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Employment

Law and Practice – Mexico

Contributed by
Creel, García-Cuéllar,
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MEXICO

LAW AND PRACTICE: p.3

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The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

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Law and Practice

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MEXICO LAW AND PRACTICE

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Creel, García-Cuéllar, Aiza y Enríquez, S.C. has a "full service" labour, employment and social security practice with ample experience in representing and advising large multinationals, including hire and termination of employees, negotiation of collective bargaining agreements with local and national unions, establishment of incentive compensation schemes, including stock option plans, incentive bonus plans and benefits, creation and operation of cost-efficient employment structures, employee training manuals, and health and safety regulations, advice on the employment law implications of commercial transactions and litigation before State and Federal Labour Courts. The Employment and Labour practice has ample experience in representing and advising large multinational groups across the spectrum of employment and labour matters, including the following: hire and termination of employees, negotiation of collective bargaining agreements with local and national unions, establishment of incentive compensation schemes, including stock option plans, bonus plans and benefits, creation and operation of personnel companies, design and implementation of internal work regulations, employee training manuals, and health and safety regulations, advice on the employment law implications of commercial transactions and litigation before State and Federal Courts.

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1. Terms of Employment

1.1 Contractual relationship

Based on a consistent interpretation of the Mexican Federal Labor Law and secondary regulations, it is safe to conclude that the execution of written individual employment agreements is an obligation for all employers in Mexico.

According to the Mexican Federal Labor Law individual employment agreements shall at least include the following information: i) employees full name; ii) employees nationality, age, marital status, Unique Population Registration Code (CURP) number and RFC number; iii) employees domicile; iv) working schedule; v) salary and payment method and place of payment; vi) description of the services to be provided; vii) workplace; viii) term of the employment relationship; ix) training and instruction conditions; and x) description of the mandatory benefits the employee will receive.

General rule in Mexico is that employers have the burden of proof to demonstrate employment terms and conditions. Therefore, in case of absence of a document evidencing the agreed terms and conditions of employment it will be presumed that the terms and conditions potentially claimed by the employee are the existing ones.

Moreover, general rule in Mexico is that employment relationships will be for an indefinite period of time, notwithstanding, exceptionally employment relationships can be subject to a definite period, when the nature of the services

and the job to be performed by the employee has a temporary nature.

Since 2012, according to Mexican Federal Labor Law employers may include in the employment agreements a trial/probation period. The purpose of such a period is to ascertain that the employee satisfies the position requirements and possesses the knowledge and ability necessary to perform the solicited work. As a general rule, the trial period will have a maximum duration of 30 days. However, in special cases the parties may agree to a duration of up to 180 days.

Likewise, an employment relationship/contract for initial training will exist when an employee agrees to perform services aiming to acquire the knowledge and skills required for the activity for which he/she will be hired. Maximum duration of this type of relationship/contract is three months, however, in special cases, a term of up to six months may be agreed to.

1.2 Compensation and work hours

The general minimum wage is the daily minimum amount an employer must pay an employee. In Mexico, as of 1 January 2017 the general daily minimum wage changed to MXN80.04.

In addition to the daily general minimum wage, the Mexican Federal Labor Law establishes a daily professional minimum wage that will only apply to specific positions/activities determined by the Mexican Federal Labor Law. The daily minimum wage may vary from MXN92.32 to MXN218.82, depending on the professional activity of the employee.

The Mexican Federal Labor Law provides maximum statutory limits to the weekly work schedule. Whenever an employee works in excess of the agreed work shift (which cannot be higher than the maximum one established in the law) payment of overtime will be triggered.

It is worth mentioning that according to the Mexican Federal Labor Law payment of overtime applies to all types of employees regardless of position or activity.

As a general rule, overtime must be required only in case of extraordinary necessities of the employer and is not intended to be considered as common practice within a company. In such regard, overtime payment is considered as a sanction/penalty for employers who require that employees perform their services in excess of the agreed work schedule.

The Mexican Federal Labor Law provides that overtime shall not exceed three hours per day, three times per week; in other words, overtime is capped to nine extra hours per week and only to cover extraordinary necessities within the company. Nonetheless, the Mexican Federal Labor Law intends to discourage employers from exceeding the overtime cap by providing different rules for the calculation of overtime payment when such exceeds the aforementioned cap.

