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Mexico: Law & Practice

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MEXICO

Law and Practice

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1. Introduction

1.1 Main Changes in the Past Year

In Mexico, the following amendments to labour law have been enacted in the last 12 months:

- In April 2022, the Mexican Senate unanimously ratified the International Labour Organization's Convention C190 (Violence and Harassment Convention) in order to put in place legal provisions and policy measures to prevent and address violence and harassment in the work environment. The ratification was published in the Official Federal Gazette on 6 April 2022. On 6 July 2022, the instrument of ratification was deposited before the International Labour Organization.
- In April 2022, a decree was published in the Official Federal Gazette through which a paragraph was added to Article 512 of the Federal Labour Law in order to recognise the use of technology and innovative work tools to reduce risks in the workplace.

No temporary legislative measures in employment matters were adopted as a consequence of the COVID-19 pandemic.

The most significant legislative action on labour issues that was likely taken to deal with certain consequences of the pandemic was the decree published in the Official Federal Gazette on 11 January 2021, by means of which Article 311 of the Federal Labour Law was amended and Chapter XII Bis of the same law was added, both on the matter of teleworking.

A definition of teleworking was added to refer to work usually performed at the employee's home or in a place freely chosen by the employee (the "Teleworking Domicile"), without the immediate supervision or direction of the employer, using primarily information and communication technologies to establish contact and control between the employer and the employee working under such modality.

The provisions added to the Federal Labour Law regarding teleworking by means of the reform apply to labour relations that are performed more than 40% at the Teleworking Domicile, while those that are performed only occasionally or sporadically at the Teleworking Domicile will not be considered as teleworking. For instance, if working at home is a consequence of an act of God or force majeure (as in the COVID-19 pandemic), it will be considered as occasional and, therefore, it will not be considered as teleworking.

2. Terms of Employment

2.1 Status of Employee

Although 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 (*empleados de confianza*). These are employees who perform management, inspection, supervision and oversight tasks, when they are of a general nature, or the personal work of the employer within the company or establishment. The category of trusted employees depends on the nature of the tasks performed and not on the name given to the position.
- Employees who render their services for a Mexican employer outside the national territory, for whom the Federal Labour Law provides special rights under Article 28.
- The Federal Labour Law contains several chapters addressing the status of various types of employees and providing specific rights and protections to each of them, for example, women workers, workers between

the ages of 15 and 18, trusted employees, employees working on ships, aircraft crew, railway workers, auto transport workers, public service freight manoeuvring workers, farm workers, commercial agents, professional sportspersons, musicians and actors, domestic workers, teleworkers, mine workers, workers in hotels, restaurants, bars and other similar establishments, workers in a family industry, doctors, workers in educational institutions, among others.
- Employees employed for a specific task, whether for a fixed term, seasonally or for an 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*), which may only be agreed upon when its nature so requires; (ii) for a fixed term (*por tiempo determinado*), which may only be agreed upon when required by the nature of the work to be performed, when the purpose thereof is to temporarily replace another employee, and in other cases provided by the Federal Labour Law (for example, the duration of labour relationships for the exploitation of mines lacking profitable minerals or for the restoration of abandoned mines or mines at a standstill may be agreed upon for a specific task, for a fixed term or for the investment of specific capital); (iii) seasonal (*por temporada*); and (iv) for an indefinite term (*por tiempo indeterminado*). The last of these, in turn, may be subject to a probation period (*prueba*) or initial training (*capacitación inicial*).

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

In terms of the Federal Labour Law, working conditions must be agreed in writing if there is no applicable collective bargaining agreement in place, and such a document must be executed in at least two counterparts, one for each party. The document must contain at least the following:

- name, nationality, age, sex, marital status, Unique Population Registry Code (*Clave Única de Registro de Población*, or CURP), Federal Taxpayer Registry Code and address of the employee and the employer;
- whether the employment relationship is for a specific task or term, seasonal, or for an indefinite term and, if so, whether it is subject to an initial training period or probation period;
- the service or services to be rendered, which shall be specified as accurately as possible;
- the place or places where the work is to be performed;
- the duration of the workday;
- the form and amount of the salary;
- the day and place of payment of the salary;
- the specification that the employee will be trained in accordance with 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 between the employee and the employer; and
- designation of beneficiaries for the payment of wages and benefits accrued but not collected prior to the death or disappearance of the employee.

