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XVI Labor and employment matters in Mexico

The Federal Labor Law of 1970 governs all aspects of the employer-employee relationships, including collective bargaining, the right to strike, minimum wage rates, work hours, compensation, and occupational health and safety. The law establishes employee rights that go well beyond those provided in many industrialized countries. For example, employees are entitled to 10 percent mandatory profit sharing, may only be dismissed for a limited number of justifiable causes, and enjoy the right to severance pay and seniority pay upon unjustified dismissal.

State labor boards may enforce the Federal Labor Law within their jurisdiction, except for specific cases in which the federal government maintains exclusive enforcement jurisdiction.

Any person rendering services to another individual or entity is considered an employee if that person works under the supervision of, or is subordinate to, the contracting individual or entity. Care must be exercised in drafting service agreements where the parties' intent is to not form an employment relationship.

In the acquisition of an on-going business, the purchaser becomes a substitute employer for the seller, and acquires all the seller's labor obligations. The purchaser and seller remain jointly liable for labor obligations for six months after acknowledgment by employees of the notice of the transfer.

A. Unions

The law provides that groups of 20 or more employees may form a labor union regardless of whether they are employees of the same company. If a company has fewer than 20 employees, its employees may affiliate with another union and request the company to enter into collective bargaining. Labor unions are particularly strong in the oil, petrochemical, mining, education, banking, transportation, entertainment, textile, restaurant, electric energy, soft drink, automobile, and communications industries. The largest and most influential group of labor unions in Mexico is the Confederation of Mexican Workers (CTM).

Strikes are recognized and protected by law as a tool available for workers to obtain improved benefits and working conditions. Although legally, the labor authorities may only resolve a strike on its legality once it has started, they may intervene in labor disputes in order to prevent strikes.

B. Foreign employees

Pursuant to the law, at least 90 percent of a company's employees must be Mexican nationals, except for directors, administrators, and other managerial-level employees. In practice, this rule is not significant since foreign nationals require proper immigration documentation in order to be employed, and such immigration authorizations are normally restricted to upper level positions.

Foreign personnel are subject to the same legal requirements as Mexican employees and are treated equally with regard to both benefits and sanctions.

C. General labor regulations

1. Individual employment contracts

It is mandatory for employers to execute individual employment agreements in writing. The law protects employees' job stability, and therefore, their contracts are usually entered

into for an indefinite term. Nevertheless, hiring for a definite term for a specific project is permitted provided that the nature of the job is truly temporary.

2. Wages

With the exception of the minimum wage, the government is not empowered to mandate salary increases. The National Minimum Wage Commission periodically -usually annually- reviews and sets the minimum wage rate by geographical area. At present, the daily minimum wage in Mexico City is approximately US\$4.00. The Commission also sets specific ranges of minimum wage rates for a number of occupations.

3. Working hours

Under the Federal Labor Law, the maximum work week is determined depending upon the work shift. There are three types of work shifts:

a) Day shift - From 06:00 A.M. to 08:00 P.M., with a maximum of 48 eight hours per week.

b) Night shift - From 08:00 P.M. to 06:00 A.M., with a maximum of 42 two hours per week.

c) Composite shift - Includes hours of the day and night shifts. The night shift hours may not exceed three and a half hours. If there are more night hours, it then becomes a night shift. The maximum number of hours permitted per week is 48. Workers are entitled to at least one thirty minute break.

4. Rate of overtime

Workers are entitled to double pay for the first nine hours of overtime worked in a given week; overtime exceeding this limit must be paid at three times the rate paid during normal work hours.

If workers render their services on their day of rest, they are entitled to double pay plus their salary corresponding to that rest day. If workers render their normal services on Sunday, they are entitled to a 25 percent premium for the workday.

5. Rest days

Workers shall enjoy one fully paid day of rest for each six days of work. Saturday working hours may be spread among the other weekly working days.

Compulsory holidays are observed on January 1st, First Monday of February, Third Monday of March, May 1st, September 16, Third Monday of November, December 1st every six years, December 25, and the day fixed by the Elections Law to exercise the right to vote.

