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# Employment 2022

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## **Mexico: Trends & Developments**

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## Trends and Developments

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### Introduction

Changes to Mexican labour law have had a significant impact on businesses, job creation and competitiveness. While the country is recovering from the effects of the COVID-19 virus, there are still important challenges for companies adapting to a continuously changing labour landscape. The United States of America has extensively exercised its right to file claims under the Rapid Response Labor Mechanism, under the United States – Mexico – Canada Agreement (USMCA), and as a result there has been a significant financial and organisational impact on companies and their operations in Mexico. These examples are shaping the new labour relations that business needs to embrace with respect to workers, unions and new regulatory authorities, as well as a whole new judicial system for labour and employment matters.

Further regulation on health and safety obligations that employers must observe in home office working regimes is threatening the viability of this flexible work arrangement and increasing the administrative burden on employers seeking to adapt to innovative work structures.

Businesses will have to continue investing in their labour compliance structure as it becomes more difficult to compete for talent in Mexico, which is already suffering the inertia of the US phenomenon of the “Great Resignation”. Being aware of the new rules and trends and how to better adapt, will be the best bet for companies wishing to remain competitive.

### Validation of Collective Bargaining Agreements

The reform to Mexico’s Federal Labour Law (FLL) of 1 May 2019 required that every collective bargaining agreement in the country be validated by the majority of union workers (50% +1) through a secret vote, no later than 1 May 2023. Failing to validate the collective bargaining agreement will result in the automatic termination of the same.

This obligation, also contained in Annex 23-A of the USMCA, requires that unions signing collective bargaining agreements must conduct a process before the Federal Centre for Conciliation and Labour Registration (the “Federal Centre”), where the regulatory agency will organise a secret vote at the work site and workers will have to decide if they want to continue with such collective agreement, or if it should be removed.

To this end, Mexico’s Ministry of Labour issued a protocol with the guidelines to validate collective bargaining agreements, prohibiting companies from interfering with the workers’ decision to either support and maintain their agreement, or to reject the same. Said protocol established that any and all working conditions in the collective bargaining agreement will remain as part of the workers’ rights, even if it terminates because the majority does not endorse the same.

This has become a critical issue for companies in Mexico, because the experience has been that very few unions are prepared to face the requirements established by national and international legislation. Some unions have not worked in the past to maintain their membership through meaningful representation; in other words, they have not acted as true representa-

tives that would bargain for better conditions before employers. Other unions have realised that they do not have the resources and infrastructure to maintain their membership, now that workers can freely decide through a secret vote whether they want to continue with their affiliation or not. A substantial number of unions are changing their internal structures, the better to appeal to their worker members, although the results of any votes on collective bargaining agreements remain uncertain.

Indeed, several voting processes to validate collective bargaining agreements in Mexico, have ended up with a majority of workers voting against the agreement and rejecting their current union representation. This has become, for many work sites, a source of uncertainty and confusion that ultimately has an effect on productivity.

The rules are clear in the sense that once the collective bargaining agreement is terminated due to the lack of workers' majority support, any other union can try to organise the workers and, following the process to obtain the certification before the Federal Centre, they can validly call for a strike if the employer refuses to negotiate a new collective bargaining agreement.

An interesting but also worrying fact is that, while a rough calculation of the total number of current collective bargaining agreements in the country is 550,000, more than three years after the requirement to validate these agreements was put in place and with less than one year to go before the deadline, only 6,000 collective bargaining agreements have been validated. Thousands of companies will most likely face the termination of their existing collective bargaining agreement and the possibility that their workers may want to affiliate with a different union, which may not necessarily be a friendly one.

### **First Experiences under the Rapid Response Labor Mechanism**

The USMCA, as well as its dispute resolution system for labour matters, the Rapid Response Labor Mechanism, became effective on 1 July 2020. This mechanism, in terms of Annexes 31-A and 31-B, will solve the disputes between the USA and Mexico and Canada and Mexico, respectively. Its purpose is to find whether a "covered facility" has been involved in a "denial of rights" under the treaty, limiting its scope to freedom of association and effective collective bargaining.