The lack of a written labour agreement does not prevent the employee from exercising his/her rights derived from the applicable labour provisions and from the services rendered and shall not be interpreted as the lack of existence of a labour relationship, as this formality is considered the responsibility of the employer.

2.3 Working Hours

Although the employer and the employee may agree on the duration of the workday, in no case may it exceed the legal limits.

The legal limits are: (i) for a day shift, ie, between 6am and 8pm, eight hours per day; (ii) for a night shift, ie, between 8pm and 6am, seven hours per day; and (iii) for a mixed shift, ie, comprising both 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 workday, the employee must be granted a period of 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 counted as effective time of the workday.

Regarding overtime, the law provides that the workday may be extended in extraordinary circumstances, but by no more than three hours per day and three times in a week. These hours of extraordinary work must be paid 100% more than the salary corresponding to the hours of the ordinary workday. In the event that the extraordinary work exceeds nine hours per week, the employer must pay 200% more than the salary corresponding to the hours of the ordinary workday, without prejudice to the applicable sanctions for doing so.

Although there is no specific regulation for part-time contracts, according to the law, the employee and the employer may freely allocate the working hours and they may do so in a way that allows the employee to rest on Saturday afternoon, or any equivalent modality.

2.4 Compensation

In Mexico, the minimum wage (*salario mínimo*) is the minimum guaranteed amount that an employee is entitled to receive in cash for services rendered in a workday.

The minimum wages in Mexico are determined by the National Minimum Wages Commission (*Comisión Nacional de los Salarios Mínimos*) (made up of representatives of employees, employers and the government), whose most recent resolution was issued on 1 December 2021 and published in the Official Federal Gazette on 8 December 2021. Such resolution contains the general minimum wages (applicable to all employees working in a certain geographic area or areas, regardless of the branches of economic activity, professions, trades or special jobs) and the professional minimum wages (applicable to all employees working in certain branches of economic activity, professions, trades or special jobs in a certain geographic area or areas) in force in two geographic areas into which Mexico has been divided for purposes of the application of such minimum wages: (i) the 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 force for 2022 in the Northern Border Free Zone is MXN260.34, while in the rest of the country it is MXN172.87.

The annual determination of minimum wages, or the revision thereof, in terms of the law, may never be below the inflation accrued during the period elapsed from its last revision.

Wages, in general terms, are protected by legal provisions, including those prohibiting, for example, the minimum wage from being subject to offset (*compensación*), discount or reduction, except in certain cases, and those establishing that the wages that are to be paid in cash must be paid in legal tender and that the currency may not be substituted by merchandise, vouchers, tokens or other items.

Employees are entitled to a Christmas bonus which, pursuant to the Federal Labour Law, must be paid before 20 December to employees who have completed one year of service and must be equal to at least 15 days of salary. Those employees who have not completed one year of service are entitled to be paid the proportional part of the bonus.

Furthermore, employees are entitled to participate in the profits of enterprises (*Participación de los Trabajadores en las Utilidades*, or PTU) in accordance with the percentage determined by the National Commission for the Participation of Employees in the Profits of Enterprises (*Comisión Nacional para la Participación de los Trabajadores en las Utilidades de las Empresas*). Such percentage, as determined by the Commission, is currently 10% of the employer's annual profits. The basis for the calculation of the annual PTU payable to the employees of an enterprise is determined by the profit of such enterprise as calculated in accordance with the Income Tax Law in Mexico and currently takes into account the taxable profit of the employer during a tax year. However, certain adjustments are made in accordance with Article 16 of the Income Tax Law in order to calculate the basis for PTU (for example, for PTU purposes, dividends received by the company from other corporations are considered as profits, among others). Therefore, there might be a difference between the actual taxable income and the basis for the PTU.

The amount of PTU to be distributed among the employees is divided into two equal shares. The first one takes into account the days worked by each employee during the year, regardless of the amount of his/her salary, while the second share is distributed in proportion to the amount of the salary paid in relation to the work performed during the year.