The mechanism used to calculate overtime payment is based on the hours that exceed the agreed work shift, as follows:

- First nine hours of overtime shall be paid with 200% of the hourly base salary.
- Any hour in excess of the nine hours of overtime shall be paid with 300% of the hourly base salary.

In the event overtime becomes a common practice in a company, the Mexican Labor Ministry may impose economic penalties on the employer.

It is also very important to highlight that employees are only obligated to work the first nine hours of overtime, any work in excess of this shall be freely agreed by the employees.

Depending on the working shift, the Mexican Federal Labor Law describes the maximum weekly schedule an employee can perform without triggering the payment of overtime:

Daytime work shift: For employees whose work schedule ranges between 6am and 8pm, with a maximum weekly total of 48 hours.

Night-time work shift: The work schedule ranges between 8pm and 6am of the following day, with a maximum weekly total of 42 hours.

Mixed work shift: A schedule that includes periods of time corresponding to both daytime and night-time work shifts provided the period corresponding to night-time work shift is less than 3½. If that period exceeds 3½ hours, it will be considered as night-time hour. The maximum weekly duration is 45 hours.

In Mexico, there are no regulatory requirements or limitations regarding executive compensation. Nevertheless, it is common practice that employers grant to executive employees higher employment benefits than the minimum established by the Mexican Federal Labor Law.

Pursuant to the Mexican Federal Labor Law, Mexican companies must distribute 10% of their annual taxable profits among the employees that worked in the fiscal year in which the profits were generated. The general rule is that all employees are eligible and entitled to participate in the profit distribution; nonetheless, general managers, general administrators and general directors are not eligible or entitled to participate in the profit distribution.

1.3 Other terms of employment

The Mexican Federal Labor Law establishes the obligation for employees to scrupulously observe the confidentiality of technical, commercial and manufacturing secrets concerning products in which the employee was directly or indirectly involved in the elaboration, or which the employee may have access due to the activities he/she performs, as well as reserved administrative/managerial matters, of which disclosure might harm the company.

Moreover, the disclosure of confidential information is considered as a justified cause for termination, and could potentially lead to criminal charges against the employee.

Furthermore, the Mexican Federal Labor Law does not establish non-disparagement obligations, either for the employee or the employer, notwithstanding, based on a consistent interpretation of the Mexican Federal Labor Law, some non-disparagement comments could be interpreted as a justified cause for termination of the employment relationship for both the employee and the employer.

The Mexican Federal Labor Law provides specific paid leave periods as follows:

Maternity/Paternity

Pregnant women are entitled to paid maternity leave of six weeks prior and six weeks after childbirth.

Employees may request that four weeks of the pre-childbirth period are transferred to after the childbirth leave period. In order for such a transfer to be permissible prior written authorisation of the doctor of the corresponding Social Security Clinic is required; likewise, the opinion of the employer and the nature of the job performed by the employee will be considered.

In case of adoption, female employees are entitled to paid leave of six weeks.

The Mexican Federal Labor Law grants male employees paid leave of five business days after the birth or adoption of a child.

Disability

Employees are entitled to paid leave for a disability, depending on the resolution issued by the Mexican Social Security Institute. Disability leave may be granted for occupational diseases and accidents and also, for maternity and/or non-occupational diseases.

The leave for disability could vary according to the type of disability, which can be a temporary disability, partial permanent disability and/or total permanent disability. The economical subsidies granted by the Mexican Social Security Institute, derived from disabilities, may also vary according to the type of disability and respective resolution issued by said authorities.

Illness of relatives

The Mexican Federal Labor Law does not provide mandatory paid leave for employees with relatives with a medical or health condition. However, it is common practice for some companies to grant its employees a bereavement paid leave of two or three days in the event of the death of a member of their immediate family.

Vacations

In Mexico all employees are entitled to a vacation period. After the first year of services rendered, an employee will be entitled to six days of vacations; such period will increase two days within each year of seniority. After the fourth year of services rendered the vacation period will increase two days after five years of services rendered, and subsequently as described.

