Towards a new labor paradigm in Mexico

Introduction to the labor reform of May 2019

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INTRODUCTION

In the context of the renegotiations of the North America Free Trade Agreement, the Mexican federal government commanded at the time by president Peña, initiated the works towards the drafting of an integral amendment of the labor legal framework, which would have to be updated pursuant to the international commitments that Mexico would undertake under the new tripartite agreement. Therefore, the reform finds its original foundation in the constitutional amendment proposed in 2016 and promulgated in 2017,as well as in the terms of the Convention 98 of the International Labour Organization (ILO), approved by the Senate in 2018, related to the right to organize and to bargain collectively.

It is true that the approval of the new United States, Mexico and Canada Agreement (USMCA), entered into force in November 2018, just a few days before president Lopez Obrador took office, had a significant influence in the characterization of the new labor legislation, which approval and promulgation culminates under the new federal government and, therefore, has been amended to meet the doctrinarian premises of the current government.

As never before, the start of a federal administration in Mexico represents a challenge to the industry and commerce. Such challenges are no strange to the labor sector: the distortions in the employment market, the promotion to informal work and the poor levels of education and training are all worrying in the complex landscape of the current federal administration.

Many private, union, sectorial and international institutions have pointed out the urgent need to strengthen the Mexican productive workforce by promoting access to the formal employment (including the reduction to labor and work based taxation); the strengthening of the social security institutions to increase the offer of services and the amount of beneficiaries; fostering equality between men and women to incentivize the access of equal number of women to the productive workforce; and finally, indexing the minimum wages to variables from formal markets (as opposed to indexing to national economic references), seeking a real correlation between the minimum wages and the average raises frosm the collective bargaining of the private sector.

With the above in mind, the labor reform being promulgated, shall provide the grounds of a new paradigm in Mexico's productive sectors, while serving as impulse to meet the goals and metrics committed in the international agreements.

AMENDMENTS TO THE FEDERAL LABOR LAW: A SUMMARY

With some exceptions, these amendments will enter into force in May of 2019.

LABOR COURTS

The current Boards of Conciliation and Arbitration, which are part of the federal and local executive branches, are substituted by labor courts, which will be part of the federal and state judiciaries. Once the labor courts begin to function, which will be within four years for federal courts and three years for state courts, they will be in charge of resolving labor disputes in accordance with the new procedural rules.

FREEDOM TO UNIONIZE

Workers will be free to form organizations as they see fit.
Employers are forbidden from forcing workers to belong to any union, from interfering in the unions' business or subjecting them to any form of control.
Elections of union leaders will be democratic; union members will each issue their direct, individual, free and secret vote.

REGISTRATION OF UNIONS AND MANDATORY PRE-TRIAL CONCILIATION.

All unions must be registered before a new federal governmental agency called Federal Center for Conciliation and Labor Registration.

Registration of unions before this entity will begin within the next two years.
Pre-trial conciliation is mandatory in most cases. For federal matters, the Federal Center for Conciliation mentioned above will be in charge of this conciliation; each state will create a Conciliation Center which will do the same at the state level.
The Federal Center for Conciliation and Labor Registration will begin its conciliation work within a maximum of four years, while state Conciliation Centers will start to function within three years.

UNIONS

The Federal Center for Conciliation and Labor Registration will have an Internet site, where the by laws and all documents pertaining to the registration of each union will be available.
Unions are prohibited from participating in schemes that have the purpose of avoiding compliance with employers' obligations, and from carrying out acts of extortion against employers. This provision is meant to address the problem posed by unions which sometimes threaten companies with calls to strike with the sole purpose of extorting money and without any representation of workers.

COLLECTIVE BARGAINING AGREEMENTS

Unions must prove that they have the workers' support whenever a request is made to enter into a collective bargaining agreement.
The union must obtain from the Center for Conciliation and Labor Registration a certificate evidencing that it represents at least 30% of the workers to be covered by the collective bargaining agreement.
Agreements between unions and employers to end a collective bargaining agreement will be subject to the prior approval of the majority of workers.

Registration of collective bargaining agreements and their amendments are to be subject to the condition that the authority has confirmed that the content of the document has been approved by the workers voting individually, freely and in secret.
All collective bargaining agreements that are currently in force shall be subject are to be review at least once during the four years following the month of May 2019. The Center for Conciliation and Labor Registration will verify that each collective bargaining agreement and its reviews or amendments have been delivered to the workers and approved by them.

RIGHT TO DEPOSIT SEVERANCE WITH COURT

Employers that lawfully refuse to reinstate employees such as managers and employees with less than one year's seniority, will have the right to deposit the sum of the corresponding severance with

the labor Court. This provides a viable solution in those cases where severance is not voluntarily accepted by the employee or where for any other reason, it is not possible to deliver the severance payment.

STRIKE

Provided that at least 60 days have passed since the beginning of a strike, employers have the right to request that the labor court determines whether the strike is the responsibility of the employer or of the workers. In the latter case, the consequence would be the end of the strike.

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