Directors, administrators and general managers are not entitled to any PTU payment. Each non-unionised employee is entitled to a PTU payment; however, if his/her salary is higher than the highest salary of the unionised employees, such highest salary, increased by 20%, shall be taken into account as a maximum limit for the purpose of calculating the PTU payment.

In addition to the foregoing, according to the last reform to the Federal Labour Law dated 23 April 2021, the PTU payable to each employee cannot be higher than (i) three months of his/her current salary or (ii) the average of the PTU paid to such employee during the last three years, whichever is higher.

The following enterprises have no obligation to pay any PTU: (i) those newly incorporated, in relation to the first year; (ii) those developing new products, in relation to the first two years; and (iii) decentralised public institutions with assistance, charitable or cultural purposes, among others.

Additional incentives such as bonuses or punctuality or attendance premiums are neither mandatory nor regulated by law but can be freely included in employment agreements.

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 be increased by two working days for each subsequent year of service, until it reaches 12 days. After the fourth year, the vacation period will be increased by two working days for every five years of service.

The labour law clearly provides that vacations cannot be compensated with remuneration.

Employees are entitled to a bonus (*prima vacacional*) of no less than 25% of the wages payable during the vacation period.

Leave

Pursuant to the Federal Labour Law, women are entitled to the following types of leave.

- A six-week paid leave 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 childbirth, upon presentation of the corresponding medical certificate, in the event that the child was born with any type of disability or requires hospital medical care.
- In case of adoption of an infant, the woman shall enjoy a six-week paid leave following the day on which she receives the child.

For male employees, the law only sets forth that the employer must grant them paid paternity leave of five working days 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 accident or occupational 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 occupational accident and by occupational illness, namely, an occupational accident is any organic injury or functional disturbance, whether immediate or subsequent, or 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 is travelling directly from his/her home to the workplace and vice versa), whereas an occupational illness is any pathological condition resulting from the action over a longer period of time of a cause having its origin in the work or in the environment in which the employee must render his/her services.

Confidentiality and Non-disparagement Requirements

The Federal Labour Law does not expressly regulate the confidentiality obligations that an employee must comply with before his/her employer; these are usually included in the labour agreements entered into between the parties. In this type of agreement, it is usually agreed that the confidentiality obligation of the employee will last for a certain term after the termination of his/her employment relationship with the employer.

However, the employee's obligation of confidentiality towards the employer might be interpreted as included in Article 47 of the Federal Labour Law, which provides the employer the right to terminate the employment relationship without liability, among others, if the employee commits, during his/her work, any breach of probity or honesty against the employer, his/her relatives or the management or administrative personnel of the company or establishment, or against the employer's customers and suppliers, as well as if the employee reveals trade secrets or discloses matters of a confidential nature, to the detriment of the company, or similar acts.

In addition, the Federal Law for the Protection of Industrial Property (*Ley Federal de Protección a la Propiedad Industrial*) defines as industrial secrets any information of industrial or commercial application which is kept confidential by the person exercising legal control over it, and implies 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. Such law could be applied to employees who misappropriate any industrial secret or intellectual property of their employer. Misappropriation is understood as the acquisition, use or disclosure of any industrial secret in a manner contrary to good industrial commercial and service customs and practices, that involves unfair competition. It may also be applied to any third party that acquires, uses or discloses an industrial secret if it 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, clauses included in a contract by which a person undertakes the obligation not to compete in a certain market or activity with another person, are not provided for in Mexican labour law; however, they may be agreed between the parties in employment agreements or separate non-compete agreements.

The consequence of breaching a non-compete clause is usually the obligation to compensate or indemnify the affected party with the amount of the damages caused to it, with the amount to be determined by the relevant judicial authority. Regarding non-compete obligations, it is important to keep in mind that in Mexico the protection of damages might be limited, contrary to what happens in other countries. In Mexico, it might be difficult to prove liability arising from a non-compete violation and the specific damages arising from this violation. Even when the violation and damages are proved, Mexican courts usually do not impose exemplary penalties or remedies as happens in other jurisdictions.

