<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. GENERAL</td>
<td>01</td>
</tr>
<tr>
<td>II. HIRING PRACTICES</td>
<td>04</td>
</tr>
<tr>
<td>III. EMPLOYMENT CONTRACTS</td>
<td>06</td>
</tr>
<tr>
<td>IV. WORKING CONDITIONS</td>
<td>08</td>
</tr>
<tr>
<td>V. ANTI-DISCRIMINATION LAWS</td>
<td>11</td>
</tr>
<tr>
<td>VI. SOCIAL MEDIA AND DATA PRIVACY</td>
<td>13</td>
</tr>
<tr>
<td>VII. AUTHORIZATIONS FOR FOREIGN EMPLOYEES</td>
<td>14</td>
</tr>
<tr>
<td>VIII. TERMINATION OF EMPLOYMENT CONTRACTS</td>
<td>15</td>
</tr>
<tr>
<td>IX. RESTRICTIVE COVENANTS</td>
<td>18</td>
</tr>
<tr>
<td>X. RIGHTS OF EMPLOYEES IN CASE OF A TRANSFER OF UNDERTAKING</td>
<td>20</td>
</tr>
<tr>
<td>XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS</td>
<td>22</td>
</tr>
<tr>
<td>XII. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES</td>
<td>25</td>
</tr>
<tr>
<td>XIII. SOCIAL SECURITY / HEALTHCARE / OTHER REQUIRED BENEFITS</td>
<td>26</td>
</tr>
</tbody>
</table>
I. GENERAL

1. Introductory Paragraph

Mexican Labor Law grew out of an armed revolution that concluded with the adoption of the current Federal Constitution in 1917. Article 123 of the Federal Constitution, entitled “Labor and Social Welfare”, expressly recognizes and protects the basic inalienable rights of employees. This was the first constitutional recognition of labor rights in world history. Thereafter, in 1931, the first Federal Labor Law was enacted to regulate employer-employee relations nationwide, later replaced by the 1970 Federal Labor Law, which improved working conditions for employees. The 1970 Law was, for all practical purposes, the federal government’s “political reward” to workers’ organizations for not supporting the 1968 student movement.

On September 2012, the President of Mexico, Felipe Calderon, introduced a bill to amend the Mexican Federal Labor Law, which after much debate before both the House of Representatives and the Senate, was approved by the Congress on November 13, 2012 and enacted by the President of Mexico on November 30, 2012 becoming effective on December 1st, 2012. The reform amends and includes important provisions to the Mexican Federal Labor Law (herein after the “New FLL” or “New Law”), which has extensive implications for employers with operations in Mexico.

2. Key Points

Employers dealing with operations in Mexico should be aware that labor relations are highly regulated in our country and that Mexican employees generally have greater rights than their American counterparts.

- Job stability principle. Any individual employment relationship is subject to the principle of ‘job stability’, that is, subject to the employee’s right to keep his or her job as long as the employment relationship so requires. If the employment relationship is for an indefinite term, the employee cannot be laid off without cause. In other words, there is no employment-at-will in Mexico.

- Restrictive Covenants or Non-Competes. In the strictest sense, non-compete agreements are void under Mexican law; specifically, under Article 5 of the Mexican Constitution. Notwithstanding the foregoing, pursuant to an opinion issued by a Circuit Court, Covenants not to compete are fully enforceable provided they are limited in time, geographical scope, clients and activity, products and services, and consideration is paid in exchange.

- Outsourcing. Although strictly ruled, the FLL allows for the subcontracting of specialized services or ‘outsourcing’. This type of work must comply with the following conditions: (a) It cannot cover the totality of the activities, whether equal or similar in whole, undertaken at the work centre; (b) It is justified due to its specialized character; (c) It cannot include tasks equal or similar to the ones carried out by the customer’s workers. If any or all of these conditions are not met, the customer will be deemed to be the employer for purposes and effects under the Law, including as it applies to obligations related to social security.

3. Legal Framework

The Mexican legal system is based on the Civil Law tradition; which is highly systematized and codified. Thus, the main sources of law are codified texts that derive from the provisions of the Mexican Constitution. As the utmost source of law in Mexico, the Constitution, has specific provisions set forth to protect the rights of citizens. These rights, previously referred to as Individual Guarantees in the civil tradition (Constitutional Rights) and now regulated as Human Rights, are classified in relation to the right they safeguard: (i) constitutional rights of equality; (ii) constitutional rights of freedom; (iii) constitutional rights of due process of law (or legal certainty); and, (iv) constitutional social rights – which by definition are those that were created with the intention to protect the common interests of a specific group as a collective (e.g., workers, students, common land farmers). Applicable legislations for Labor law in
Mexico derive from the Constitutional provisions on social rights for workers in Article 123.

Furthermore, Article 123 of the Mexican Constitution provides protection for the collective interests of workers by establishing general employee rights that seek a balance in the employer-employee relationship; including but not limited to (a) setting maximum limit of working hours per week; (b) equality rights; (c) weekly rest days; (d) mandatory rest days in the year (holidays or long weekends); (e) employees’ right to profit sharing; (f) maternity leave; (g) limitations on work of minors; (h) limitations on work of pregnant and breastfeeding mothers; (i) paid vacation periods; (j) right to unionize, to strike and lockout, and right to collective bargaining; (k) minimum salaries; (l) limitations on work shifts; (m) overtime; (n) social security rights (such as the establishment of a housing fund for workers); (o) Christmas bonus; (p) mandatory training; (q) Labor authorities (competence and jurisdiction); amongst others.

The laws governing all labor relationships in Mexico, regardless of the workers’ nationality are:


**FEDERAL LABOR LAW.** The FLL is the most important employment legislation in Mexico. It defines a ‘labor relationship’ as the rendering of a subordinated personal service by one person to another, in exchange for a wage.

The main element of any labor relationship is subordination, which the Mexican Supreme Court of Justice has defined as the employer’s legal right to control and direct the employee and the employee’s duty of obedience towards the employer. Once a labor relationship exists, the rights and obligations provided for by the FLL automatically apply, regardless of how the agreement is defined by the parties.

**SOCIAL SECURITY LAW.** Additionally, the Social Security Law is the legislation that contains the stipulations intended to provide further social benefits for the collective; specifically aimed for the employers and the employees. The Social Security Law covers the various rights and duties of both employee and employer with respect to retirement funds and healthcare benefits provided for by the authorities.

**NATIONAL WORKERS HOUSING FUND INSTITUTE’S LAW,** 1972. The National Workers Housing Fund Institute’s Law was created with the purpose of providing support for the employees in order to acquire their own homes. A National Housing Fund was created for employees in order for them to have access to a government run mortgage (credit institution) and acquire their own homes. There is an obligation from the employer to deposit the corresponding

4. New Developments

**A. BILL AMENDING AND SUPPLEMENTING DIVERSE CONSTITUTIONAL PROVISIONS ON LABOR JUSTICE.**

On April 28, 2016, President Enrique Peña Nieto sent a bill to the Senate to amend and supplement several Articles on labor justice. This reform intends to consolidate the autonomy and effectiveness of labor justice administration, being the most relevant after the Constitution was enacted on 1917.

The initiative proposes a deep transformation of procedural labor law, beginning with three essential premises:

a. Labor Justice will be further administered by the Federal or Local Judicial Branch, which should focus in their jurisdictional duties.

b. A pre-judicial conciliatory stage is inserted during the labor proceeding, which will be mandatory for the parties and will be responsibility of decentralized agencies named Conciliation Centres, which will be provided with legal capacity and own budget, as well as with technical, operational, financial, deciding and acting autonomy. This new stage will consist in one sole mandatory hearing, which date and time will be promptly set by these new decentralized agencies; the subsequent hearings will only take place with agreement between the parties.

c. A new decentralized agency of the Federal Public Administration is created, which will be in charge of registering all Collective Bargaining Agreements and union organizations, as well as of the administrative processes inherent to those subjects; furthermore, it will be in charge of the conciliatory role at the Federal level.
B. BILL AMENDING DIVERSE PROVISIONS OF THE FEDERAL LABOR LAW.

Also on April 28, 2016, the Mexican President sent a bill to the Senate to amend several provisions of the Federal Labor Law, which explanatory statements refer to the need of strengthening Collective Bargaining and updating the rules to release the workers’ headcount evidence.