Likewise, the Mexican Federal Labor Law provides that employees shall enjoy their vacations during the six month period after their first anniversary within the company, and the vacation period shall be enjoyed in a continuous way.

The statute of limitation to claim accrued but unused vacation is 18 months, as of the date in which the right of the employee to enjoy vacations is accrued.

According to the Mexican Federal Labor Law, vacations cannot be compensated with any payment or exchanged for any other benefit, since it is an employment benefit that shall be enjoyed.

Additionally, all employees are entitled to receive a mandatory vacation premium that should not be less than 25% of the salaries corresponding to vacations.

Other absences

The Mexican Federal Labor Law establishes that employers may allow employees to miss work in order to perform an accidental or permanent commission at their union or state. However, such a request shall be made with anticipation, and employers are allowed to deduct the corresponding time, unless the employee compensates such time.

In addition, many international companies have internal policies that grant additional paid and unpaid leaves, which may vary depending on the specific profession or industry.

2. Employee Representation/Unions

2.1 Representatives

Union representation is a very common practice in Mexico. Trade unions are a substantial and important sector in the political organisation of Mexico. Unions in Mexico maintain representatives on all of the bodies responsible for the election of members of state and Federal Labor Boards.

The Mexican Federal Labor Law recognises the freedom of association of workers and employers, defining it as the temporary agreement of a group of workers or employers for the defence of their common interest. The Mexican Federal Labor Law defines a union as an association of workers or employers incorporated for the study, improvement and defence of their respective interests.

2.2 Unions

Mexican unions are campaigning more than ever to increase membership. Office, clerical workers, salesmen and education employees have now been added to the already long list of unions. It is exceptional to find a large Mexican industrial company which is not unionised.

Unions in Mexico are voluntary organisations which are classified as follows:

- Trade unions: those which organise workers of a specific trade, occupation or craft;
- Company unions: those which organise workers of a given company or firm;
- Industry unions: those which organise workers of a specific type of industry; and
- National industry unions: those which organise workers of a specific type of industry in two or more states.

Unions are free to form federations or confederations at local or federal levels. Currently, federations of unions may be classified as: (i) traditional, generally considered moderate and affiliated to Mexico's ruling political party; or (ii) radical or independent, some of which are affiliated to leftist or radical groups and parties and others which are conservative or have rightist inclinations.

2.3 Union elections/representation

Unions are organisations of either workers or employers, depending on who incorporates such association. Membership of a workers' organisation is not mandatory, but if employees are willing to work for a company whose workforce is already unionised, more likely than not they will have to join the existing union.

In general terms, the purpose of a union is to represent its members and protect their interests in any matter that may concern them with respect to labour and employment relationships

Collective relationships are usually governed by a collective bargaining agreement which is the agreement executed between a union and an employer with the goal of establishing the employment terms and conditions under which the unionised employees will render their services to the company, and the benefits and salaries employees will receive in exchange.

All collective bargaining agreements should be registered before the competent Conciliation and Arbitration Labor Board. Collective bargaining agreements must be revised every year to increase salaries and every two years to increase benefits; such reviews should also be filed before the Conciliation and Arbitration Labor Board.

The Mexican Federal Labor Law recognises a unions right to claim the execution of a collective bargaining agreement through a strike call. The Conciliation and Arbitration Labor Board will serve the company with the strike call and the intended date of the strike and will appoint a conciliation hearing where the parties will be encouraged to reach an agreement and avoid the strike.

Prior to the strike, the union does not need to demonstrate that it in fact represents the majority of the workers.

In case the Conciliation and Arbitration Labor Board considers the employer liable for the strike, the employer will have to pay all accrued benefits and back salaries to the employees for the duration of the strike.

A strike in Mexico ceases any type of activity within the premises of the employer and usually affects the totality of the employees.

The employer can request to the Conciliation and Arbitration Labor Board the removal of the strike and also request a ballot where the employees may vote for maintaining the strike or to resume work. However, the duration of this process may take several months.

Unions have historically abused the right to call for a strike and notwithstanding they may not represent the majority of the employees of a company, the mere risk of shutting down a company for several weeks or months is sufficient to negotiate an amount that would settle the strike call procedure in order to avoid the strike.