Given the difficulty of evidencing before the judicial authority a causal relationship between the conduct performed, ie, the breach of a non-compete obligation, and the damages suffered by the affected party, it is usual to include in non-compete agreements stipulations obliging the breaching party to pay a certain amount in the event of breach, ie, pre-quantified damages.

The enforceability of this type of non-compete obligation is usually approached from two perspectives.

- Constitutional, since such obligations have been considered a violation of the right to freedom of work. The Mexican Constitution states that no person may be prevented from performing his/her choice of work, provided that it is lawful, except by means of a judicial resolution, and that any agreement by virtue of which an individual temporarily or permanently waives the right to pursue a certain profession, industry or trade may not be allowed. Therefore, it will be important to consider certain requirements and characteristics when drafting the non-compete obligations that employers may require, so that they do not constitute a waiver of the right to perform, throughout the national territory, any given profession, industry, work or trade.
- Economic competition, since the obligation not to compete may be considered a monopolistic practice. Regarding this aspect, COFECE, the Mexican 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 can be legally agreed between the parties in employment agreements or in separate non-solicitation agreements.

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

Given the difficulty of evidencing before the judicial authority a causal relationship between the conduct performed, ie, the breach of a non-solicitation obligation, and the damages suffered by the affected party, it is common to include in the non-solicitation agreement stipulations obliging the breaching party to pay a certain amount in the event of breach, ie, pre-quantified damages.

The enforceability of this type of non-solicitation obligation, as well as non-compete obligations, may be challenged for their alleged unconstitutionality, since they may be considered as violating Article 5 of the Mexican Constitution, which states that no person may be prevented from performing his/her choice of work, provided that it is lawful, and such right may only be banned by judicial resolution, when third parties' rights are infringed, or by government order, issued according to the law when society's rights are infringed, ie, to substitute workers participating in a legally declared strike or if the workers against a strike intend to keep working for the duration of the strike.

4. Data Privacy Law

4.1 General Overview

In Mexico, there are different personal data protection laws whose application depends on the data subject being regulated. 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 above-mentioned law, those persons processing data have the obligation to protect the personal data they process, to respect the principles set forth in the law, namely legality, consent, information, quality, purpose, loyalty and proportionality, and to respect the right of the individuals whose data is being processed 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 obligations towards employees with respect to the protection of their personal data arising from the above-mentioned law, the employer also has the obligation to protect personal data with respect to other data subjects, such as prospective employees, clients, suppliers, partners, 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 any enterprise or establishment, the employer must employ at least 90% Mexican employees;
- in the categories of technicians and professionals, the employees must all be Mexicans, unless there are not enough Mexicans who possess a given specialism, in which case the employer may temporarily employ foreign employees, in a proportion not exceeding 10% of those engaged in that specialism. In any case, the employer and the foreign employees will have the joint obligation to train Mexican employees in the relevant specialism; and
- the physicians at the service of the enterprises must be Mexican.

5.2 Registration Requirements

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

In addition to the foregoing, a foreign individual rendering services to a Mexican employer must hold an immigration document evidencing his/her legal right to stay in the country. The procedure for obtaining such a document is usually carried out by the employer with the intervention of the foreign individual.

The status under which foreign individuals usually stay in Mexico is that of temporary resident (*residente temporal*), which authorises them to stay in the country for a period no longer than four years. Temporary residents may obtain a work permit, subject to an offer of employment, which will give them the right to work in the country and enter and leave the national territory as many times as they wish, as well as the right to preserve the family unit; ie, a foreign individual may enter with, or eventually request access for, his/her parents, spouse, concubine, children or spouse's or concubine's children, as long as they are minors, are not married or if they are under his/her tutelage.

6. Collective Relations

6.1 Status/Role of Unions

Labour unions in Mexico are understood as associations of employees that are formed for the study, improvement and defence of their interests. Both employers and employees 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 only condition of observing their corresponding by-laws.

Both types of unions enjoy protection under the law against any act of interference between them relating to their formation, operation or administration. Any action or measure to promote the formation of employees' organisations with the purpose of placing them under the employer's control is considered an act of interference.

