mexico, it is not common to successfully prove liability derived from a non-compete violation and to prove the specific damages derived from this violation. Even when the violation and damages are proved, the courts usually do not impose exemplary penalties or remedies like in other jurisdictions.

Given the difficulty of evidencing before the jurisdictional authority the causal relationship between the conduct performed, ie, the breach of a non-compete obligation, and the damages suffered by the affected party, it is normal to find in the non-compete agreements stipulations containing a contractual penalty that obliges the breaching party to pay a certain amount in the event of breach, ie, pre-quantified damages. In this regard, several court decisions have ruled that in no case may the contractual penalty be greater in amount than the principal obligation.

The enforceability of this type of non-compete obligations is usually approached from two aspects.

- Constitutional, since it has been considered as a violation of the freedom to work (the Mexican Constitution states that no person may be prevented from engaging in the profession, industry, trade or work that suits him or her being lawful except by means of a judicial resolution and that an agreement by

virtue of which an individual temporarily or permanently renounces to exercise a certain profession, industry or trade may not be admitted). It will be important to keep these prohibitions in mind when drafting the non-compete obligations required by employers, ie, that they do not constitute a waiver of the exercise, throughout the national territory, of a given profession, industry or trade.
- Economic competition, since the obligation not to compete may be considered a monopolistic practice. Regarding this aspect, the antitrust authority has ruled that non-competition obligations will be valid when they are duly limited as to time, territory, subject matter and persons.

3.2 Non-solicitation Clauses – Enforceability/Standards

Non-solicitation clauses are not provided for in Mexican law; however, they are usually agreed between the parties in employment agreements or additional non-compete and non-solicitation agreements.

The ordinary consequence of breaching a non-solicitation obligation is to compensate or indemnify the affected party with the amount of damages caused to it; amount to be determined by the corresponding jurisdictional authority. Regarding non-solicitation obligations, it will be important to keep in mind that in Mexico the protection of damages is very limited, contrary to what happens in other countries. In Mexico, it is difficult to prove liability derived from a non-solicitation violation and to prove the specific damages derived from this violation. Even when the violation and damages are proved, the courts usually do not impose exemplary penalties or remedies like in other jurisdictions.

Given the difficulty of evidencing before the jurisdictional authority the causal relationship between the conduct performed, ie, the breach of a non-solicitation obligation, and the damages suffered by the affected party, it is normal to find in the non-solicitation agreements stipulations containing a contractual penalty that obliges the breaching party to pay a certain amount in the event of breach, ie, pre-quantified damages. In this regard, several court decisions have ruled that in no case may the contractual penalty be greater in amount than the principal obligation.

The enforceability of this type of non-solicitation obligations, as well as non-compete obligations, is constantly challenged for their unconstitutionality, since they violate Article 5 of the Mexican Constitution, which provides “freedom of work”.

4. DATA PRIVACY LAW

4.1 General Overview

In Mexico there are different personal data protection laws whose application depends on the regulated subject; however, the private sector is regulated by the Federal Law for the Protection of Personal Data in Possession of Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de Particulares*).

By virtue of the aforementioned law, individuals have the obligation to protect the personal data they process, to respect the principles set forth in the law: legality, consent, information, quality, purpose, loyalty, proportionality, and to respect the right of employees to informational self-determination, as well as to guarantee the exercise of their rights of access, rectification, cancellation and opposition to the processing of their personal data.

It is important to point out that in addition to the employer’s obligations towards employees with respect to the protection of their personal data, the former has an obligation to protect personal data with respect to other data subjects, such as

candidates, clients, suppliers, partners or shareholders, etc.

5. FOREIGN WORKERS

5.1 Limitations on the Use of Foreign Workers

In terms of Mexican labour law, except for directors, administrators and general managers:

- in every enterprise or establishment, the employer must employ at least 90% Mexican employees;
- in the categories of technicians and professionals, the employees must be Mexicans, unless there are none in a given specialty, in which case the employer may temporarily employ foreign employees, in a proportion not exceeding 10% of those in the specialty; and
- the physicians in the service of the companies must be Mexican.

In any case, the employer and the foreign employees will have the joint obligation to train Mexican employees in the relevant specialty.

5.2 Registration Requirements

In Mexico, in order to hire foreign employees, it is necessary for the employer to obtain, before the office of the National Immigration Institute (*Instituto Nacional de Migración*) where its establishment is located, an employer's registration certificate (*constancia de inscripción del empleador*) that allows individuals and legal entities to carry out procedures to issue job offers to foreigners.

In addition to the above, each of the foreigners who render services on behalf of a Mexican employer must have an immigration document evidencing their legal stay in the country. This procedure is usually carried out by the employer with the intervention of the foreigner.