Among these issues, compliance of stricter rules is proposed for the filing of Collective Bargaining Agreements (CBAs), trending to verify the employees’ consent for their execution.

These provisions have as purpose certifying that the work centre and the workers protected by the CBA do exist, as well as that the workers are familiar with the Collective Bargaining Agreement and support the signing union.

Their purpose is ensuring the Freedom of Association and the right to Collective Bargaining.

b. Workers’ headcount procedure.

The other issue addressed by this initiative refers to the procedure that must be followed for the workers’ headcount, but rather than addressing the strike topic, it seems to make reference to the lawsuits for ownership of Collective Bargaining Agreements, provided by the Federal Labor Law.
II. HIRING PRACTICES

In general terms, the employer has the freedom to ask the questions it considers convenient to a candidate in all phases of the recruitment process; in other words, there is almost no limitation to the scope of such questions from a legal standpoint. However, company policy and international guidelines might require global corporations to adhere to stricter procedures in the recruitment, interview and screening processes.

RECRUITING. Given that there are no specific laws or rules applicable to recruitment, employers may, in their own judgment or interests or in accordance with company policy and interests; determine all necessary requirements for employment.

Laws regulating discrimination are not extensively developed in Mexico, but the FLL states that workers shall not be discriminated against on grounds of race, nationality, sex, age, disability, religion, political opinion, migratory condition, health, sexual preferences, or social rank. Even though the FLL prohibits discrimination, in practice there is unfortunately no action against employer discrimination.

EMPLOYMENT APPLICATIONS. On the employment application, employers can request information from an applicant regarding his/her socioeconomic data, educational background, prior employment, drug screening, medical conditions, family situation and even criminal background.

The employer is even allowed to require the applicant to provide a certificate issued by the Attorney General’s office (federal or state) evidencing that the applicant has no prior criminal record.

Notwithstanding the above, it is advisable to include a specific provision in the application form whereby the applicant acknowledges and agrees to the background check and the employer attests that the information provided will be kept confidential. Employers shall also be mindful of compliance with data privacy law and regulations.

PRE-EMPLOYMENT INQUIRIES. As mentioned previously, employers have great flexibility regarding the information that may be gathered about applicants except pregnancy status for working women or any other information that may imply a discriminatory practice.

PRE-EMPLOYMENT TESTS AND EXAMINATIONS. Drug screening and pre-employment physicals for applicants are generally permitted, with the applicant’s consent. Additionally, the results of tests and information provided in interviews must be kept confidential and in accordance with the Privacy Notice delivered to the employee or applicant.

BACKGROUND, REFERENCES AND CREDIT CHECKS. Letters of recommendation are usually required by employers. Background and reference checks are generally allowed, but are subject to the applicant’s consent; the law is silent to this particular respect but it is recommended that the employer secures the applicant’s consent. The information obtained has to be handled in a confidential manner and in accordance with the privacy notice delivered to the employee or applicant.

The FLL allows employers to terminate any employee, without any further liability to the employer, within thirty days following the employee’s first day on the job or hiring date, if the employee used false documentation or false references to obtain employment, or deceives the employer about qualifications that he/she does not have.

INTERVIEWING. The employer has the freedom to ask any questions in any phase of the recruitment process. There is no real limit set by law as to the pertinence of the questions allowed, however common sense is applied under these circumstances. During interviews, employers may ask for and corroborate any financial information, educational or employment information, drug screen results, medical condition, family situation and criminal history.

HIRING PROCEDURES. The FLL does not provide for any special hiring process; therefore, employers do not have
to follow any specific guidelines, unless agreed with the Union in the CBA (such as hiring only union members). However, depending on the position, normal practice dictates that all possible employees must first fill out an employment application, whereby all those interested in working for a company provide certain information, such as personal information, academic background, references, qualifications, skills and job experience.

A second phase involves an interview with the applicant and, for some companies, criminal, work history and economic background checks, directly or through third parties.

Since the company will gather personal data on the applicant, employers are also required to deliver a privacy notice to the same, in order to comply with the Federal Law for the Protection of Personal Data in the Possession of Private Parties.
III. EMPLOYMENT CONTRACTS

Written employment agreements in Mexico are mandatory. Every employee must enter into an individual employment agreement with the employer and set out the terms and conditions of the employment (in Mexico, there’s no ‘employment-at-will’. An employer must have justified cause (as defined by the FLL) in order to terminate the employment relationship, if not, employer must compensate the unjustly terminated employee accordingly (FLL stipulates the amount for severance payments). Notwithstanding the previous statement; in the given case that an employment relationship exists and there is no written agreement; the employee’s constitutional and statutory rights are not waived or affected by this omission.

In the case of Unions, there is an additional agreement that is negotiated and entered into by the Union and the employer in order to promote the creation or improvement of the labor conditions for the employees as a collective and in turn the employer obtains a loyal and solid workforce. The Collective Bargaining Agreement (hereinafter ‘CBA’) is renewable and cannot contain provisions that stipulate the waiver of the basic constitutional and statutory rights or benefits for the employees as a collective. It can always be more favourable than the constitutional and statutory requirements but never less than the latter.

1. Minimum Requirements

Article 24 of the FLL provides that working conditions must be established in writing, and each party must be provided with a copy of the employment agreement. In addition, Article 25 states that the individual employment agreement must contain the following information:

- Name, nationality, age, sex, civil status, CURP, Tax ID number, and domicile of the employee and the employer, if applicable;
- Whether employment is for a specific job or term, initial training, permanent, and if it is subject to a probationary period;
- The service or services to be provided, as specifically as possible (job description);
- The place or places where the employee will work;
- The work schedule;
- Amount of salary and any fringe benefits;
- Date and place where salary is to be paid;
- An indication that the employee will be trained according to the plans and programmes established by the employer;
- Amount of rest and vacation days, and any other conditions agreed to by the employee and the employer.

Every employment agreement contains an implied relationship of mutual trust and confidence.

Furthermore, employment agreements cannot contain an employee’s acceptance to waive the necessary legal grounds for justified dismissal on the part of the employer and the minimum mandatory benefits provided by the FLL, described in Section IV.1 below.

On the other hand, CBAs must also be in writing and contain the following information:

- names and domiciles of the parties executing the CBA;
- the address of the facilities where the CBA will be applicable;
- duration or whether it is for an indefinite term or specific job;
- work schedules;
- rest days and holidays;
- salary amounts;
- employee training;
- initial training for new hires;
- integration and operation of the Employee/Employer Committees as established by law;
- other conditions agreed upon by the parties.

CBAs must be filed in the Local or Federal Conciliation and Arbitration Board, depending on competence and jurisdiction. Competence and jurisdiction of the Conciliation and Arbitration Boards is determined by the employer’s main business activities in accordance with the applicable FLL provisions.
2. Fixed-term/Open-ended Contracts

Any individual employment relationship is subject to the principle of ‘job stability’, that is, subject to the employee’s right to keep his or her job as long as the employment relationship so requires.

The FLL assumes, as a general principle, that an employment agreement has been executed for an indefinite term, unless the nature or the particular type of service to be provided calls for an employment agreement for a specific job or term, or if the parties agree to execute an employment agreement for initial training or subject to a probationary period.

The New FLL provides that employment agreements for an indefinite term are for continuous work, but the parties may agree that the services be provided for a fixed and periodic work with a discontinuous character, in cases where the services are required to be provided during a season or are not required to be provided during all the week, month or year.

3. Trial Period

The initial training employment relationship is the relationship whereby the employee agrees to provide his/her subordinated personal services, under the control and supervision of the employer, in order to acquire the necessary knowledge and skills to perform the services for which he/she is hired. This agreement must establish a training period of 3 months, as a general rule, and 6 months, for executive positions.

Finally, for those employment agreements executed for an indefinite term or for a specific job or term of more than 180 days, the New FLL establishes that the same may be subject to a probationary period of 30 days, or up to 180 days for executive positions, in order to verify that the employee has the necessary knowledge and skills to perform the services for which he/she has been hired.