In view of the above, it can be concluded that although there are companies that have succeeded in keeping their labour relationships out of any conflict without executing a collective bargaining agreement, others have been forced to nego-

tiate "against the wall" with the threat of a strike for failure to have a collective bargaining agreement that is executed and registered.

3. Restrictive Covenants

3.1 Noncompetition clauses

Enforceability

In Mexico, non-compete covenants are very hard to enforce before Mexican Labor authorities since under the Mexican Constitution and the Mexican Federal Labor Law, no individual can be kept from engaging a job in any profession, industry, commerce or activity, provided that the activities to be performed are legal. Consequently, enforcing these covenants is difficult from an employment perspective.

Notwithstanding, non-compete obligations may be addressed from different law fields, such as a civil obligation through an agreement whereby the individual agrees not to perform specific activities or engage any competitive business for a certain period of time in a determined geographic area, in exchange for economic compensation.

Nevertheless, the only effect in case the employee decides to "compete" will be that the former employer will stop paying the amount and could be entitled to request compensation for damages before a civil court. However, such agreement will not prevent the employee from engaging in any employment or commercial relationship, since per se there is no legal action that can actually restrict or prevent the employee from competing.

Moreover, according to a preliminary project of law of the Mexican Federal Economic Competition Commission (which as of the date of this publication are still not binding), the enforceability of non-compete restrictive covenants, will be subject to the fulfillment of certain requirements which compliance shall be analysed on a case by case basis; in a general manner non-competition covenants will be upheld only where the employer can show the existence of a proprietary interest which is entitled to protection and where the restrictions in the covenant are no wider than is necessary to protect that interest.

General standards for their terms

The Mexican Federal Labor Law does not provide general standards for non-compete restrictive covenants, however, the Mexican Federal Economic Competition Commission recently established preliminary guidelines (which as of the date of this publication are not binding) with respect to the enforceability of such restrictive covenants.

Independent consideration for a non-competition clause

From a legal standpoint there are no legal requirements to pay a consideration in order to comply with non-compete obligations. Notwithstanding, and considering the person might be able to engage in any competitor business for a specific period of time (which could reduce its right to make a living) paying a consideration could help demonstrate before the corresponding authorities that such restrictive covenants are valid and enforceable since freedom of work is not being restricted either totally or partially, thus non-compete obligations derive from a loyalty pact between the parties in order to protect the knowledge acquired by the individual or "know how."

Likewise, executing a non-compete agreement which follows the general guidelines of the Mexican Federal Economic Competition Commission (which as of the date of this publication are not binding) and granting compensation to the individual in order to retain from engaging or working with a competitor, increases its enforceability and the moral obligation of the individual to comply with his/her non-compete obligation.

3.2 Nonsolicitation of employees provisions

The Mexican Federal Labor Law does not establish specific regulation for non-solicitation of employees. Notwithstanding, as long as the employee's non-solicitation agreement/clause is lawful, reasonable and does not have a significant negative impact on trade/business, such agreement/clause might be held valid and enforceable before civil courts, since such restriction does not directly impair a former employee's ability to make a living.

Additionally, complying with the general guidelines of the Mexican Federal Economic Competition Commission (which as of the date of this publication are not binding) for such restrictive covenants could strengthen the enforceability of such.

3.3 Nonsolicitation of customers provisions

The Mexican Federal Labor Law does not establish specific rules for non-solicitation restrictions with respect to customers. However, prohibiting outright solicitation of any clients to any organisation is overly broad, and prohibiting the solicitation of clients for any business that is not in competition with the former employer might be considered an unjustified restraint on trade, based on the interpretation of the preliminary guidelines (which as of the date of this publication are not binding) issued by the Mexican Federal Economic Competition Commission.

In order for non-solicitation covenants to be enforceable, such should be restricted to customers with whom the departing employees had business dealings, since if the restrictions are broad such may be considered to go beyond what is

strictly necessary to protect the legitimate business interests of the former employer.

It is important to highlight that the individual's confidentiality obligations will survive even after his/her employment relationship is terminated with his/her former employee. Therefore, any breach of the individual to his/her confidentiality obligations post-employment could end in criminal charges against the individual.