The potential contingencies that companies can face as a consequence of a Rapid Response Labor Mechanism are (i) losing the preferential export tariff under the USMCA for the export of goods or services to the North American region; (ii) sanctions to be imposed by the country where the relevant products and services were sold; (iii) a total prohibition on exporting goods or services to the plaintiff country.

The USA has vigorously enforced collective labour obligations through the Rapid Response Labor Mechanism. Up to the date of this publication (September 2022), based on Chapter 31 Annex A of the USMCA, the USA has notified to Mexico five claims for alleged denial of workers' freedom of association rights and effective collective bargaining. All five claims have been filed against automotive companies operating in highly industrialised and unionised cities in Mexico.

### ***General Motors (Silao, Mexico)***

On April 2021 a vote at the General Motors plant in Silao to legitimise the collective bargaining agreement held by the largest union in Mexico, the Workers' Confederation of Mexico (CTM), was suspended due to irregularities, including the destruction of ballots. Following good-faith consultations, on 8 July 2021, the USA and Mex-

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ico announced a course of remediation to provide workers with the ability to legitimise the agreement under free and democratic conditions. The vote took place again and the workers rejected the collective bargaining agreement, which was then terminated. An independent union was created by the workers at the plant, which following the appropriate procedure demanded a new agreement from the company, winning through another voting process. In May 2022, the independent union negotiated an 8.5% increase in salaries and 5.3% increase in benefits (a total of 13.8% of the company's payroll cost).

### *Tridonex (Matamoros, Mexico)*

An independent union named "20/32" (after their demand for a 20% salary increase and an MXP32,000 annual bonus) created by activist and now federal congresswoman, Susana Prieto of the ruling MORENA party, demanded the administration of the existing collective bargaining agreement held by CTM. The local labour authority did not process the claim, which was considered sufficient grounds for alleged denial of the right of free association and collective bargaining. Following consultations, on 10 August 2021, the USA and Mexico announced an agreement where the company paid severance and back pay to 154 terminated workers of approximately USD600,000; guaranteed the protection of workers from intimidation and harassment; and allowed a vote on worker representation. On 28 February 2022, the 20/32 union won the election to represent workers at the plant.

### *Panasonic Automotive Systems (Reynosa, Mexico)*

On 18 April 2022, the 20/32 union filed a claim for alleged denial of right to free association and collective bargaining at the Panasonic Automotive plant in Reynosa, arguing that efforts to maintain CTM as the bargaining representative of the workers had including threats, violent acts and dismissals. The collective bargaining agree-

ment was signed with CTM without workers' support and registered before the state labour authority, rather than the federal labour authority, which has jurisdiction over automotive matters. On 23 April 2022, the 20/32 union won an election and the right to represent workers at the plant. On 9 June 2022, the union negotiated a salary increase of 9.5%, a bonus of 3.5% of annual salary (a total of 13% of the company's payroll cost), reimbursement of union dues to workers, and the reinstatement of terminated workers.

### *Teksid (Frontera, Mexico)*

On 5 May 2022, the Mining Union, headed by Senator Napoleon Gomez Urrutia from ruling political party MORENA, filed a claim for alleged denial of the right of free association and collective bargaining at Teksid in Frontera, arguing efforts to maintain CTM as the bargaining representative of the workers had included threats, violent acts and dismissals. Although the Mining Union has a collective bargaining agreement registered before the federal labour authority, the company maintained a collective bargaining agreement with CTM, registered before the state labour authority, which has no jurisdiction on automotive matters. In July 2022, the Mining Union announced it has reached an agreement with the company, to be recognised as the bargaining representative of the workers, the reinstatement of terminated workers and payment of back wages, and payment of union dues to the Mining Union, withheld since 2019.