Both, the initial training agreement and those agreements subject to a probationary period, cannot be executed on a consecutive basis and their term cannot be extended. It is mandatory to execute these agreements in writing, establishing that the employee will be entitled to all social security benefits. If the labor relationship continues once the effective term of these agreements has elapsed, the labor relationship will be considered for an indefinite term and the seniority accrued during the training and probationary period shall be recognized.

4. Notice Period

There is no notice period under FLL. However, the employer must notify the worker in writing of the cause or causes for dismissal. Notice may be delivered directly by the employer at the moment the dismissal takes place or communicated to the Conciliation and Arbitration Labor Board within 5 work days, in which case the employer must provide the employee’s last domicile registered in its files so the conciliation and arbitration labor board notifies the employee in person. If neither is done, the dismissal will be considered unjustified.

Failure to execute a dismissal within one month after the employer knew about the event that gave rise to the cause for dismissal will invalidate the action.
IV. WORKING CONDITIONS

1. Minimum Working Conditions

The FLL provides for the following minimum benefits, which may not be waived whatsoever:

(a) **Social security benefits.** All employees must be registered with and contribute to the:
- Mexican Institute of Social Security (IMSS);
- National Workers Housing Fund Institute (INFONAVIT);
- Retirement Savings Programme; and
- National Fund Institute for Workers’ Consumption (INFONACOT), which is a governmental institution that provides financial aid to employees for the acquisition of goods and services. This is mandatory as of 1 December 2013.

(b) **Profit Sharing.** Employees are entitled to share in the employer’s profits, currently fixed at 10% of the company’s gross, pre-tax income;

(c) **Paid Mandatory Holidays.** The FLL requires that employees be paid for government holidays;

(d) **Vacation Premium.** Employees are paid an extra 25% of the salary to which they are entitled during their vacation period;

(e) **Christmas Bonus.** Employees have the right to a bonus of at least fifteen days of their daily base salary, which must be paid by no later than 20th December of each year.

2. Salary

**A. MINIMUM SALARY**

The minimum salary is defined as the lowest minimum cash payment that a worker may receive for services rendered in a given time period. Since October 1st, 2015, minimum general salaries and minimum professional salaries are established in one unique region throughout the country.

As of January 1, 2014, the minimum general salary in Zone A was MXN$67.29 (approximately US$3.60) per day, and the minimum general salary in Zone B was MXN$63.77 (approximately US$3.41) per day.

As of January 1, 2015, the minimum general salary in Zone A was MXN$70.10 (approximately US$3.75) per day, and the minimum general salary in Zone B was MXN$66.45 (approximately US$3.56) per day.

As of October 1, 2015, the minimum general salary in the Unique Zone was MXN$70.10 (approximately US$3.75) per day.

As of January 1, 2016, the minimum general salary in the Unique Zone is MXN$73.04 (approximately US$3.91) per day.

The minimum general salary is set by the tripartite National Commission for Minimum Salaries, taking into account the basic amount necessary for the satisfaction of, among other things, the following needs of each family:

- material needs such as housing, household furnishings, food, clothing, and transportation;
- needs of a social and cultural nature, such as attendance at athletic events, training schools, libraries, and other cultural presentations; and
- needs related to the education of children.

The minimum salary is set annually and becomes effective on January 1st. Under special circumstances, it may be modified during the year at the request of one of the parties in the tripartite National Commission, if it is deemed by the Commission as a whole, that the economic circumstances warrant it.

**B. OTHER REQUIREMENTS CONCERNING SALARIES**

Salary includes cash payments for wages, plus bonuses, housing provided by the employer, premiums, commissions, in-kind benefits, and “any other amount or benefit that is given to the worker for his work”; it does not include profit-sharing payments.

As discussed above, salaries of workers may not be set below the minimum established by law. Salaries are established on the principle of equal pay for equal work, provided productivity is the same.

Manual laborers must be paid at least weekly; other workers must be paid every two weeks. A Christmas
bonus, consisting of at least 15 days’ salary, is considered as part of the salary and should be paid each year before December 20.

The right to collect a salary is irrevocable. Salaries must be paid directly to the worker in cash, in currency of legal tender. Workers need to authorize in writing an alternative payment option like direct deposit or check. In-kind benefits (e.g., lodging and board) must be appropriate for the personal use of the worker and his or her family. Fines may not be collected from workers’ salaries, and only some specific deductions, listed in Article 110 of the FLL, are permitted.

Under no circumstances may an employer charge interest on workers’ debts to the employer, nor may workers’ salaries be garnished except for alimony payments to a spouse or other family members. In the case of insolvency of a business, salaries earned over the last year of operation and the compensation due workers have priority over any other credit, “including those backed by real estate, tax liabilities, and amounts owed the Mexican Institute of Social Security, and especially over all the assets of the employer.” Workers may collect debts from the employer directly, through the conciliation and arbitration boards, without need of becoming party to insolvency, bankruptcy, or probate proceedings.

3. Maximum Working Week

The work shift is the time in which the worker is at the disposal of the employer in order to perform work. In most instances, the work shift corresponds to the time interval the worker actually spends working, but the two concepts may differ where the worker is unable to complete the work shift because of reasons outside of his or her control.

A. WORK SHIFTS

Mexican labor law recognizes three work shifts, as follows:
• the day shift, with a length of eight hours, between 6:00 a.m. and 8:00 p.m.;
• the night shift, lasting seven hours, between 8:00 p.m. and 6:00 a.m.; and
• the swing or “mixed” shift, lasting seven and one-half hours, divided between the day and night shifts, provided that less than three and one-half hours of the time is during the night shift.

B. REST PERIODS

Workers are given a rest period of at least one-half hour during a work shift.

C. HOURS PER WEEK

The principle of a 48-hour workweek, which presupposes one complete day of rest with full pay, is officially the law of the land. However, in some employment relationships, such as in government service, the banking sector, and in much of the private sector, a 40-hour workweek has been established. The arrangement of the 40 hours of work may be over five and one-half days or any other equivalent arrangement.

4. Overtime

It is incumbent on the employer to maintain records of the effective length of the workday should the worker claim to have worked overtime.

Section XI of Article 123 of the Constitution limits overtime to 3 hours per day and provides that it may not be performed on more than 3 consecutive days. However, pursuant to a binding opinion issued by the Supreme Court of Justice, overtime must be calculated and paid on a weekly basis; this means it should not exceed 9 hours a week.

Furthermore, overtime must be paid at twice the hourly rate of pay. Article 68 of the FLL establishes that if overtime extends beyond 9 hours per week, the overtime beyond 9 hours must be paid at triple the hourly rate.

Persons under 16 years of age and pregnant or nursing mothers, if it endangers the worker or the child’s life, are not permitted to engage in overtime work.

5. Holidays

Article 74 of the FLL establishes the following mandatory holidays:
• January 1st;
• the first Monday in February, in commemoration of February 5th;
• the third Monday in March, in commemoration of March 21;
• May 1st;
• September 16;
the third Monday in November, in commemoration of November 20;
• December 1st of every six years, on the day of the national presidential inauguration;
• December 25; and
• the election day scheduled by federal and local electoral laws.

Workers who are required to work on a mandatory holiday are entitled to double pay in addition to their regular pay.

6. Employer’s Obligation to Provide a Healthy and Safe Workplace

Article 123 of the Mexican Constitution places the burden on employers to provide workers with a safe workplace:

An employer shall be required to observe, in the installation of its establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labor, as well as to organize the same in such a way as to ensure the greatest possible guarantee for the health and safety of workers as is compatible with the nature of the work, under the penalties established by law in this respect.

Title IX of the FLL also deals with occupational safety and health. Under these provisions, employers have the obligation to set up enterprises in accordance with the principles of worker safety and health, and to take necessary actions to ensure that contaminants do not exceed the maximum levels allowable under the regulations and instructions issued by competent authorities. Employers also are obligated, when required by the authorities, to make physical modifications in facilities to accommodate the safety and health of workers.

Likewise, employers must keep first aid medications and medical supplies at the workplace and instruct personnel on how to administer them. If there are more than 100 workers in a given enterprise, an infirmary with appropriate staff must be established. Enterprises employing more than 300 workers must have a hospital staffed with adequate medical and auxiliary personnel.