4. Data Privacy Laws

4.1 General overview

The Mexican Federal Law of Protection of Personal Data held by Private Parties (Ley Federal de Protección de Datos Personales en Posesión de los Particulares or DPL), governs every aspect of the processing, transfer, use and storage of personal data in Mexico (either sensitive or not), including the purposes for which companies collect such information, the way they store it, with whom they share it, and when and how they delete the information after it is used (these activities as a whole are defined as "processing" by the DPL).

Local data protection law and regulations are applicable to any processing of personal data when: i) such processing is carried out in the establishment of a data controller located in Mexico; ii) such processing is carried out by a data processor (regardless of its location) on behalf of a data controller located in Mexico; iii) the data controller is not located in Mexico but is bound by Mexican law as a result of an agreement or pursuant to international law; or iv) the data controller is not located in Mexico but uses means located in such territory, unless such means are used solely for the purposes of mere transit.

In general terms, the DPL: i) imposes obligations on all businesses or individuals that process personal data (data controllers); ii) governs how individuals (data subject) may control the way data controllers use their personal data, mainly through the exercising of their rights of access, rectification, cancellation and opposition (the ARCO Rights); iii) establishes an administrative procedure which data subjects may enforce their ARCO Rights; and iv) provides several penalties aimed at deterring and sanctioning conduct that violates the use of personal data.

In cases where a third party participates in any stage of personal data processing on behalf of a data controller, it will be identified as "data processor." In such a scenario, a data controller shall ensure that the data processor abides by the same principles set forth in the privacy notice; to that end, a data controller has to comply with the following requisites before transferring data to a data processor: i) data controllers must obtain the consent of data subjects in order to transfer their personal data; ii) data controllers must communicate the privacy notice to the data processor; and iii) a data processor must assume the same obligations that correspond to the data controller. Items in ii) and iii) directly above are usually accomplished through the execution of data transfer agreements (note that no standard model clauses have been approved or issued by the relevant regulator) or the implementation of enforceable policies that comply with applicable requirements under Mexican law (note that no regulatory approval would be required for such policies and no geographic transfer restrictions apply under the applicable law).

5. Foreign Workers

5.1 Limitations on use of foreign workers

As a general rule, the Mexican Federal Labor Law establishes that employers should employ at least 90% of Mexicans. The Mexican Federal Labor Law provides that employers that do not comply with the abovementioned disposition could be subject to economic penalties.

Pursuant to the Mexican Federal Labor Law, penalties to be imposed must consider: i) whether the action or omission arising in the sanction was intentional or not; ii) the seriousness and the damages caused; iii) if a single action or omission affects several employees the sanction could be imposed per each affected employee; and iv) if a single action or omission derives in several infringements, the penalties corresponding to each infringement shall be applied individually.

As an exception to the aforementioned rule, all technician and professional employees shall be Mexican, unless there are no available employees for a specific specialty or branch, in which case the employer may temporarily employ foreign employees, provided that such foreign employees do not exceed the 10% of said specialty or branch. In the case of the temporary hiring of foreign employees, such foreign employees will have the obligation to train Mexican employees so they can replace them once they acquire the corresponding skills/knowledge.

This limitation is not applicable for directors, managing directors and general managers.

Notwithstanding the aforementioned it is important to consider that some international treaties may include different exceptions for some industries or investors.

5.2 Registration requirements

In Mexico, whenever hiring foreign employees, the employer must obtain a special registry before the Mexican National

Institute for Migration. Likewise, foreign employees working in Mexico must obtain their proper work-permit or visa.

6. Grounds for Termination

6.1 Is cause required

Employment relationships in Mexico are governed by the "job stability" principle, which consists of the right for employees to keep their job, as long as there is no legal ground for termination justifying the dismissal. In Mexico the principle of employment at will is not recognised.

