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Creel, García-Cuéllar, Aiza y Enríquez, S.C. has over 80 years of history and is a leading full-service corporate law firm. It has an established reputation for delivering creative, specialised and responsive legal advice on the most complex and innovative matters in Mexico for the most sophisticated and demanding clients. The practice is based on the philosophy that a client is best served by legal advice designed to anticipate and avoid problems, rather than respond to them. The firm 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; 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 Status of Employee

The Mexican Federal Labour Law (FLL) does not distinguish blue-collar or white-collar employees. Even though, as a general rule, the FLL provides that all employees are entitled to the same working benefits and conditions, it distinguishes the following categories of employees and grants them with special entitlements or imposes special restrictions as described below.

Unionised Employees

Unionised employees are those who are members of a union incorporated in terms of the law. Depending on the particularities of the case, it may not be enough to be subject to a collective bargaining agreement (CBA) in order to be classified as a unionised employee. In this regard, the FLL provides that (i) the highest salary of a unionised employee within a company shall be considered for the calculation of the individual amounts to be paid as employees' profit sharing and (ii) in equality of circumstances, employers shall prefer unionised employees over non-unionised personnel.

Trust Employees

Trust employees are those who perform (i) direction, inspection, vigilance or supervision activities, provided they are of a general nature; or (ii) personal services for the employer. Whether an employee is considered to be a trust employee depends on the activities carried out by the relevant individual and not on the title of the employee's position.

In this regard, the FLL imposes the following special restrictions to trust employees: (i) they cannot join unions of employees who are not trust employees or claim reinstatement to their jobs in the case of wrongful termination of employment; (ii) their salary might be capped for the calculation of the individual amounts to be paid as employees' profit sharing; and (iii) employers may terminate their employment relationships with justified cause when there are reasonable motives to distrust them.

Employees Hired for an Indefinite or Definite Term

The FLL distinguishes employees depending on the term of their employment relationships, including employees hired for a definite or indefinite term. In this regard, the statutory severance payment payable to employees in the case of unjustified termination of employment differs depending on whether they are hired for an indefinite or definite term.

Special Jobs

The FLL sets forth special conditions for employees dedicated to the following "special" jobs: (i) work in ships; (ii) aeronautical crews; (iii) railroad employees; (iv) land transport employees; (v) public service manoeuvring employees within areas of federal jurisdiction; (vi) agricultural employees; (vii) commercial agents; (viii) professional athletes; (ix) actors and musicians; (x) employees working remotely; (xi) housekeeping employees; (xii) miners; (xiii) employees of hotels, restaurants and bars; (xiv) work within a family industry; (xv) resident doctors; and (xvi) employees working in universities.

1.2 Contractual Relationship

Pursuant to the FLL, the general rule is that employment relationships/contracts shall be for an indefinite term. Exceptionally, parties to an employment relationship may agree that such is subject to a definite term or a particular work, provided that the nature of the services and the activities to be carried out strictly require such modalities.

In addition to the above, the following modalities may apply:

- parties to an employment relationship for an indefinite term or for a definite term that exceeds 180 days may agree to a probation period with the purpose of employees demonstrating they have the abilities required for the position for which they are being hired; and
- parties may agree to an employment relationship for initial training with the purpose of employees acquiring the specific skills required for the position for which they will be hired.

If, at the end of the probation period or initial training, employees do not demonstrate they have the abilities that are required, the employer may terminate the employment relationship without liability. In order to formalise such termination of employment, certain procedural requirements shall be observed.

Individual employment agreements in writing are required whenever there is not a CBA in place. Employees must be provided with a copy of their individual employment agreement, which shall include the following information: (i) generals of both parties; (ii) term of the employment relationship; (iii) activities to be carried out; (iv) workplace; (v) working schedule; (vi) salary and conditions thereof; (vii) training and instruction provisions; (viii) other employment conditions agreed between the parties; and (ix) beneficiaries appointed by the employee.

1.3 Working Hours

The FLL provides maximum working hours per day/week depending on the working shift during which the services are carried out as described below:

- daytime – working shift between 6am and 8pm, with a maximum duration of eight hours per day (or 48 hours per week);
- night-time – working shift between 8pm and 6am, with a maximum duration of seven hours per day (or 42 hours per week); and

- mixed – working shift encompassing periods of daytime and night-time working shifts. If the period corresponding to night-time working shift is higher than 3.5 hours, the working shift shall be construed as night-time. Mixed working shifts have a maximum duration of 7.5 hours per day (or 45 hours per week).