The provisions of the FLL have been implemented through the new Federal Occupational Safety and Health Regulations, issued by the Secretary of Labor and Social Welfare in 2014, to enter into effect on February 2015. In addition, many technical rules regarding occupational safety and health are set out in workplace safety standards known as Official Mexican Standards (NOMs).

The Federal Safety Regulations oblige employers to ensure workers’ safety and to keep them informed of risks in the workplace. In addition, the Regulations require periodic tests on various equipment, risk studies concerning matters such as noise levels and air quality, communication with workers concerning risks, worker training, and in some cases, the purchase of additional equipment to comply with the various requirements. The Regulations also cover transportation of primary materials and hazardous materials, including biohazards, and safety in the agricultural sector, and establish rules concerning labor by pregnant women and minors.

Companies with more than 100 workers are required to have a preventive program for safety and hygiene; companies with fewer workers must provide the STPS with a list of their safety and hygiene obligations. Companies not in compliance could be given up to a year’s grace upon submission of a written plan detailing how they plan to come into compliance. Independent private sector units, such as insurance companies, may certify compliance with workplace standards, following authorization by the STPS, forestalling the need for inspections.

The Federal Conciliation and Arbitration Board is responsible for resolving conflicts that arise from employer noncompliance with occupational health and safety responsibilities. The state authorities must cooperate with federal authorities.

Also, the FLL mandates that safety and health commissions be created in every enterprise or establishment. The commissions are made up of equal numbers of labor and management representatives and are responsible for investigating the causes of accidents, proposing measures to avoid their occurrence, and monitoring compliance therewith.
V. ANTI-DISCRIMINATION LAWS

1. Brief Description of Anti-Discrimination Laws

In Mexico, discrimination laws in labor matters are not extensively developed. The FLL states that no worker may be discriminated against on the grounds of race, nationality, gender, age, disability, religion, migratory condition, health, sexual orientation, religion, sexual preferences, political opinion or social status. Article 3 of the FLL establishes as a general principle, among other matters, that: ‘any distinction made against employees based on race, nationality, sex, age, disability, religion, migratory condition, health, sexual orientation, religion, political affiliation or social status is strictly prohibited’. Article 132, VI further requires employers to: ‘treat employees with due consideration and avoid mistreatment by word or conduct’, while Article 133, I prohibits employers from: ‘refusing employment (to an applicant) based on age or gender’. Article 164 provides that: ‘women have the same rights and obligations as men’.

Employers who violate any of the abovementioned provisions shall be subject to a fine of 250 up to 5,000 days of the minimum wage in effect.

The Federal Law to Prevent and Eliminate Discrimination prohibits any discriminatory practice that infringes on the principle of equal opportunity. The federal government’s interpretation of this law must be consistent with international treaties on discrimination to which Mexico is party.

Notwithstanding the above stated laws and legal provisions; there are no stipulations with respect to concrete sanctions or legal actions, should the employer incur in discriminatory acts. Therefore, regardless of the existence, in paper, of these laws and provisions, the lack of enforcement thereof represents a standstill in the evolution of non-discriminatory legislation in Mexico.

2. Extent of Protection

Protected characteristics include ethnic or national origin, gender, age, disability, social or economic condition, health, pregnancy, language, religion, opinions, sexual preferences, marital status or any other that impedes or nullifies the recognition or exercise of rights and real equality of opportunities among individuals.

The law does not prohibit retaliation; however, most companies include such a provision in their compliance programmes and policies.

Employers must avoid any practice such as asking for non-pregnancy certificates to women or health certificates to employees and, in general, any practice that may imply a distinction between two or more individuals who apply for the same job.

3. Protections Against Harassment

The General Law for the Equity of Men and Women aims to regulate and guarantee gender equality. It sets up the guidelines and mechanisms for the fulfilment of equality in the public and private sector, by encouraging women’s empowerment.

The FLL however, does not specifically regulate sex discrimination aside from general discrimination. See section 17.1. above.

The FLL provides that an employee may be dismissed without liability for the employer if he/she incurs sexual harassment in the workplace. Among the several prohibitions that the FLL imposes on employers, is toleration of sexual harassment within the workplace. The breach of this provision may result in the imposition of a fine of 250 up to 5000 times the minimum wage in effect.

Federal and state criminal codes have established harassment as an offence. Under the Criminal Code for the Federal District, it is an offence for any person to harass another person repeatedly for sexual purposes.
Furthermore, Article 1916 of the Federal Civil Code (FCC) states that a person must be indemnified in cash for ‘moral damages’ when he or she is affected in his or her feelings, affections, beliefs, honour, reputation, private life, shape and physical appearance, or in the consideration that others have of such person. Furthermore, the same provision assumes that moral damage exists when a person’s freedom or physical or psychological integrity is violated or diminished. Despite this assumption, in practice it is difficult to prove the essential elements of the action that causes moral damage, taking into consideration its subjectivity.

4. Employer’s Obligation to Provide Reasonable Accommodations

In August 2009, the General Law for Handicapped People was published. This law states that those with a physical handicap must be included in society on equal grounds. Nonetheless, the FLL does not provide anything specific regarding disability discrimination, except that it falls into the general discrimination prohibited by the FLL.

Despite the above mentioned, in order to promote equity and diversity within the workplace, the FLL establishes the obligation for employers with more than fifty employees to have appropriate facilities for the performance of the services of employees with disability.

5. Remedies

A. INTERNAL DISPUTE RESOLUTION PROCESS
Companies may have internal dispute resolution processes; however, they are not mandatory, as the parties will always be entitled to raise their actions with the Conciliation and Arbitration Boards.

B. MEDIATION AND CONCILIATION
There is no mediation and conciliation except for the formal conciliation process performed by the Conciliation and Arbitration Boards.

C. ARBITRATION
Arbitration is performed by the Conciliation and Arbitration Boards, as it is not possible for the parties to agree on a third party arbitration. For a labor-related ruling to be enforceable, it must be issued by the competent labor authority, Conciliation and Arbitration Board or a Court of Appeals.

D. LITIGATION
Conciliation and Arbitration Boards are the administrative agencies in charge of solving labor disputes. When dealing with individual litigation cases, a Board will encourage the parties to reach a settlement agreement before the actual proceedings take place.

If the parties refuse to reach an agreement, a Board will initiate the process; however, the parties may reach an agreement at any moment before the final award is issued.

E. FINES, PENALTIES AND DAMAGES
The Social and Welfare Department can impose fines of different amounts on employers for breach to the FLL.
VI. SOCIAL MEDIA AND DATA PRIVACY

In Mexico, there is no comprehensive legislation on social media; however, the Federal Law on the Protection of Personal Data held by Private Parties (the “Law”) and its secondary regulations, among other laws, apply to the processing of personal data that is carried out within social media platforms (including job advertisements), as well as to the processing of personal data that is obtained from social media. Processing is understood as the collection, use, disclosure or storage of personal data by any means.

All processing of personal data must observe the principles of legality, consent, information, data quality, purpose specification, loyalty, proportionality and accountability.

1. Can the employer restrict the employee’s use of Internet and social media during working hours?

According to the FLL, employees should be committed to perform their jobs with the utmost diligence and efficiency, as well as to safeguard those working tools provided by the employer to ease the accomplishment of their duties, which are not intended for personal use. Thus, employees may have access to social media if the employer so allows, either during their work shift or out of it. Breach of the foregoing may lead to justified termination of employment. Depending on the nature of the job, access to social media may be necessary.

On the other hand, the employer may have access to the employees’ communications by these means with supervision purposes and only if agreed in writing with the employees.

It must be borne in mind that, according to the most recent opinions issued by the Supreme Court of Justice, the right to privacy of private communications includes social media.

2. Employee’s use of social media to disparage the employer or divulge confidential information

Employees have a duty of loyalty towards the employer, which means that employees must refrain from carrying out actions that may harm company’s reputation, other employees, or the company in general. The contrary may give grounds for termination with cause.
The FLL allows for the employment of foreign nationals in Mexico. Article 7 of the FLL states that “in every enterprise or establishment, the employer shall employ at least 90 per cent of Mexican workers.” This same provision states that with regard to categories of technicians and professionals, “the workers shall be Mexicans unless there are none in that particular specialty, in which case the employer may employ foreign workers temporarily, in a ratio not to exceed 10 per cent of those employed in that specialty.” There are two additional conditions in Article 7: (1) employers and foreign workers have a joint obligation to train Mexican workers in the specialty of the foreign workers; and (2) physicians working in enterprises must be Mexicans. The provisions of Article 7 of the FLL do not apply to directors, administrators, or general managers of enterprises.