The Mexican Federal Labor Law provides that an employer can only terminate "for cause" an employment relationship, in the event the employee incurs in one or more of the specific causes for termination provided in such law. As an example, the Mexican Federal Labor Law states the following justified termination causes:

"If the employee during working hours, commits dishonest or violent acts, makes threats, offends or mistreats the employer, his/her family, the officers, clients, or administrative personnel, unless he/she is provoked to act in self-defense; (ii) If the employee commits any of the offenses listed in the preceding paragraph against his/her co employees; (iii) If the employee, outside the worksite commits the offenses listed in paragraph i) above; and (iv) If during the performance of his/her work or by reason of it, the employee intentionally or by negligence, causes material damage to the work building, machinery, instruments, raw materials and any other goods of the company…"

6.2 Layoffs

According to the Mexican Federal Labor Law an employer may terminate the employment relationship with an employee without responsibility and with no obligation to pay severance, when the employee incurs in one or more of the specific grounds for termination "for cause" foreseen in Article 47 of the Mexican Federal Labor Law.

The employer who terminates "for cause" an employee shall notify him/her in writing, clearly specifying the conduct(s) causing the termination "for cause" and the date or dates where such conduct(s) were committed.

The notification shall be made personally to the employee at the time when the employee committed such conduct or when the employee acknowledged such conduct and communicate it to the competent Conciliation and Arbitration Board within the next five business days.

The statute of limitation for the employee to file an individual employment complaint derived from the termination "for cause" starts after the employee personally receives the rescission notice.

Failure to comply with the notification process will be considered by the Conciliation and Arbitration Board as a termination without cause, entitling the employee to either reinstatement or payment of severance.

7. Procedures for Implementing Terminations

7.1 Internal and appeal procedures

The Mexican Federal Labor Law establishes different procedures to be followed depending on the termination alternative.

Termination "For Cause"

The termination process

In the event an employer decides to terminate an employee "for cause," the employer must notify the employee in writing of the employment termination within 30 days as of the date in which the employer became aware of the cause. Such notification can be done directly to the employee or to the Mexican Conciliation and Arbitration Board.

The termination notice must be as detailed as possible, since anything not included might not be presented or argued as evidence of the termination "for cause" in the eventual litigation.

The mere fact of failing to notify the employee the grounds of termination "for cause" in writing or failing to demonstrate in trial the grounds for termination, is sufficient to deem that the termination was "without cause."

In this latter case, the employer would be liable for payment of the following mandatory severance payment:

- Three months of daily total compensation;
- 20 days of daily total compensation per each year of services rendered;
- Seniority premium, equal to 12 days of salary per each year of services rendered, with the salary limitation up to twice the minimum wage, if his/her salary exceeds such limitation; and
- Accrued and proportional part of employment benefits.

In addition, in case of litigation, the employer could be liable to pay back salaries from the date of the dismissal through the first 12 months of litigation. After the first 12 months of litigation a monthly interest of 2% over the amount of 15 months of salary will be generated.

Standards of proof in Mexico

Standard proof in Mexico does not follow the same rationale to the one used by the United Sates judiciary system. However, applying worldwide general litigation terms, the

standard of proof in Mexican employment litigation is of "absolute proof." Bearing in mind that the plane filed is not equitable, the employer must present evidence that clearly and without any possible doubt, supports the termination "for cause" of the employee.

The Conciliation and Arbitration Board is reluctant to uphold a termination "for cause" based on circumstantial evidence.

Authorities are protective of employee's rights, the Mexican Federal Labor Law specifically provides that in the event of doubt the authorities shall use the most favourable interpretation for employees. Accordingly, it is critical to have undisputed evidence to support the grounds of termination in order to prevail in a litigation dealing with a termination "for cause."

Mutual termination agreements
In the event an employer decides to terminate an employee "without cause" and provided an employee agrees to such, both parties can execute a mutual termination agreement describing the terms and conditions for the termination of the employment relationship, and describing the concepts to be paid to the employee due to the employment termination.

These agreements should be filed and ratified before the Conciliation and Arbitration Labor Board in order to be valid and enforceable.

8. Notice Periods/Severance

8.1 Required notice periods
In Mexico neither employees or employers are obligated to provide prior termination notices. The Mexican Federal Labor Law establishes only that an employer has a 30 day statute of limitation to terminate the employment relationship "for cause," as of the date in which employer became aware of the grounds for termination.

8.2 Required severance
According to the Mexican Federal Labor Law payment of severance will be triggered: i) in case of a wrongful termination (without a just cause); and ii) when the employee terminates for a justified cause.

It is important to highlight that in case of a wrongful termination the affected employee will be entitled to claim, indistinctively, reinstatement or payment of severance.