6. Safety and health care

The law places special importance on safety and health care in the work place. Therefore, there are a number of administrative regulations that exist with which employers must comply. Such health and safety regulations are occasionally amended.

7. Job-related risks

All job-related risks are the responsibility of the employer, where job-related risk is

defined as risks to which an employee is exposed as a result of, or while performing, his particular occupation or job. In localities where the Social Security System operates, employees must be insured against these types of risks. In localities where the Social Security System does not yet operate (which are increasingly fewer), employers are required to directly pay employees and their beneficiaries the indemnities provided in the law.

8. Termination of employment contracts

An employer may justifiably dismiss an employee without liability only if the employee commits any of the acts enumerated in the law. Such acts include dishonesty, mistreatment of employer, insubordination, disobedience, disclosure of trade secrets, or having more than three unjustified absences within any 30 day period.

The employer dismissing an employee with cause is bound by law to deliver him a notice in writing stating both the grounds for dismissal and the date of termination.

Should the employee refuse to receive the written notice of dismissal, the employer must, within 5 days of such refusal, notify the Labor Board and request that the Board to serve notice of the dismissal to the employee at his registered home address.

In cases of unjustified dismissal, employees are entitled to demand either reinstatement or payment of an indemnity equal to 3 months' salary, seniority premium, back pay, and the outstanding balance of any earned and unpaid benefits. Moreover, if the employer fails to prove in court that there were sufficient cause for dismissal and that employer complied with the notice formalities for dismissal, the employer will be required by law to pay to the employee back wages from the time of dismissal to the date of the judgment, including any salary increase that the employee might have been entitled to (for example, under a labor contract, etc.).

In the case of employees with less than one year's seniority; confidential employees, house servants, part-time employees, and employees having direct and permanent contact with the employer, the law grants the employer the privilege to refuse reinstatement of the employee, and instead allows the employer to pay the employee an indemnity equal to 20 days' salary per year of services, in addition to the 3 months' salary indemnity. This option, however, is available only with the approval of the Labor Board.

Although the indemnity of 20 days' salary per year of services technically applies only in the foregoing cases, in general practice, such payment is incorporated into the proposed severance package to make it attractive to the employee, and thus prevent a lawsuit for reinstatement. However, if the employee rejects the payment and demands to be reinstated, and does not fall under any of the five aforementioned employee categories, he is entitled to be reinstated regardless of the amount of money offered to him by the employer.

According to the law, the basis for calculation of the indemnity payments is the "integrated salary," because it results from adding to the base salary the proportional part of all other benefits such as bonuses, commissions, Christmas bonus, and vacation premium.

In addition to the indemnity payments, employees must also be paid any earned and unpaid benefits they may be entitled to, such as salaries, vacation days, vacation premium, and Christmas bonus. Among the benefits requiring indemnity payment is a seniority premium consisting of 12 days' salary per year of service, calculated on a basis limited to twice the general minimum salary in force in the location of the employment.

An employee may claim termination of his employment contract if the employer commits any of the acts listed in the law. Such acts include insults, salary reductions, or unilateral modification of existing conditions of employment. If the employee proves in court that the employer committed any of these acts, the employee will be entitled to payment of 3 months' salary, plus 20 days' salary per year of service, seniority premium, back pay, and the outstanding balance of any earned and unpaid benefits.

Employees may voluntarily resign their job at any time without any liability on their part and without any obligation to advise the employer in advance.

An employee voluntarily terminating his employment is only entitled to payment of the outstanding balance of any earned and unpaid benefits. Exclusively in the case of

employment for more than 15 years, the employee will be entitled to payment of a seniority premium, which as previously discussed, is equal to 12 days' salary per year of service, calculated on a salary basis, limited to twice the amount of the current minimum salary.

9. Benefits

Fringe benefits are high relative to total payroll costs. Employee benefits are compulsory under the Labor Law. The most significant mandatory fringe benefits are the following:

a) Paid vacations

After one year of employment, an employee is entitled to a paid vacation period of 6 working days, which increases by 2 days for each during the next 3 years of service. Thereafter, the vacation period increases by 2 days for every additional 5 years of service.