The FLL’s limited authorization for foreign nationals to work in Mexico is also subject to the requirements of the Migration Law, in force as of May 25, 2011. The Migration Law establishes the following types of immigration status for foreign nationals in Mexico:

• VISITORS: The immigration status of visitors mainly subdivides into a) tourists (and other non-business related visitors); and b) businesspersons. Neither may pursue employment in Mexico. The maximum length of stay for foreign nationals arriving in Mexico under this type of status is 180 continuous days. The status of visitor tourist describes itself. The status of visitor businessperson allows foreign nationals to engage in business-related activities; however, they may not be paid, either in cash or in kind for these activities.

• TEMPORARY RESIDENCE: This type of residency is granted to those foreign nationals who have a family bond (either Mexican or foreigner) or otherwise in Mexico. They may not pursue employment—although they may file for work permission—and the length of their stay is linked to the person to whom they are linked in Mexico, not to exceed four years.

• TEMPORARY RESIDENCE WITH WORK PERMISSION: This type of residency is granted to those foreign workers whose work visa is sponsored by a Mexican company. The maximum length of a temporary residence card is four years. The Mexican company is the one to start the process and request the work permission on behalf of the worker before entrance of the foreign national to Mexican soil. Once the maximum four-year period has elapsed, the foreign national may pursue a permanent-resident status.

• STUDENTS: Students fall into the category of temporary residents. They may file for work permission, as long as the job offer is related to the field they are studying in Mexico. Their stay in the country may be extended until they complete their studies and obtain the necessary credentials attesting to the completion of their schooling, not to exceed four years.

• PERMANENT RESIDENCE: This type of residency is granted to those foreign nationals who meet the following requirements:
  • they have been married to a Mexican national for more than two years (and the marital bond persists);
  • they have Mexican children; or
  • their temporary residency has reached the four-year period.

All foreign nationals holding a status of permanent residence are allowed to work in Mexico. A permanent residence card does not expire. Foreign nationals under this status may start accruing time in order to file later for the naturalization process.

Article 33 of the Constitution grants foreign nationals the same individual guarantees as Mexican citizens, but it also authorizes the Executive of the Union (the President of the Republic) to force them to leave the country “immediately and without a trial” whenever the President deems their presence to be inconvenient. Under no circumstances may foreign nationals engage in domestic politics.
VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. Grounds for Termination

An employer may dismiss an employee only where the latter gives cause for dismissal. Under Mexican labor law, “integrity at work” is mandatory behaviour for the employee. An employee is deemed to act with integrity when the work is carried out with intense effort, care, and attention, in the agreed-upon time, place, and manner. “Lack of integrity” is a generic cause for dismissal. Additionally, Article 47 of the FLL specifies particular kinds of conduct that are causes for dismissal:

- use of false documentation to gain employment;
- dishonest or violent behaviour against the employer or the employer’s family;
- dishonest or violent behaviour against co-workers that disrupts work discipline;
- acts of harassment or sexual harassment directed toward any person in the workplace;
- sabotage of the workplace;
- negligence;
- carelessness that threatens the safety of the workplace and of other workers;
- immoral acts in the workplace;
- disclosure of trade secrets;
- more than three unexcused absences in a 30-day period;
- insubordination;
- failure to adopt preventive measures or to follow procedures to avoid accidents or illnesses;
- reporting to work under the influence of alcohol or narcotic drugs; and
- incarceration.

2. Collective Dismissals

According to the FLL, there must be a legally permitted cause of termination that substantiates the collective dismissal. The severance payment and the subsequent procedure will be determined depending on the cause.

The first step is to determine whether the company has unionized workers and confidential employees. If it does, the working conditions of the union workers are governed by the CBA. Therefore, both the termination of the union workers and the CBA must be negotiated with the Union.

Concerning the termination of individual employment relations with union workers, the FLL sets forth a formula to calculate the amount of severance to be paid to each employee, as described in Section 3.a below.

The aggregate salary of union workers must include: (1) the base salary; (2) any other benefit in cash or in kind (such as life insurance, savings fund, food coupons, vacation premium, year-end bonus, etc.); and (3) any other benefit provided to the employee for services rendered.

In practice, some labor unions claim the payment of a four-month indemnity plus twenty days of aggregate daily salary for each year of service rendered, arguing that the termination of the employment relationship is a consequence of the implementation of new working procedures by the parent company. In other cases, the union claims an additional premium for the closing of industrial operations that may represent an additional percentage to the indemnity contemplated by law.

The employer also has the obligation to pay a seniority premium to each employee being terminated. This premium is equal to twelve days of salary for each year of service rendered, with a cap at the equivalent of two times the minimum daily salary. Mandatory fringe benefits must be paid in arrears at the time of termination.

Upon conclusion of the negotiations, an agreement will be filed before the Local Conciliation and Arbitration Board for the liquidation of all union workers. The above will enable the employer to freely dispose of its real estate and goods (machinery, raw materials, buildings, etc.).

Additionally, it is a common practice to liquidate confidential employees using the same basis as for the union workers. In some cases, those who actively participate in the closing operations will receive a ‘stay-on’ bonus.
3. Individual Dismissals

A. IS SEVERANCE PAY REQUIRED?

Termination payment is calculated depending upon the cause of termination:

- Voluntary resignation: The employer must pay all due benefits, including sales incentives, on a prorated basis up to the termination date. If the employee has at least fifteen years of seniority, he or she is also entitled to a seniority premium of twelve days’ salary for each year of service capped to twice the minimum daily salary in force.

- Termination with cause: The employer must pay all due benefits, including commissions, on a prorated basis until the date of termination, and the seniority premium of twelve days of salary for each year of service (but with a cap of twice the minimum daily salary in the same terms as explained before).

- Termination without cause: Employees that are terminated without cause are entitled to the following lump sum severance: (1) three months of the employee’s daily aggregate salary, plus: (2) twenty days of the employee’s daily aggregate salary for each year of service; (3) a seniority premium of twelve days’ salary for each year of service (but with a cap of twice the minimum daily salary in the same terms as explained before), (4) due benefits.

Furthermore, in terms of Article 33 of the FLL for any agreement or settlement to be valid, it must be entered into in writing and contain a detailed description of the facts that motivated it and the rights therein contained. It must be ratified before the competent Conciliation and Arbitration Labor Board, which will approve it as far as it does not contain a waiver of the employee’s rights.

By virtue of the above, a Separation Agreement may be considered best practice. However, it must be ratified before and approved by the Conciliation and Arbitration Labor Board in order to be valid.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

The Standard provisions of a Separation Agreement are:

- Reciprocal acknowledgement of the parties’ status and representation, and legal capacity.
- Employee’s statement containing the employer’s name, hiring date, position, work shift and salary.
- Express consent by the parties to terminate the employment relationship and the termination date.
- Total settlement of obligations and acknowledgement of receipt on behalf of the employee of the net and gross amounts due by the employer, including a breakdown of the concepts that are being paid, applicable taxes and deductions.
- Full release by the employee of all labor and social security obligations in favour of the employer, its parents, subsidiaries or affiliates, predecessors, successors or assigns, as well as their respective current and/or former partners, directors, shareholders/stockholders, officers, employees, attorneys and/or agents, all both individually and in their official capacities.
- Employee’s statement under oath of the working conditions and benefits enjoyed while in service with the employer.
- Confirmation by the employee of the last day worked for the employer.
- Ratification of the Agreement and request of the Labor Board’s approval.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

No, the employee’s age makes no difference.
D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

Other provisions to consider in the Separation Agreement are those related with:

- Company’s files, documents and property.
- No disparagement.
- Confidentiality clause.
- Non-compete and/or non-solicitation.