Mandatory severance equals the following payments:

- Three months of daily total compensation;
- 20 days of daily total compensation per each year of services rendered;
- Seniority premium, equal to 12 days of salary per each year of services rendered, with the salary limitation up to twice the minimum wage, if his/her salary exceeds such limitation; and
- Accrued and proportional part of employment benefits.

In addition, in case of litigation, the employer could be liable to pay back salaries from the date of the dismissal through the first 12 months of litigation. After the first 12 months of litigation a monthly interest of 2% over the amount of 15 months of salary will be generated.

9. Termination Agreements

9.1 Obtaining releases
In Mexico the grant of releases is a common practice, however proper caution should be taken since employees are protected by the acquired right, and the no resignation of rights principle.

According to these principles even if employees agree to grant releases, if such a release contains the resignation of rights, authorities will consider the releases as void and null.

In order for any releases to be valid and enforceable, such must be ratified before the Conciliation and Arbitration Labor Board, and such authority after reviewing the release will issue a resolution awarding legal validity and enforceability.

9.2 Enforceable releases
Generally, releases are valid unless they contradict any of the protective principles for the employment class, such as the acquire right and no resignation of rights principles.

The content of releases must be in accordance with the Mexican Federal Labor Law, accepted moral standards, good practice, employment principles, and shall not involve any waiver of rights.

Concerning the limitation on employment termination agreements, several formalities shall be complied with in accordance to the Mexican Labor Law and the Conciliation and Arbitration Boards. Said formalities can be summarised as follows: i) the employment termination shall be formalised in the effective termination date; ii) it is not allowed to carry out future terminations, and any type of right waivers that may affect the employees.

10. Employment Disputes

10.1 Employment Discrimination Claims

The Mexican Constitution and the Mexican Federal Labor Law protects any against discrimination based on ethnicity or national origin, gender, age, disability, social condition, health conditions, religion, opinions, sexual preferences, marital status or any other that is prejudicial to human dignity or that aims to nullify or undermine the rights and freedoms of individuals.

Likewise, the Federal Law to Prevent and Eliminate Discrimination seeks to prevent and eliminate all forms of discrimination against any person under terms of Article 1 of the Mexican Constitution, as well as to promote equality of opportunity and treatment.

The Federal Law to Prevent and Eliminate Discrimination and the Mexican Constitution prevents discrimination based on one or more of the following grounds: ethnicity, national origin, colour, culture, sex, gender, age, disability, social, economic, health or legal status, religion, physical appearance, genetic characteristics, immigration status, pregnancy, language, opinions, sexual preferences, political identity or affiliation, marital status, family status, family responsibilities, language, criminal record, as well as homophobia, misogyny, any manifestation of xenophobia, racial segregation, anti-Semitism, as well as racial discrimination and related forms of intolerance.

10.2 Contractual, Wrongful Dismissal Claims

In Mexico employees are entitled to resign from the employment relationship at any time, without any obligation or prior notice. Likewise, employees will be entitled to terminate the employment relationship "for cause," in case the employer incurs in one or more of the specific causes provided in such law, in which case the employee will be entitled to the mandatory severance.

Considering that in Mexico there is no employment at will, the Mexican Federal Labor Law provides that an employer can only terminate "for cause" an employment relationship, in the event the employee incurs in one or more of the specific causes provided in such law. Therefore, an employee who is dismissed without a justified cause (wrongful termination) or terminates the employment relationship "for cause," is entitled to claim the corresponding severance payment or reinstatement on the prior position.

10.3 Retaliation/Whistleblower Claims

Mexican Federal Labor Law does not contain specific rules or protection for employees that complain about employer wrongdoing. However, employees must not commit, allow or tolerate any wrongdoing.

Moreover, by interpretation of the law, if the conduct performed by the employer gives grounds for termination, then the employee will be protected by the Mexican Federal Labor Law.

Internal complaints

The Mexican Federal Regulations for Safety and Security in the Workplace provides that employers must establish secure and confidential mechanisms to receive employees' complaints with respect to wrongdoing, discrimination and work-related violence. In case the employer receives any complaint, the employer will be obligated to undertake an investigation and take immediate corrective actions.