### *Manufacturas VU (Piedras Negras, Mexico)*

On 21 July 2022, the USA filed a claim for alleged denial of rights at Manufacturas VU in Piedras Negras, stating that during June 2022 workers at the plant were being denied the right to free association and collective bargaining, by not being allowed to conduct organising activities that were otherwise afforded to CTM. The claim states that activities may include efforts

to interfere with the right of workers to organise, form and join the union of their choice. At the time of completion of this article (September 2022), the response of the Mexican government was still pending.

Based on the potential adverse effects of an arbitration under the Rapid Response Labor Mechanism, many companies should make a deep analysis of their current compliance with standard and collective labour matters, and specifically of whether the rights to freedom of association and effective collective bargaining are being protected.

### **Health and Safety in the Home Office**

The Mexican government has published the draft of mandatory regulations that will apply to home-office arrangements, in connection with health and safety matters. Mexico passed, in January 2021, an amendment to the FLL, including a chapter regulating home office or “teleworking”, but the decree stated that further regulation on health and safety matters should be enacted within 18 months following the publication of the teleworking reform.

At the time of completion of this article (September 2022), the mandatory regulations were subject to comments from the public at large, but small changes are expected to occur. The most important obligations for employers intending to implement home office working arrangements are set out below.

Employers must prepare and validate a verification list, which must include among other things, the following:

- Identify potential agents that may create occupational risks, including psychosocial and ergonomic risks, with consequences for employees’ health.
  - Validate the verification list by doing an in-person review of the place or places chosen by the employee to work remotely, with the employee’s consent. If this is not possible, employees may do a self-verification of the conditions at the place where they will work, with verification by the employer using technological tools.
  - Employers must validate employees’ internet connection, as well as their access to acceptable electricity, illumination and ventilation.
  - Validate that the employee’s area of work is clean and tidy, with temperature and ventilation that feels comfortable.
  - Validate that the level of noise does not impede the employee’s concentration.
  - Confirm that the employee has a table or desk to work on comfortably.
  - Confirm that the employee has an ergonomic chair and any other required ergonomic accessories.
  - Confirm that the work space allows privacy and that the employee will not be interrupted by other persons while at work.
- Prepare and maintain a home office policy, including among others, the following features:
- Promote the culture to prevent occupational accidents and illnesses.
  - Participation mechanism to prevent the employee’s social isolation.
  - Rules to contact and supervise work, including the systems and technology used for such purpose.
  - Guarantee a right to privacy and rules so as to avoid interference with work-life balance.
  - Specify the duration of the work shift, including a guarantee to disconnect at the end of the day.
  - Equal employment opportunities and compensation equality between employees in home office arrangements and those working at the employer’s premises.

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- Rules to modify the home office arrangement and for the employee to return to work in the office.
- Periodical maintenance of work tools assigned to employees and training about health and safety conditions at least once a year.
- A mechanism to attend and follow up on cases of domestic violence and rules to change the place selected as the home office.

Proper document support will be critical in order to comply with health and safety obligations for home office employees, which companies need to prepare in advance of the entry into force of the mandatory regulations.

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pliance with labour and social security laws, and in the design and implementation of labour structures to avoid risk. It assists in processing immigration documentation for top-level executives and their families, and with employment agreements, terminations, and fringe benefit planning. It also represent clients in employment litigation.

## Author



**Alfredo Kupfer-Domínguez** heads the Sánchez Devanny's Labour, Social Security and Immigration practice group. He advises local and foreign clients in complex labour and

employment matters, including union negotiations, planning for new and existing investments in efficient labour structures, executive transfers and terminations, social security and compensation matters, formation

and implementation of pension plans, equity compensation programmes, and flexible benefit plans. Alfredo was recently appointed by the Mexican government as a panellist to the Rapid Response Labor Mechanism of the USMCA, for disputes between Mexico and Canada. He was appointed Chairman of the Human Capital and Labor Affairs Committee of American Chamber of Commerce in Mexico for 2021–23.

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