5. Remedies for employee seeking to challenge wrongful termination

According to the FLL, employees who have been wrongfully terminated can file a complaint with the Conciliation and Arbitration Board for: (a) constitutional severance consisting of three months of aggregate salary; or (b) reinstatement to the same position he/she held, plus back wages (which is the salary the employee is not earning during the labor proceedings capped to one year, if the litigation is not concluded after twelve months, the plaintiff will be entitled to request 2% monthly interest over a fifteen-month’s salary base).
1. Definition of Restrictive Covenants

Although Mexican legislation does not provide for a specific concept of restrictive covenants, they may be defined as any contract, covenant, or agreement having as scope the restriction, loss or irrevocable sacrifice of the personal freedom.

Mexican law does not expressly prohibit clauses or covenants of this nature during the employment relationship. In fact, if a worker engages in activities that result in competition against the employer’s business during the course of employment, that conduct would constitute just cause for termination of the work relationship, even in the absence of a non-compete covenant.

Covenants not to compete may be incorporated as one among various clauses in an individual work contract, or may take the form of an altogether separate or standalone agreement between the employer and the worker.

On the other hand, both the validity and enforceability of covenants not to compete that seek to survive an individual’s work relationship are more difficult to ascertain. Mexico’s Constitution protects its citizens’ freedom to engage in lawful work. Moreover, the FLL expressly provides that work constitutes a “social right and duty” and, as such, to “preclude any person from carrying out work, or from engaging in a profession, industry or trade of choice, so long as it is lawful,” is not permitted in principle. As a general rule, other than the self-evident requirement that the work, profession, industry, or trade be considered lawful, the right to freely choose work may only be limited or denied “by resolution of competent authority when the rights of a third party are infringed, or when those of society are offended.” Notwithstanding the foregoing, pursuant to an opinion issued by a Circuit Court on Civil Matters in Mexico City, Covenants not to compete are fully enforceable provided they are limited in time, geographical scope, clients and activity, products and services, and consideration is paid in exchange.

By virtue of the above, Mexican employers that require certain workers to enter into non-compete covenants must narrow down the scope of the worker’s post-employment restrictions by (a) setting limits to the duration of the covenant, such as a maximum of one year after the conclusion of the work relationship; (b) defining the type of competitive activities from which the former employee is to refrain; and (c) specifying the competitors and the geographic area or market segment in which the former worker cannot accept employment.

In addition, employers must make a payment to the former worker in exchange for the commitment not to engage in direct competition with its business. Another alternative for the parties is to agree on dividing an overall payment into periodic “instalments” after pre-defined periods have elapsed in which the former worker has opted not to accept employment with a competitor or to engage in direct competition. Ultimately, however, the absence of express regulation on this subject can always lead to legitimate questions regarding the validity or enforceability of covenants not to compete.

2. Types of Restrictive Covenants

Non-Competes, Non-solicitation of customers and Non-solicitation of employees are clear examples of Restrictive Covenants. Execution of restrictive covenants has become more common in Mexico as a means to protect the employer’s confidential information and trade secrets, as well as to ensure the companies’ right to loyal competition.

3. Enforcement of Restrictive Covenants—process and remedies

In principle, Restrictive Covenants are only “enforceable” during the employment relationship as a cause for termination and without liability on the employer.

From a labor standpoint, post-employment Restrictive Covenants are null and void under Mexican legislation and, therefore, unenforceable; the only possibility for “enforcement” is before the Civil Courts as explained in Section IX.1 above.
If the Non–Compete and Non-Solicitation agreement is declared null and void for the reasons provided in Article 5 of the Mexican Constitution, both parties are able to retrieve their prior status, meaning the employee will be requested to pay back any and all moneys received for performance of the obligations established in the agreement.

The employer could also exercise a civil action claiming damages derived from such infringement or even take criminal action if the employee had access to confidential information and/or trade secrets while performing his/her duties.

Note that an injunction to prevent someone from rendering services or working in a certain field or activity cannot be issued because, as mentioned in Section A above, Article 5 of the Mexican Constitution and 4 of the FLL bar such relief.

4. Use and Limitations of Garden Leave

There are no garden leaves under Mexican legislation.
X. RIGHTS OF EMPLOYEES IN CASE OF A TRANSFER OF UNDERTAKING

1. Employees’ Rights

In connection with the sale of a business or transfer of undertaking, the FLL generally requires the acquiring entity to retain the selling entity’s workers, as well as to assume existing benefit liabilities, regardless of whether the benefits are privately sponsored (e.g., company-sponsored medical insurance) or legally mandated (e.g., paid vacation and vacation premium). This is known under Article 41 of the FLL as a substitution of employer: The substitution of the employer shall not affect the work relations of the enterprise or the establishment. The substituted employer shall be jointly responsible with the new employer for the liabilities derived from the work relations and the Law, which originated prior to the date of the substitution, for a term of up to six months; upon expiration of such term, only the responsibility of the new employer shall subsist.

The six-month term referred to in the preceding paragraph shall be computed as of the date of notice of such substitution to the union or the workers.

As a corollary of this retention obligation, the acquiring entity must recognize the workers’ length of service, so as to ensure that changes in the legal structure or the ownership of the employer do not undermine the workers’ vested rights.

If the sale of a business in Mexico is structured as a stock purchase or a merger agreement that does not affect the seller’s corporate entity, a substitution of employer does not come into play. In these cases, the buyer automatically becomes the employer of the seller’s workers.

Article 41 of the FLL likewise contemplates continuity of the work relations in the event of an asset sale.

When the buyer, or substitute employer, assumes the workers’ terms and conditions of employment in effect prior to the substitution, the FLL does not require consent from, or consultation with, the workers.

For a substitution of employer to apply, pre-substitution terms and conditions of employment—as established in the individual employment contract or collective agreement—must remain unaltered. If the substitute employer unilaterally implements detrimental changes to existing employment conditions, the employee can rescind the employment relationship and demand statutory severance. During the first six months following an employer substitution, both employers remain jointly liable for labor claims.

2. Requirements for Predecessor and Successor Parties

However, in order to consummate the transfer of workers through an employer substitution and properly allocate responsibility for labor liabilities associated with the asset sale transaction, both the seller and the buyer are required to comply with important procedural formalities, including the following:

- delivery of a notice of employer substitution to individual workers and to the union, if the workers are covered by a collective agreement; the notice of substitution is typically signed by both the seller (substituted employer) and buyer (substitute employer);
- delivery of notices to the Mexican Social Security Institute (IMSS) to ensure amendment to the existing registry to show the substitute employer as employer of the existing registry;
- delivery of similar notices to the National Fund for Worker Housing (INFONAVIT) and the National Fund for Development and Guarantee of Workers’ Consumption (INFONACOT);
- with respect to labor claims against the seller (substituted employer) pending before the courts or before an arbitration and conciliation board, each parties’ legal representatives must notify the corresponding authorities.

The procedural requirements listed above are accompanied by a host of administrative activities, such as changes to personnel management documentation.
(e.g., pay checks, business cards, identification badges, new employment and other form agreements for post-substitution hiring, vacation documentation, facilities’ signage, permits, shifts, attendance records, loan documents, and the like), revocation of pre-substitution powers of attorney (by the substituted employer), and issuance of new powers of attorney (by the substitute employer) for representation in labor matters, among others.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. Brief Description of Employees’ and Employers’ Organizations

Article 356 of the FLL defines a union as “the association of workers or employers for the study, advancement, and defence of their respective interests.” It follows from this definition that labor unions may not include both workers and management members.

Labor unions can be organized as follows:
- trade unions, encompassing workers of the same profession, skill, or specialty;
- enterprise unions, encompassing workers employed in the same enterprise;
- industrial unions, encompassing workers who work in two or more enterprises in the same industry;
- national industry-wide unions, formed by workers employed in the same industry but who are located in two or more states (including the Federal District) and various trades; and
- multi-craft unions, established in municipalities that do not have 20 or more workers of the same profession, trade, or specialty.

Similarly, there are different types of employers’ unions or associations, as follows:
- those formed by employers in one locality who are engaged in one or more activities; and
- national associations, comprising employers in several states.

Among other activities, labor unions may do the following:
- challenge the annual tax declarations filed by employers;
- initiate a collective dispute on economic issues;
- sign collective agreements on behalf of workers;
- determine participation of individual workers in profit sharing;
- oversee the operation of training systems;
- establish general seniority scales;
- participate in the drafting of work rules; and
- deal with occupational safety and health problems.