In these procedures, the company shall endeavour to maintain confidentiality throughout the investigatory process to the extent practical and appropriate under the circumstances, unless necessary to conduct an adequate investigation or compelled by judicial or other legal process, the company shall not i) reveal the identity of an employee who makes a report and asks that his or her identity remain confidential; or ii) make any effort, or tolerate any effort made by any other person, to ascertain the identity of an employee who makes a report anonymously.

The Mexican Federal Labor Law does not provide specific regulations or guidelines for anonymous complaints. Notwithstanding, secondary regulations establish that companies shall implement different internal procedures in which the individual filing the complaint can keep his/her identity confidential, since it is demonstrated that this encourages individuals to come forward.

11. Dispute Resolution

11.1 Judicial procedures

Specialised employment forums

In Mexico the Conciliation and Arbitration Labor Boards are the competent authorities to resolve all individual or collective disputes arising from employment relationships between the employer and the employee or between the employer and the union.

On the date in which this publication was written, the Conciliation and Arbitration Labor Boards directly derive from the Executive Power; However, there is a Constitutional amendment that will be shortly enacted whereby the Conciliation and Arbitration Labor Boards will now correspond to the Judicial Power.

Claims at federal, province/state, city levels

In Mexico employment labor claims can be filed before the Federal or Local Conciliation and Arbitration Boards depending on the jurisdiction. Plaintiffs may choose the

Conciliation and Arbitration Board based on the following criteria: i) place of execution of the employment agreement; ii) domicile of the defendant; or iii) place where the services where rendered.

The Federal Conciliation and Arbitration Board has jurisdiction to resolve employment disputes with respect to industrial branches/service, such as mining, automotive, oil & gas, food production, beverage production, bank and credit services, among others.

The Local Conciliation and Arbitration Board has jurisdiction to resolve all other employment disputes which do not correspond to the jurisdiction of the Federal Board.

Class action claims
The Mexican Federal Labor Law does not contemplate class action claims. The Mexican Federal Labor Law provides collective actions that can be filed by employees and unions. Among the most common collective action is the strike procedure, which consists of the temporary suspension of the activities in a workplace.

The strike will be limited to the act of suspending work and may extend to a company or one or more of its establishments.

Strike procedures must observe special requirements of lawfulness and existence.

11.2 Alternative dispute resolution
Any pre-dispute agreement entered into by the employee and the employer will be valid and enforceable, provided that it meets the minimum legal requirements and is ratified before the Conciliation and Arbitration Labor Board; otherwise any agreement entered into by the parties will be considered null and void.

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In addition, the Mexican Federal Labor Law establishes a conciliation stage, where the authority pursues the parties to reach an agreement before the plaintiff ratifies its complaint and the defendant answers the complaint. However, as of the day in which this publication was written the conciliation is not an independent procedure, since in case the parties decide not to settle, immediately after the litigation process will commence.

Currently in Mexico the only authority to mediate, resolve and arbitrate employment and labor disputes is the Conciliation and Arbitration Labor Board. Therefore, any mediation agreement entered into between an employee and employer will not be valid nor enforceable.

11.3 Damages or other relief
Employees affected by discriminatory practices could file a claim before the Conciliation and Arbitration Labor Board or the National Board to Prevent Discrimination. Employers can settle claims before litigation is initiated or even when litigation takes place.

The Conciliation and Arbitration Labor Board may impose fines.

The National Board to Prevent Discrimination may impose administrative measures to prevent future discrimination practices in the workplace as well as the following reparation measures:

- Restitution of the right affected by the act, omission or social discriminatory practice;
- Compensatory damages;
- Public warning;
- Public or private apology; and
- Guarantee of no reoccurrence of the act or social discriminatory practice.

The administrative and reparation measures that these authorities may impose will not prevent the affected employee from seeking remedies in other areas of the law (ie, civil law, criminal law).

12. Extraterritorial Application of Law

12.1 Application of domestic law outside the country
Mexican regulations do not establish any standards to determine whether domestic law can be applied outside the country. However, court precedents establish that whenever services are rendered in Mexican territory, the employment relationship will be governed by the Mexican Federal Labor Law, regardless of the choice of jurisdiction the parties may choose.