The ordinary status under which these foreigners usually remain in the country is that of temporary resident (*residente temporal*), which authorises them to remain in the country for a period of no more than four years, with the possibility of obtaining a permit to work in exchange for remuneration in the country, subject to an offer of employment with the right to enter and leave the national territory as many times as they wish and with the right to preserve the family unit.

6. COLLECTIVE RELATIONS

6.1 Status/Role of Unions

Labour unions in Mexico are understood as an association of employees or employers, constituted for the study, improvement and defence of their respective interests. Both have the right, without any distinction and without prior authorisation, to form the organisations they deem convenient, as well as to join them, with the sole condition of observing their relevant by-laws.

In legal terms, both unions enjoy adequate protection against any act of interference by one with respect to the other, whether carried out directly or through their representatives in their incorporation, operation or administration, with acts of interference being understood as actions or measures tending to promote the constitution of employees' organisations dominated by an employer or an organisation of employers, or to support in any way employees' organisations with the purpose of placing them under their control.

It should be noted that, in 2018, Mexico ratified Convention C098 (Right to Organise and Collective Bargaining Convention) of the International Labour Organization (*Organización Internacional del Trabajo*) concerning the application of the principles of the right to organise and col-

lective bargaining. Derived from the foregoing, an important constitutional reform on labour matters entered into force in Mexico, which, in addition to setting forth new bases for labour justice, modified several provisions on labour union matters, including aspects related to freedom of association and effective representation, particularly regarding employer protection unions, which are used by several companies in the country. This constitutional reform led to additional secondary reforms of labour provisions in 2019.

These reforms cause that the union structures that have been used throughout time in Mexico need to be modified or revised in order to guarantee and protect the freedom of association of employees. The relevant reforms seek, among other issues, for employees to have a much more active union life.

6.2 Employee Representative Bodies

The role of employees' unions is to study, improve and defend the interests of their members. Their incorporation must be made before one of two authorities.

Unions, as well as collective bargaining agreements and the agreements and regulations entered into between employers and employees must be registered with the Federal Centre for Labour Conciliation and Registration (*Centro Federal de Conciliación y Registro Laboral* (CFCRL)). Unions may register by submitting several documents such as a copy of the minutes of the incorporation meeting, a list with the number, names, CURP and addresses of its members, an authorised copy of the bylaws and an authorised copy of the meeting minute in which the board of directors was elected.

Although local authorities previously had this type of authority, since the labour reform regarding union life, only local Conciliation Centres are authorised to carry out labour conciliations.

6.3 Collective Bargaining Agreements

Pursuant to the Federal Labour Law, a collective bargaining agreement is an agreement entered into between one or more labour unions and one or more employers, or one or more labour unions of employers, to set forth the conditions under which work is to be performed in one or more companies or establishments.

If the employer refuses to sign the agreement, the employees may exercise their right to strike.

In order for a labour union to enter into a collective bargaining agreement with an employer, the labour union must first have "Evidence of Representation" (*Constancia de Representatividad*) issued by the competent labour authority.

Once the above is complied with, the collective bargaining agreement must be approved by the employees.

Once the employees approve the clauses of the collective bargaining agreement, it must be executed in writing, under penalty of nullity, in triplicate, and one copy must be delivered to each of the parties and the other copy must be deposited with the Federal Centre for Labour Conciliation and Registration (*Centro Federal de Conciliación y Registro Laboral*).

Collective bargaining agreements are effective from the date and time of presentation of the document, unless the parties have agreed on a different date.

It should be noted that for the registration of an initial collective bargaining agreement or a revision agreement, the Federal Centre for Labour Conciliation and Registration verifies that its content is approved by the majority of the

employees covered by it through a personal, free and secret vote. In this sense, one of the relevant effects of the reforms referred to in **6.1 Status/ Role of Unions** of 2019 is that employees are authorised to join a union, federation or confederation and be consulted through personal, free, secret and direct vote to, among other things, sign initial collective bargaining agreements and ratify negotiated agreements on the collective bargaining agreement or review agreement, as well as to legitimise existing collective bargaining agreements.

7. TERMINATION OF EMPLOYMENT

7.1 Grounds for Termination

Grounds for Termination

In terms of the Federal Labour Law, there are three main categories of termination causes of the labour relationships.