A union can be established with at least 20 workers in active service, or by the association of at least three employers. Previous authorization is not required for the establishment of a labor union. Workers occupying positions of trust cannot belong to the same labor unions with other workers, although they may establish their own labor unions.

2. Rights and Importance of Trade Unions

Trade unions are a substantial and important sector in the political organisation of Mexico. The unions have become a very strong force within the official political party (the ‘Institutional Revolutionary Party’ or ‘PRI’) and within the Mexican Congress. They strongly influence the Mexican Congress and have introduced and supported most of the social legislation. Trade unions in Mexico have representatives on all the bodies responsible for the election of members of state and the federal labor boards.

Trade (or craft) unions may enter into their own collective agreements provided they represent the majority of the workers engaged in that trade within the company.

A labor union may lose its right to represent workers in a collective agreement if the conciliation and arbitration board determines that it no longer represents a majority of the workers, and, in such cases, another union acquires that right.

In May 1999, the Supreme Court held that provisions of the Federal Law of Workers in the Service of the State (LFTSE), which allow only one union within each government agency, were unconstitutional.

The Court concluded that the limits on representation violated Article 123 of the Constitution, because they restricted the rights of workers to associate freely and negotiate collective agreements. However, the Court upheld a requirement that a minimum of 20 workers was required to form a union. Following this ruling,
there has been a tendency to form new unions (e.g., the air traffic controllers) and this trend is likely to continue.

In a 2000 decision, the Supreme Court held that Article 75 of the LFTSE, which prohibited any automatic renewal of appointments within a trade union, was unconstitutional because it prevented the re-election of labor union leaders. This was the first such ruling, so it does not constitute a compulsory ruling.

3. Types of Representation

Unions may represent its members at either the national or local levels. In order to gain official recognition, unions must register with the Secretariat of Labor and Social Welfare in cases where the federal government has jurisdiction, and with the local conciliation and arbitration board in cases of local jurisdiction. Legal registration of a union requires the following:

- a certified copy of the bylaws;
- in the case of labor unions, the names and addresses of the members and their employers;
- a certified copy of the minutes of the general meeting at which the union was constituted; and
- a certified copy of the minutes of the general meeting at which the board of directors was elected.

Once these documents are submitted, the registering authority (i.e., STPS or the local conciliation and arbitration board) has 60 days to issue the registration. Registration may be denied only in the following circumstances:

- the union does not fulfil the lawful purposes spelled out in Article 356 (i.e., for labor unions, “the study, advancement, and defence” of workers’ interests);
- the union does not have the minimum number of members (20 workers or three employers) required by Article 364; or
- the union fails to submit all the documents required by Article 365.

In those cases where the registering authority has not reached a certification decision within the 60-day period, the prospective union may demand that registration be carried out. If the authority does not act within 3 days of the demand, the registration is automatically granted, and the authority is required to issue the appropriate documentation. However, a problem arises when the above procedure is followed and the authority does not formally grant registration. Article 692, Section IV provides that:

union representatives will accredit their status by means of the certification issued by the Secretariat of Labor and Social Welfare or the local Conciliation and Arbitration Board, indicating that the Board of Directors of the union has been registered.

Clearly, if registration has not occurred—and the STPS or local conciliation and arbitration board has not issued a certification—then the union will not be able to pursue legal proceedings, which include, for a labor union, calling a strike or entering into a collective agreement. Where certification has been delayed, the union may initiate a writ of amparo suit (juicio de amparo) against the authority that has denied its registration.

A union cannot be dissolved or suspended, nor can its registration be cancelled, by administrative decision. Cancelling the registration requires a legal process that demonstrates that the union has been dissolved or it no longer complies with legal requirements. A union can be dissolved only when it is so agreed by two-thirds of its membership or when the term specified in its bylaws has expired.

4. Number of Representatives

The FLL does not provide how a union’s board of directors should be constituted, although reference is made to “general,” “internal,” and “recording” secretariats. This information is most commonly contained in the union’s bylaws. Non-Mexican nationals may not be members of the boards of directors of labor unions. The boards of directors must render an account to the full membership at least every 6 months regarding the administration of union funds.

Some labor unions—especially the larger ones—are divided into sections representing specific groups of workers, work areas, specialties, etc. These sections do not have, as a general rule, their own legal standing and in collective matters must act through the board of directors of the principal union.

Unions are represented by their secretary general or by a person appointed by the board of directors, unless the bylaws provide otherwise. If a member of the board of directors of a labor union is terminated by the employer, or ceases to work for reasons imputable to the employer,
the worker will continue to exercise his or her union duties, except where the bylaws provide otherwise.

The general membership meeting is the supreme decision-making body of a union. The bylaws must specify the manner in which general membership meetings should be convened, the intervals at which they should be held, and the required quorum. If the board of directors does not hold a general membership meeting as specified in the bylaws, in a timely manner, one-third of the total membership of the union or the section may request that such a meeting be convened within a period of 10 days. If this is not done, in the case of labor unions, the workers may convene the membership meeting. Such a general membership meeting shall be deemed to be valid only if two-thirds of the total membership of the union or the section attend.

5. Appointment of Representatives

The FLL does not provide how a union’s board of directors should be constituted, although reference is made to “general,” “internal,” and “recording” secretariats. This information is most commonly contained in the union’s bylaws.

6. Tasks and Obligations of Representatives

Unions are under a permanent obligation to report periodically to the labor authorities any new members. They must also advise the labor authorities of any changes in the board of directors or amendments to their bylaws. The deadline for doing so 10 days from the date in which the change occurs. Moreover, unions must furnish authorities with reports that may be requested with regard to any actions they have taken.

7. Employees’ Representation in Management

Workers have no representation in the company’s Management.
Employees also have the right to designate representatives to be part of mixed commissions (safety and health, profit-sharing, training, productivity and development, and the like), for which they need not be unionized. Meetings of workers for these purposes are, strictly speaking, temporary accords for the protection of their mutual interests—that is, coalitions.

These possibilities generate the potential that groups of workers could pursue claims collectively in the conciliation and arbitration boards, although, in practice, these actions hardly ever occur, at least at the present time.
XIII. SOCIAL SECURITY / HEALTHCARE / OTHER REQUIRED BENEFITS

1. Legal Framework

The social security system in Mexico is governed by the Social Security Law (LSS) of 1995, which went into effect on July 1st, 1997. The Mexican Social Security Institute (IMSS) is responsible for administering social security programs. The IMSS is a quasi-official entity, under tripartite (government-worker-employer) management, whose executive director is appointed by the President of the Republic.

A. COVERAGE

In general, social security coverage is compulsory for all workers, including members of production cooperatives, worker-run and joint worker-management-run companies, traditional agrarian communities of common ownership (ejidatarios), joint property communities (comuneros), small farmers (colonos), small property owners organized in groups, and local societies or credit unions covered by the Agricultural Credit Law.

2. Required Contributions

The social security system is financed from contributions by workers, employers, and the government. The contributions are based on salary levels. However, workers do not make contributions if they earn the monthly minimum wage in their geographic area. The maximum salary amount used to calculate social security contributions is 25 times the monthly minimum wage in Mexico City.

Within this minimum/maximum range, employee contributions are 2.00 per cent of earnings for retirement benefits, plus 3.15 per cent of earnings for disability and survivor benefits. For employers, the contribution rate is 5.15 per cent of covered payroll for retirement benefits. Government contributions amount to 7.43 per cent of covered earnings, plus an average flat rate of MXN$4.07 (depending on salary range) for each day a worker contributes for retirement benefits, and .125 per cent of covered earnings for disability and survivor benefits.

Contribution rates, limited to earnings up to 25 times the minimum wage, for sickness, medical, and maternity benefits currently are as follows:

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<th>Salaries Up to 3 Times</th>
<th>Salaries Over 3 Times</th>
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<tbody>
<tr>
<td>Min. Wage</td>
<td>20.40%</td>
<td>1.10%</td>
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<tr>
<td>Employer</td>
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<tr>
<td>Employee</td>
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<tr>
<td>Government</td>
<td>13.255%</td>
<td>National CPI</td>
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<tr>
<td>Total</td>
<td>33.65%</td>
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Contributions for day-care benefits are paid entirely by the employer and are equal to 1 per cent of covered payroll, subject to the minimum and maximum earnings limits.

