Labor, Social Security and Immigration Newsletter
May 02, 2019

Labor Reform: New Challenges.

After remaining almost static for more than thirty years, the Federal Labor Law has experienced two important reforms recently, the first in December 2012. By the most recent one, published on May 1, 2019 in the Official Federation Gazette,, Mexico complies with its agreements of the Constitutional Reform of 2017, the ratification by the Senate of the 98th Convention of the International Labor Organization, and the execution of the United States, Mexico and Canada Agreement (USMCA).

The most important modifications are:

I. The creation of the Federal Center for Conciliation and Labor Registry ("Federal Center").

The law creating the Federal Center will be enacted within 180 days of the publication of the Reform in the Official Federal Gazette. The Federal Center, amongst others, will have the following functions:

a. Register all collective bargaining agreements, internal regulations, and union organizations, and any administrative function derived from the aforementioned. The Federal Center must initiate this function within 2 years of the enactment of the Reform.
b. At the federal level, provide the conciliation function as a prerequisite to bringing a labor claim. The Federal Center must initiate this function within 4 years of the enactment of the Reform.

Likewise, on local matters, each State will create its own Conciliation Centers, which must start operating within 3 years of the enactment of the Reform. These Local Conciliation Centers will not have the functions of registering collective bargaining agreements, internal rules or union organizations.

II. Labor Justice

a. Elimination of the Conciliation and Arbitration Labor Boards and the creation of Labor Courts, as part of the Judicial Branch.
The conflicts derived from the employment relationship will now be resolved by federal or local Labor Courts. The Federal Labor Courts will start functions within 4 years, while the local ones will start within 3 years.

Until the Labor Courts begin functioning, the Conciliation and Arbitration Labor Boards will

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continue to oversee these cases.

b. Pre-Trial Conciliation Procedure.
Prior to bringing a claim in the Labor Courts, employees and/or employers must open the conciliation procedure. Such procedure will last up to 45 days and will suspend the statute of limitations for bringing a labor claim. The Federal Center or the local Conciliation Center will issue a certificate that the procedure has been exhausted when the employee and the employer fail to reach an agreement. Such certificate is a requirement to initiate a labor claim.

Conflicts derived from discrimination, termination of pregnant employees, appointment of beneficiaries, collective bargaining agreement entitlement claims, or challenges to union statutes will not require this pre-trial procedure.

c. Ordinary and Special Procedures.
The ordinary procedures as we know them will radically change, by eliminating the conciliation, demand and exceptions, or the offering and admission of evidence stages. To summarize, the plaintiff will present the claim and evidence, so that the defendant can produce its answer and furnish evidence. Once that is done, with their corresponding rights to object, the Labor Courts will summon the parties to a preliminary hearing, in which the case will be purged. The Labor Court will admit evidence and will appoint a trial hearing, in which all of the evidence will be rendered and the parties would be allowed to present allegations.

It is important to mention that the Reform establishes that the denial of the termination and the offering of reinstatement to the employee does not revert the burden of proof. This is a significant change to the form in which cases were defended with the previous procedure.

With respect to the special procedures, those regarding appointment of beneficiaries of a deceased or disappearance of an employee due to a delinquent act is regulated, as well as those on social security matters. Likewise, such chapter deals with the entitlement to collective bargaining agreements.

Lastly, the Reform creates a platform so that the parties will be legally served through electronic means.

III. Collective Matters

In full compliance with the 98th Convention of the ILO and the USMCA, the Reform deals with the freedom of association and unionization (to belong or not to a union), effective negotiation of collective bargaining agreements and prohibition of employers to induce employees to support or not support a union. In all collective procedures involving voting, the labor authorities must guarantee that

the employees will issue their votes in a free, personal, secret and direct manner. The most important items of the Reform are:

a. **Prohibition to Unions.**
The employers will be allowed to request the cancellation of the union's registry when the union commits acts of extortion or requests cash or in-kind payments to drop a notice of intent to strike or for not initiating a collective procedure.

Likewise, unions cannot participate in schemes or act as employers with the intention of evading employer responsibilities, such as labor or social security.

b. **Execution of New Collective Bargaining Agreements.**
Unions that seek the execution of a collective bargaining agreement must obtain a Certificate of Representation from the Federal Center that evidences that they represent at least 30% of the employees subject to the collective bargaining agreement. If any other union requests such Certificate of Representation, the employees will have to vote for the union of their choice and the one that obtains the majority will obtain the Certificate.

c. **Revision of Collective Bargaining Agreements.**
A procedure is created in which the unions will have to carry out a voting process in which the majority of the employees must decide whether to accept the revision of the collective bargaining agreement or the scale of wages. If the majority of the employees do not accept the revision, the union will be entitled to strike or to postpone the strike until reaching an agreement satisfactory to the majority of the employees.

The employer will be obligated to deliver a copy of the collective bargaining agreement to each employee within 15 days of its presentation to the Federal Center.

d. **Union Representation.**
With respect to union democracy, the most relevant modifications are to prohibit voting for union representatives by raising hands, as was customary for unions in Mexico. Hereinafter, the voting of union representatives should be done by free, direct, personal and secret vote. The Reform also establishes that union representation should not be for an undefined period of time and adds new rules for accountability of the use of the union's assets.

IV. Other Relevant Matters.

a. **Appointment of Beneficiaries.**
The Reform provides that the individual employment agreements must contain a section to appoint the beneficiary of salaries and benefits in case of

employee death or disappearance due to a delinquent act.

b. Private Settlement Agreements.
The termination agreements between employers and employees that are executed without the intervention of the labor authority will be valid; however, if a provision contains a waiver of right, such provision will be null and void, and the rest of the agreement will continue to be valid.

c. Notice of Rescission.
The lack of a rescission notice to the employee or to the labor authority will create the presumption of unfair dismissal. However, the employer may prove at trial that the termination was justified.

d. Payment of Severance by Consignment.
In case of a termination of an employee with seniority of less than one year, for whom for any reason it is impossible to continue the employment relationship under the criteria of the authority, when the employee is administrative (as opposed to operators), household or temporary, the employer will be able to deposit the payment with the Labor Court, the severance corresponding to the employee, so that it can conclude the employment relationship. These cases are those mentioned by the law that interrupt labor stability.

e. Digital Tax Receipts.
The digital tax receipts or CFDIs as they are known, will be a means to prove the payment of salary and benefits and will replace salary receipts as long its content can be verified on the Tax Administration Service page. It is important to mention that the companies that continue issuing salary receipts must obtain the handwritten signature of the employees.

f. Protocol to Prevent Discrimination.
Employers have a special obligation to implement a protocol to prevent discrimination based on gender, to attend to cases of violence and sexual harassment, and to eradicate forced and child labor. This obligation is in line with the Federal Prevention and Eradication of Discrimination Law and the Federal Safety and Health Regulation.

g. Registration of Household Employees with the Mexican Social Security Institute.
Derived from the most recent jurisprudence and the project program in place by the Institute, the Reform establishes the obligation of employers to register their household employees with the Institute and pay contributions for them.

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As you have seen above, employers soon must make significant changes not only to their documents, but also to the way in which their employment relationships are handled. We invite you to

contact us to prepare your legal strategy to comply with these new labor requirements.

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