- The grounds for termination provided by law (Article 53 of the Federal Labor Law), namely: (i) mutual consent of the parties; (ii) death of the employee; (iii) termination of the work or expiration of the term or investment of the capital; and (iv) physical or mental incapacity or manifest inability of the employee, which makes it impossible to provide the work.
- Causes that, pursuant to Article 47 of the Federal Labour Law, entitle the employer to dismiss the employee without further liability (without paying in his or her favour the corresponding severance). The employer who dismisses an employee must give written notice clearly stating the conduct or conducts that motivate the termination and the date or dates on which they were committed, delivering the notice personally to the employee at the very moment of the dismissal or, alternatively, communicating it to the competent court, in which case the employer must provide the employee's last registered address so that the authority may notify the employee. If in the corresponding lawsuit the employer does not prove the causes of the termination, the employee will have the right to request his or her reinstatement in the job he or she was performing, or the relevant compensation, and that he or she be paid the wages due computed from the date of the dismissal for a maximum period of twelve months and, if applicable, the relevant interest.
- Causes that, pursuant to Article 51 of the Federal Labour Law, entitle the employee to resign without further liability. In these cases, the employee may separate from work within 30 days following the date on which any of the causes mentioned in the aforementioned article occurs, and shall be entitled to indemnification by the employer.

Collective Redundancies

With respect to the collective termination of employment relationships, Article 434 of the Federal Labour Law provides that the causes for termination of these employment relationships are causes such as force majeure or acts of God not attributable to the employer, or its physical or mental incapacity or death, which produce as a necessary, immediate and direct consequence, the termination of the work, the notorious and manifest unaffordability of the exploitation, the exhaustion of the material object of an extractive industry, or the legally declared insolvency or bankruptcy, if the competent authority or the creditors resolve the definitive closing of the company or the definitive reduction of its work and some additional specific assumptions for certain industries.

In most of the aforementioned cases, notice must be given or authorisation must be obtained from the labour authority to proceed with the termination.

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7.2 Notice Periods/Severance

Notices and Formalities

As said in **7.1 Grounds for Termination**, the employer who dismisses an employee based on any of the causes mentioned in Article 47 of the Federal Labour Law must give written notice clearly stating the conduct or conducts that motivate the termination and the date or dates on which they were committed, delivering the notice personally to the employee at the very moment of the dismissal or, alternatively, communicating it to the competent court, within five working days, in which case the employer must provide the employee's last registered address so that the authority may notify the employee.

In case of termination by the employee derived from the causes mentioned in Article 51 of the Federal Labour Law, the employee may separate from work within 30 days following the date on which any of the causes occurs.

Severance Payment

In the case of employees who freely terminate their employment relationship or those who are terminated with grounds for dismissal, only a settlement payment comprising the proportional amounts to which they are entitled for the work rendered in favour of the employer (eg, salary up to the date of termination, vacations not taken, vacation bonus, proportional Christmas box, etc) shall be paid in their favour, without being entitled to severance payment.

In all other cases, employees will be entitled to a severance payment consisting of the constitutional indemnity which is integrated with the amount of three months of integrated salary, as well as the seniority premium consisting of 12 days of salary for each year of service rendered. Certain maximum limits provided by law must be considered for the calculation of these amounts.

Finally, it should be noted that in the event of dismissal of an employee, he or she will be entitled to sue before the local or federal labour authority for reinstatement to his or her job under the same terms and conditions under which he or she had been working, as well as the payment of wages due for a maximum period of 12 months and, if applicable, interest. Failure or impossibility to comply with the above will also result in the payment of additional severance.

It is recommended, in any case, to obtain external professional advice in order to determine whether any of the causes for termination of the labour relationship have occurred, the possibility or ease with which such update may be evidenced before an eventual labour proceeding initiated by the employee, as well as for the calculation of the amounts to be paid in his or her favour due to the termination and, finally, to determine the manner in which it is advisable to document the relevant labour relationship termination.

7.3 Dismissal For (Serious) Cause (Summary Dismissal)

In Mexico, there are no special or different procedures for summary dismissals or dismissals for serious cause. All types of terminations are processed in terms of the provisions of **7.1 Grounds for Termination** and **7.2 Notice Periods/Severance**.

7.4 Termination Agreements

In terms of the Federal Labour Law, one of the grounds for termination provided by law (Article 53 of the Federal Labour Law) is the mutual consent of the parties, therefore, in Mexico, termination agreements signed by both parties, employer and employee, are authorised and common.

Although there are no specific formalities or requirements with which these agreements must comply, the common practice is that they

include releases of liability for the parties and that the competent labour authority is involved in the execution of such agreements.

7.5 Protected Employees

In Mexico, there are no specific categories of people or employees that cannot be dismissed; however, it is important to be careful in certain cases, for example, in the case of pregnant or breastfeeding women.