Workers with at least 52 weeks’ worth of payments into the social security system, and who withdraw for whatever reason, are entitled to continue making voluntary payments. Should the worker obtain salaried employment again, the worker may return to the system and maintain all benefits.

The compulsory nature of social security means that workers are automatically covered by virtue of being workers, whether or not they are registered in the system. If there is an omission in registering a worker, the employer is responsible.

3. Insurances

The social security system protects workers in the following matters:

- occupational accidents and illnesses;
- old-age, retirement, and survivor pensions;
- disability;
- sickness;
- medical benefits;
- maternity;
- day care for children of insured workers; and
- social services
4. Required Maternity/Sickness/Disability/Annual Leaves

A. PREGNANCY LEAVE
Working mothers are entitled to forty-two days prior to childbirth as pregnancy leave, and the IMSS pays them 100% of their registered salary during such leave. Moreover, working mothers may request the employer transfer up to four weeks of pregnancy leave in order to enjoy them after childbirth.

B. MATERNITY LEAVE
Working mothers are entitled to forty-two days after childbirth as maternity leave, with the IMSS paying them 100% of their registered salary.

Statutory maternity leave may be extended as necessary if work is not possible because of the pregnancy or the delivery. During the maternity leave, the employee receives her regular salary.

During the nursing period of 6 months, the new mother is entitled to two additional thirty-minute rest periods per day to feed the child, in an adequate and hygienic place set aside by the employer.

When returning from maternity leave, the employee is entitled to reinstatement, provided that not more than one year has passed since the date of delivery. Maternity leave is included in the length of service.

C. MEDICAL OR SICK LEAVE
An employee is entitled to sick leave depending on the type of illness and degree of disability. In case of illness or injury, an employee must obtain a doctor’s order from the IMSS. The IMSS determines the employee’s entitlement to sick leave as well as the amount paid to the employee during the illness or injury. The IMSS, not the employer, pays the employee’s income during the leave.

There is no mandatory unpaid medical leave of absence in Mexico. If the employee needs an unpaid medical leave of absence due to a condition not recognized by the IMSS, then the employer has the discretion to grant the leave.

D. INJURY AT WORK
The FLL provides leave due to:

1. Occupational Injuries: defined as any accident or disease to which the employees are exposed in the course of their employment, or any consequences thereof;

2. Industrial Accident: defined as any organic injury, functional disturbance (whether immediate or subsequent) or death, occurring suddenly in the course of the employment or as a result thereof (i.e., the place where or the time when the accident occurs is related to the employment); or

3. Occupational Diseases: defined as any pathological condition arising out of the continued action of a cause that has its origin or motive in the employment or in the environment in which the employee is obliged to render his or her services.

The consequences of any of the injuries described above, and the term they may last, according to the SSL, are as follows:

<table>
<thead>
<tr>
<th>Injury</th>
<th>Period of Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temporary disability</td>
<td>52 weeks (which may be extended to an additional period of 52 weeks).</td>
</tr>
<tr>
<td>Permanent partial disability</td>
<td>Temporary leave. Payment is through the IMSS according to the amounts established in FLL.</td>
</tr>
<tr>
<td>Permanent total disability</td>
<td>Permanent leave. Payment is through the IMSS according to the amounts established by the FLL.</td>
</tr>
</tbody>
</table>

The economic benefits paid by the IMSS due to illness are based on 60% of the employee’s registered salary, and they are paid as of the fourth day of absence.

The SSL establishes the periods of leave depending on the division of the compulsory social insurance plan:

<table>
<thead>
<tr>
<th>Division</th>
<th>Period of Leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Workers compensation insurance for job-related injury and illness</td>
<td>According to the above-mentioned outline.</td>
</tr>
<tr>
<td>Illness</td>
<td>1 day to 52 weeks.</td>
</tr>
</tbody>
</table>

E. ANNUAL LEAVE
Workers are entitled to 6 vacation days after being employed for one year, and to 2 additional days for each subsequent year, up to a maximum of 12 days. As of the fifth year, the worker is entitled to 14 workdays’ vacation; for each additional group of five years, two more vacation days are added.

Employers must pay workers a vacation premium equivalent to 25 per cent of the salary earned during the vacation days.

Vacations must be taken on the date indicated by the employer, within 6 months following the worker’s anniversary with the employer.
5. Mandatory and Typically Provided Pensions

A. DISABILITY BENEFITS
For disability benefits, the IMSS retains responsibility for the management and collection of contributions, but private insurance companies provide benefits.

Workers who were first covered by the social security system prior to July 1st, 1997 are eligible for a disability pension if they are assessed with a permanent 50 per cent reduction in normal earning capacity and have at least 150 weeks of contributions. Other workers are eligible for a disability pension if they are assessed with a permanent loss of at least 75 per cent of normal earning capacity and have at least 150 weeks of social security contributions, or if they are assessed with a loss of 50–74 per cent of normal earning capacity and have at least 250 weeks of contributions. The IMSS assesses the level of reduced earning capacity.

Disability pension benefits are equal to 35 per cent of the worker’s average adjusted earnings during the last 500 weeks of contributions. In addition, 15 per cent of the worker’s pension is paid for a wife or partner, and 10 per cent is paid for each child younger than age 16 (age 25 if a student, no age limit if disabled). If there is no wife, partner, or child, 10 per cent is paid for each dependent parent. A worker who requires the constant attendance of others to perform daily functions is also eligible to receive a constant attendance allowance of up to 20 per cent of the pension amount.

A disability pension is subject to a guaranteed minimum. As of January 1st, 2013, the monthly minimum pension amount was MXN$1,969.78 (approximately US$106.07), for workers covered by the pre-1997 system, or MXN$2,253.76 (approximately US$121.36), for workers subject to the reformed system. Benefits are adjusted annually in February according to changes in the price index. Disabled workers also are entitled to a Christmas bonus equal to 15 days of pension benefits without supplements.

If a worker is eligible for a disability pension and has an individual retirement account with a balance greater than the minimum pension, he or she may withdraw the amount exceeding the minimum pension, use the excess amount to purchase an annuity, or apply the excess amount to survivor benefits.

B. RETIREMENT BENEFITS
Effective July 1st, 1997, the Mexican pension system was reformed from a defined benefit system, without any change for workers who were pensioned before that date. The current pension system in Mexico is a fully funded defined contribution system based on three pillars:

- a minimum guaranteed pension for low-income workers;
- mandatory individual savings accounts with competitive mutual fund management;
- voluntary savings.

Normal retirement benefits are available to both men and women who have reached age 65 and who have at least 1,250 weeks of social security contributions. An early retirement benefit is available at age 60.

The first pillar of the Mexican pension system, the minimum pension guarantee is equal to the minimum wage on July 1st, 1997, indexed for inflation. As of January 1st, 2013, the monthly minimum pension was MXN$2,253.76 (approximately US$121.36).

The second pillar is based on defined contributions and individual accounts. The IMSS collects the contributions and places them in the worker’s account, but the accounts are managed by private retirement fund administrators (AFOREs). At retirement, the worker has two options:

- receive periodic payments or a lump sum directly from the AFORE; or
- transfer the account balance to an insurance company and buy an annuity

Various factors determine the amount of the pension benefit: the number of contribution years; the period over which the pension is distributed; the annual average investment yield on the individual’s account; and the AFORE’s fees.

Workers who started contributing prior to the 1997 reform can choose, at the time of retirement, the highest benefits computed under the two systems.

C. SURVIVOR BENEFITS
Survivor benefits are payable provided that the deceased worker was a pensioner and made at least 150 weeks of contributions at the time of death.
Survivor benefits are payable to a surviving widow or a permanently and totally disabled widower in an amount equal to 50 per cent of the pension that would have been paid to the worker. Each surviving child under age 16 receives a benefit equal to 20 per cent of the worker’s pension, or 30 per cent if the child is an orphan. If there is no eligible spouse or child, a benefit equal to 20 per cent of the worker’s pension is paid to each person. Survivor benefits may not exceed 100 per cent of the pension that would have been paid to the worker.

Upon the death of a covered worker, the social security system pays a funeral benefit to the family equal to two months’ of the worker’s salary.
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