Years of Service	No of vacation days
1	6
2	8
3	10
4	12
5 to 9	14
etc.	

Workers are entitled to a vacation premium in addition to their vacation days' salaries in an amount equal to 25 percent of their daily wages.

b) Christmas bonus

Employees are entitled to an annual bonus of not less than 15 days' salary payable before December 20.

c) Housing fund

Employers must contribute 5 percent of payroll to the National Workers' Housing Fund Institute. At this time, the base salary for contributions has a cap of 24 times the minimum daily wage in Mexico City. This cap will rise annually until it reaches 25 times the minimum daily wage. The housing contribution and the social security payments into pensions and retirement funds are part of the Retirement Savings Plan. Employees may use the funds to purchase, repair, or remodel their homes, based on a preference policy followed by the Institute. The net fund balance, if any, will be paid to the employee in the case of total disability, retirement, or death.

d) Profit sharing

Profit sharing is compulsory for all businesses, regardless of size or organizational structure (i.e. whether organized as a partnership, corporation, or sole proprietorship). Employees are entitled to receive an amount equal to the percentage determined by the National Commission on Profit-Sharing. This percentage currently amounts to 10 percent of the taxable income as calculated for income tax purposes under the terms of the Income Tax Law.

In businesses whose income is derived exclusively from personal services, the amount of profit share is capped at one month's salary.

The mandatory profit sharing does not apply in the following cases:

- i)* Newly established entities, during the first year of operation;
- ii)* Newly established entities engaged in manufacturing a new product, during the first two years in operation;
- iii)* Entities engaged in mining, during the exploration period;
- iv)* Public and private welfare institutions; and
- v)* Businesses whose capital and/or gross income do not meet certain minimums established by the Ministry of Labor.

Distribution of profit-sharing must be made no later than May 30 of the following year.

The officer with the highest level of authority is not entitled to participate in the compulsory profit-sharing program for workers. Employees holding confidential positions will have a share in the company's profits; however, if their salary is higher than that of the highest paid unionized worker (or in the absence of a union, the highest-paid non-confidential worker), such salary plus 20 percent will be considered as the maximum salary for profit sharing. The distribution is made on the basis of salary earned and days worked during the fiscal year. Temporary workers shall be entitled to their share of the profits, provided they have worked at least 60 days during the respective year.

10. Social security

All employers must register themselves and their employees with the government Social Security Agency known as IMSS (its acronym in Spanish). Social security dues are paid by both the employer and the employee (via withholding) every month, taking as a basis the daily salary received by the employees. This contribution basis generally is capped at 25 times the minimum wage. Social security benefits cover job-related risks, general illnesses and maternity, disability and life, retirement, old age and unemployment at an advanced age, children's nurseries, and social benefits.

IMSS maintains medical clinics and hospital facilities throughout Mexico and provides services free of charge to eligible employees and their families. IMSS subsidizes 100 percent of an employee's salary in the event of temporary disability due to a job-related accident or illness, and 60 percent of the salary in case of general accidents or illnesses. Employees may receive a pension in the event of permanent disability, and heirs may also receive a pension in the event of death of the employee.

An employee may obtain pension benefits upon retirement at age 60. There is no legal mandatory retirement age.

The new Law that took effect on July, 1997, introduced important modifications to the Social security system, the most relevant of which involves the replacement of the administrative system for employee retirement funds that had been controlled by the IMSS since its commencement in 1943. As of July 1997, such funds are administered by private, specialized financial entities known as AFORES (their acronym in Spanish).

To this effect a complex network of organizations, rules and related procedures have been created to extend the Retirement Savings System, known in Mexico as SAR. The system's main emphasis is in the individualization of retirement accounts for workers. The funds in the individual accounts are invested by specialized subsidiaries of the AFORES.

Social security contributions are of a tax nature. Penalties for employers' noncompliance with contribution payment requirements include fines from 40 percent to 100 percent of omitted payments, along with updating and delayed-payment surcharges.