8. EMPLOYMENT DISPUTES

8.1 Wrongful Dismissal Claims

In the event that the employer does not prove any of the assumptions of termination of the labour relationship, the employee will have the right to demand before the competent labour authority, according to the activity developed by the company, the reinstatement to his or her employment (or, as the case may be, the respective severance payment), the payment of wages due for up to a maximum period of 12 months, plus the corresponding interest, if applicable, the payment of seniority premium, vacations not enjoyed by the employee, vacation premium, Christmas bonus and the constitutional indemnity.

8.2 Anti-discrimination Issues

In terms of the provisions of the Federal Labour Law, as well as other Mexican laws on discrimination, no conditions may be set forth that imply discrimination among employees based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, immigration status, opinions, sexual preferences, marital status or any other condition that violates human dignity. Therefore, neither employers nor their representatives may refuse to accept employees on the basis of the above-mentioned grounds for discrimination.

On the other hand, other laws contain other types of obligations to prevent and eradicate discrimination in the workplace, namely, the Federal Law to Prevent and Eliminate Discrimination (*Ley Federal Para Prevenir y Eliminar La Discriminación*), which states that it is considered discriminatory to set forth differences in remuneration, benefits and working conditions for equal jobs.

In case of violation of the above, the corresponding authority may impose a fine ranging from 250 to 5,000 times the general minimum wage, ie, between USD1,800.00 and USD37,000.00.

It should be noted that, for the imposition of the relevant sanctions, the authority must consider several elements, such as the seriousness of the discriminatory conduct or social practice, the concurrence of two or more motives or forms of discrimination, recidivism, understood as when the same person incurs in the same, similar or new violation of the non-discrimination right, whether to the detriment of the same or a different aggrieved party, the effect produced by the discriminatory conduct or social practice, etc.

9. DISPUTE RESOLUTION

9.1 Judicial Procedures

Mexico has had specialized labour courts since 2017, when a constitutional reform was published that ordered the creation of labour courts at the federal and state levels. This reform was complemented in 2019 with the reform to the Federal Labour Law that sets forth the parameters for the creation of labour courts and granted a maximum term of three years in local matters and four years in federal matters for their creation and entry into operation.

Prior to these reforms, labour disputes were heard before the Federal or Local Conciliation

and Arbitration Boards which, although they exercised judicial functions in labour matters, belonged structurally to the executive branch.

Regarding class actions in labour matters, in Mexico the concept of class actions is exclusive to civil matters to protect conflicts in matters of consumer relations of goods or services, public or private, and the environment. Notwithstanding the foregoing, the Federal Labour Law contemplates the existence of Collective Labour Disputes, in which the legitimate entity is usually the union of employees holding collective bargaining agreements and/or the majority of the employees of a company or establishment.

9.2 Alternative Dispute Resolution

In Mexico, employees who have a labour dispute must, in most cases, before going to the labour courts, attend a conciliation proceeding. The conciliation procedure will be carried out by federal or local conciliation centres.

In the event that a conciliation agreement is executed, it will have the status of res judicata and the quality of a title to initiate executive actions through the mechanisms for the enforcement of judgments provided for in the Federal Labour Law.

9.3 Awarding Attorney's Fees

Although Article 944 of the Federal Labour Law sets forth that "The expenses incurred in the enforcement of the award shall be borne by the party that fails to comply", the Mexican federal courts have agreed that this only refers to the costs of enforcement itself and does not extend to the concept of attorneys' fees involved in the lawsuit.

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Cannizzo, Ortíz y Asociados, S.C. was established in Mexico more than 40 years ago, and is an excellent gateway for doing business in Mexico, thanks to its international education and experience in the approach to legal practice and a deep understanding of the Mexican reality. The firm assists its clients in matters relating to employment relationships and the laws that regulate them. Its practice includes both individual and collective matters. It represents its clients in the negotiation and execution of collective bargaining agreements before labour unions and their corresponding deposit before the authorities. Its labour and employment team is ready to support its clients to be in compliance with the recent amendment of the Federal Labour Law, including the negotiation and execution of bargaining agreements according to the new provisions and the implementation of the protocol to prevent discrimination; and the future amendments of the outsourcing regulation in Mexico.

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Mauricio Moreno-Rey has extensive experience in various areas of law, which allows him to provide complete and high-level specialised advice in the areas of labour law, M&A, and corporate, advising domestic and foreign clients in conducting business and investments in Mexico and cross-border and multi-jurisdictional transactions. His vast experience, deep knowledge of the law, and detailed analysis and understanding of his clients' businesses allow him to complete complex corporate restructurings due to the new subcontracting regime in Mexico. Mauricio has participated directly in the development and implementation of elaborated labour policies of companies in Mexico, Central America and South America.

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