In 2018, Mexico ratified Convention C098 (Right to Organise and Collective Bargaining Convention) of the International Labour Organization concerning the application of the principles of the right to organise and collective 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, amended several provisions on labour union matters, including aspects relating to freedom of association and effective representation, particularly regarding the introduction of a prohibition of employees' unions created or controlled by employers to be used for their own protection, which used to be a common practice. This constitutional reform led to additional secondary reforms of labour provisions in 2019.

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

6.2 Employee Representative Bodies

The role of employees' unions is to study, defend and improve the interests of their members. Their incorporation must be made before the Federal Centre for Labour Conciliation and Registration (*Centro Federal de Conciliación y Registro Laboral*, or CFCRL). Unions, as well as collective bargaining agreements and the agreements and regulations entered into between employers and employees, must be registered before the CFCRL. A union registers itself by submitting several documents, including a copy of the minutes of the incorporation meeting, a list containing the names, telephone numbers, CURP numbers and addresses of its members, an authorised copy of the by-laws and an authorised copy of the minutes of the meeting in which the board of directors was appointed.

Local and federal Conciliation Centres are authorised to carry out labour conciliations between employers and unions. Previously, this used to be the competence of the local and federal Conciliation and Arbitration Boards.

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 employers' unions, to set forth the conditions under which work is to be performed at one or more companies or establishments.

If an employer refuses to sign the agreement, its 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 obtain "Evidence of Representation" (*Constancia de Representatividad*), which is 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 three counterparts. One copy must be delivered to each of the parties and the other copy must be deposited with the CFCRL.

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 CFCRL verifies that its content has been approved through a personal, free and secret vote by the majority of the employees the agreement refers to. In this sense, one of the relevant effects of the reforms of 2019 referred to in **6.1 Status/Role of Unions** is that employees are authorised to join a union, federation

or confederation and to be consulted through personal, free, secret and direct vote for, among other things, the union to sign initial collective bargaining agreements, and to approve amendments and revisions to those collective bargaining agreements, 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 causes of termination of labour relationships.

- The grounds for termination provided by law (Article 53 of the Federal Labour 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 perform the work.
- Causes that, pursuant to Article 47 of the Federal Labour Law, entitle the employer to dismiss the employee without any liability (without paying in the employee's favour the corresponding severance). The employer who dismisses an employee must give written notice clearly stating the conduct or conducts that motivated the termination and the date or dates on which they were committed, delivering the notice personally to the employee at the moment of dismissal or, alternatively, communicating it to the competent court, in which case the employer must provide the employee's last registered address in order to allow the authority to notify the employee. If in the corresponding legal procedure, the employer does not prove the causes of the termination, the employee will be entitled to request his/her reinstatement in the job he/she was performing, or the corresponding compensation, and to be paid the wages overdue calculated from the date of the dismissal for a maximum period of 12 months and, if applicable, the corresponding interest.
- Causes that, pursuant to Article 51 of the Federal Labour Law, entitle the employee to terminate the labour relationship without any liability. The employee has 30 days following the date on which any of the causes mentioned in Article 51 occurs, to terminate the labour relationship, and he/she 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 of force majeure or acts of God not attributable to the employer, or the employer's physical or mental incapacity or death, which produce as a necessary, immediate and direct consequence, the suspension of works; the manifest unprofitability of the operation; the exhaustion of the material object of an extractive industry; the legally declared insolvency or bankruptcy of the employer, if as a result the definitive closure of the company or the definitive reduction of its work is decided by resolution; and some additional specific events for certain industries.

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

7.2 Notice Periods/Severance

Notices and Formalities

As discussed in **7.1 Grounds for Termination**, an employer that dismisses an employee based on any of the grounds for termination mentioned in Article 47 of the Federal Labour Law must

give written notice clearly stating the conduct(s) that motivated the termination and the date(s) on which they were committed, delivering the notice personally to the employee at the moment of 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 in order to allow the authority to notify the employee.

In case of occurrence of any of the causes mentioned in Article 51 of the Federal Labour Law, the employee may terminate the labour relationship within 30 days following the date on which any of those causes occurs.

