

Labor, Social Security and Immigration Practice Group Newsletter



Loss of trade benefits under USMCA for non-compliance of labor obligations

On July 1, 2020, the USMCA enters into force, putting an end to NAFTA, and giving way to a modern and updated agreement. It also includes several unforeseen aspects. One of those aspects is the inclusion of Annex 31-A (United States) and 31-B (Canada), where the Facility-Specific Rapid Response Labor Mechanism is incorporated with the purpose of guaranteeing the remediation of a Denial of Rights. Denial of Rights means that a worksite has impeded the right of free association by its employees or that an employer obstructs collective bargaining.

Since the Constitutional Reform in 2017, the ratification of the 98th Convention of the International Labor Organization, and the reform to the Federal Labor Law in 2019, attention has returned to the power of employees to unionize, and if they so decide, to negotiate their employment conditions through collective bargaining. Mexico has been heavily criticized for allowing the use of protective collective bargaining agreements, which is intended to be eradicated with these legal provisions.

And specifically with the reform to the Federal Labor Law on May 1, 2019, unions must legitimize their collective bargaining agreements. This means that they will have to obtain approval from the employees

subject to such agreement, by employees voting their acceptance. This obligation will have to be fulfilled by 2023. However, with the entering into force of the USMCA, these processes are accelerated, so we will be observing more active unions. Just as the car mirrors that mention that "objects in mirror are closer than they appear", is the obligation to comply with the right to free association and collective bargaining as an obligation for employers and unions.

Non-governmental organizations (NGOs), activists, and workers and their unions, including competitors, can file claims with the United States or Canada's government, respectively, for the failure of a worksite located in Mexico to comply. The innovation of this mechanism is that sanctions are not imposed on the signatory countries, but directly to the worksite. Moreover, for purposes of repeated breach of obligations, the lack of compliance from companies from the same corporate group would also be taken into account.

Not remedying any Denial of Rights could bring as a consequence the:

- » suspension of the preferential duties for the products manufactured by the worksite;
- » imposition of sanctions, which are to be determined;

and

- » in case of repeated breach, prohibiting export of products to the complaining country.

Now more than ever, companies should be paying special attention to their compliance with labor provisions, in particular, allowing for stronger collective relationships, so that they are not subject to sanctions by virtue of this mechanism of the USMCA.

During the process of the mechanism, employers will have the opportunity to remedy such breach. However, as it is an expedited process, companies may have a short time to do so. It is important to mention that, upon filing of a claim, the breach will be presumed. Therefore, the burden of proof is on the worksite to demonstrate otherwise.

The United States has declared that they have a special interest in using these mechanisms against companies engaged in the services and manufacturing of aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel and aluminum, glass, pottery, plastic, forgings, cement, and more.

Lastly, within the mechanism, a panel will be comprised by representatives of both countries (the complainant

and claimant parties), which will be able to make an onsite visit, in which they could seek evidence of the denial of the mentioned rights.

This bulletin was prepared jointly by Alfredo Kupfer-Domínguez (akupfer@sanchezdevanny.com) and David Puente-Tostado (dpt@sanchezdevanny.com).

Sánchez Devanny is a leading Mexican law firm that provides **full-service legal advice** both to Mexican and international clients.

We build enduring client relationships because we make every effort to understand our clients' businesses and expectations, to serve as an ally, and to provide **complete, accessible and personalized advice**.

Labor, Social Security and Immigration Practice Group

This practice advises clients on compliance with labor and social security laws, and in the design and implementation of labor structures to avoid risk. We assist in processing immigration documentation for top-level executives and their families, with employment agreements, terminations, and fringe benefit planning, and represent clients in employment litigation.

Contact

Alfredo Kupfer Domínguez
akupfer@sanchezdevanny.com

David Puente Tostado
dpt@sanchezdevanny.com

Mexico City:

Av. Paseo de las Palmas #525 Piso 6
Col. Lomas de Chapultepec, 11000
Ciudad de México
T. +52 (55) 5029 8500

Monterrey:

José Clemente Orozco #335 Piso 4
Despacho 401 Col. Valle Oriente, 66269
San Pedro Garza García N.L.
T. +52 (81) 8153 3900

Querétaro:

Blvd. Bernardo Quintana #7001
Torre 1 Oficina 1109 Col. Centro Sur, 76090
Querétaro, Qro.
T. +52 (442) 296 6400



Sánchez Devanny Eseverri S.C.



@SanchezDevanny



/sanchezdevannymx

www.sanchezdevanny.com

Sánchez Devanny refers to Sánchez-Devanny Eseverri, S.C., a leading Mexican law firm that provides full-service legal advice both to Mexican and international clients.

This publication contains general information only and is just for informative purposes. Sánchez Devanny is not rendering legal advice or services by means of this publication. To obtain legal advice or services and before making any decision or taking any action that may affect your business you should consult a qualified professional advisor.

Sánchez Devanny provides legal services in the areas of Corporate and M&A; Corporate and Project Finance; International Trade and Customs; Real Estate, Infrastructure and Hospitality; Tax; Labor, Social Security and Immigration; Corporate Governance and Regulatory Compliance; Energy, Natural Resources and Environmental; Life Sciences; Intellectual Property, Entertainment and Sports Law; Litigation and Alternative Dispute Resolution; Antitrust; Financial Institutions and Services; Private Wealth Management and Estate Planning and Data Privacy and Information Technology to both public and private clients, especially in the automotive, retail, pharmaceutical, manufacturing, real estate and energy industries.