Severance Payment
Those employees who voluntarily terminate their employment relationship or who are terminated with justified grounds for dismissal, are entitled only to a settlement payment (*finiquito*) comprising the proportional amounts accrued for the work rendered in favour of the employer (eg, salary up to the date of termination, vacations not taken, vacation bonus, proportional Christmas bonus, etc), without being entitled to any 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 (ie, comprising payments made in cash for daily work, gratuities, bonuses, room and board, commissions, benefits in kind and any other amount or benefit given to employees for their work), as well as a 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 the seniority premium.

Finally, it should be noted that in the event of an unjustified dismissal of an employee, he/she will be entitled to demand before the local or federal labour authority reinstatement in his/her job under the same terms and conditions under which he/she had been working, as well as the payment of wages due for a maximum period of 12 months and, if applicable, corresponding interest thereon. Failure to comply or the 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 set forth in the law have occurred, and to determine how they may be proven in an eventual labour proceeding initiated by the employee, as well as for the calculation of the amounts to be paid in his/her favour due to the termination and, finally, to determine the manner in which it is advisable to document the termination of the labour relationship.

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 set out in **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) is the mutual consent of the parties; therefore, termination agreements signed by both employer and employee are permitted and a common practice.

Although there are no specific formalities or requirements with which these agreements must comply, taking an approach arising from a systematic interpretation of several articles of the Federal Labour Law, the common practice

is that such agreements usually include mutual release of liability for both parties. In addition, such agreements must be executed in writing and ratified before the Board of Conciliation and Arbitration.

7.5 Protected Employees

In Mexico, there are no specific categories of employees who cannot be dismissed.

8. Employment Disputes

8.1 Wrongful Dismissal Claims

In the event that the employer does not prove the existence any of the grounds for justified termination of the labour relationship, the employee will be entitled to demand before the competent labour authority, the reinstatement in his/her job (or, as the case may be, the payment of the corresponding severance), the payment of wages due for up to a maximum period of 12 months, plus the corresponding interest thereon, if applicable, the payment of seniority premium, vacations not enjoyed by the employee, vacation bonus, 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, employers may not establish any conditions that may result in discrimination among employees based on ethnic or national origin, gender, age, disability, social status, health conditions, religion, immigration status, opinions, sexual preferences or marital status, or any other condition that violates human dignity. Therefore, neither employers nor their representatives may refuse to hire employees on the basis of the above-mentioned grounds for discrimination.

In addition, other laws contain other types of obligations to prevent and eradicate discrimination in the workplace, for example, the Federal Law to Prevent and Eliminate Discrimination (*Ley Federal Para Prevenir y Eliminar La Discriminación*), which states that it is considered discriminatory to establish differences in remuneration, benefits or working conditions for equivalent jobs.

In case of violation of the above, the corresponding authority may impose a fine ranging from 250 to 5,000 times the Unit of Measurement and Update, ie, between approximately USD1,170 and USD23,600.

It should be noted that, to impose the corresponding sanctions, the authority must consider several issues, such as the seriousness of the discriminatory conduct or social practice; the concurrence of two or more causes or forms of discrimination; recidivism, ie, when the same person commits the same, a similar or a new violation of the right to non-discrimination, 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 specialised 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 by a reform to the Federal Labour Law that set forth the parameters for the creation of labour courts and initially 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 tried 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 legitimised 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 wish to start a labour dispute must, in most cases, before going to the labour courts, attend a conciliation procedure. The conciliation procedure will be carried out by federal or local conciliation centres.

If a conciliation agreement is executed, it will have the status of res judicata and the quality of a title to start 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 ruled that this only refers to the costs of enforcement itself and does not extend to the attorney's fees incurred during the lawsuit.

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 experience in approaching legal practice and its deep understanding of the Mexican reality. The firm assists its clients with matters relating to employment relationships and the laws regulating them. Its practice comprises both individual and collective matters. It also represents its clients in the negotiation and execution of collective bargaining agreements with labour unions and the corresponding filing before the competent authorities. Its labour and employment team is ready and able to support its clients to be in compliance with the recent amendments to the Federal Labour Law, including the negotiation and execution of bargaining agreements under the new provisions, as well as in the actions required to address the recent amendments to outsourcing regulation in Mexico.

Authors

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