In some instances, particular provisions regarding working schedules apply to employees who carry out activities classified by the FLL as special jobs. The maximum working hours per day may be increased with the purpose of allowing employees to rest Saturday evening or in a similar modality, provided that the maximum working hours per week are observed.

Part-time Contracts

The FLL does not distinguish full-time from part-time employment relationships/contracts. Even though employees hired under a reduced working schedule are entitled to at least the statutory minimum benefits provided by the FLL, employers are not obligated to pay the same salary or benefits granted to full-time employees since they are not rendering their services under the same working schedule.

Overtime

If employees render their services in excess of the working shift agreed with their employer (which may not exceed the maximum working hours per day/week permitted by the FLL), the payment of overtime will be triggered. All employees are entitled to the payment of overtime regardless of their position or activities.

Overtime shall not exceed three hours per day or three times per week. Each hour of overtime under the aforementioned legal cap shall be compensated considering a payment of 200% of the employee's hourly base salary. Each hour of overtime in excess of the nine hours per week legal cap shall be compensated considering a payment of 300% of the employee's hourly base salary.

In addition to the payment of overtime, Mexican labour authorities may impose economic penalties on employers who violate the working shifts agreed with their employees. Furthermore, if employees regularly and systematically render their services in overtime, the amounts paid by the employer as overtime may be considered an integrating part of their salary for severance purposes.

1.4 Compensation

Minimum Wages

Mexico has "general" and "professional" minimum wages. The general minimum wage applies to all employees regardless of their working schedule, type of work, age, industry, experience or any other variables. Professional minimum wages only apply to certain employees depending on their specific profession, craft or activity and are higher than the "general" minimum wage.

There are two classifications for "general" and "professional" minimum wages: (i) the "Northern Frontier Free Zone", which applies exclusively in those municipalities that share borders with the USA, for which the current (2019) "general" minimum wage is MXN176.72; and (ii) those applicable in the rest of the country, for which the current "general" minimum wage is MXN102.68

Bonuses and the "Thirteenth Month"

The FLL does not provide the payment of a "thirteenth month". Notwithstanding the foregoing, all employees are entitled to an annual Christmas bonus "*Aguinaldo*" of at least 15 days of base salary. It is common that in certain industries and for specific groups of employees, employers voluntarily grant a higher entitlement as Christmas bonus *Aguinaldo*.

Employers shall comply with the payment of Christmas bonus *Aguinaldo* before December 20. Employees who did not render their services to the corresponding employer throughout the entire calendar year will be entitled to a proportional payment for this concept.

Employers are not obligated to grant employees with bonuses, commissions or any other type of variable compensation; however, it is a common practice for employers in Mexico to grant variable compensation based on the achievement of individual and/or organisational goals.

Government Intervention in Compensation and Increases

The Mexican government only intervenes in increases to "general" and "professional" minimum wages. Minimum wages are determined and increased annually by a National Commission of Minimum Wages integrated by representatives of employees, employers and the government. Even though the government does not have any official intervention in compensation above the applicable minimum wages, in practice many collective negotiations or voluntary salary increases granted by companies are calculated based on the annual increase to the general minimum wage.

1.5 Other Terms of Employment

Vacations

All employees are entitled to an annual period of paid vacations that increases based on employees' seniority as follows: (i) six days after one year of service; (ii) eight days after two years of service; (iii) ten days after three years of service; (iv) 12 days after four years of service; and (v) after the fourth year, employees' vacation entitlement increases by two days every four years. In addition to the annual period of paid vacations, all employees have the right to receive a vacation premium of at least 25% of the amount to which they are entitled as base salary during each vacation period.

It is common that in certain industries and for specific groups of employees, employers voluntarily grant higher vacation entitlements. Any vacation entitlement that is superior to the statutory minimum periods does not have to increase based on employees' seniority.

Employers shall pay the corresponding salary and employment benefits during the vacation period. Vacations cannot be cancelled in exchange for the payment of the corresponding compensation, except in the case of termination of employment.

Required Leave

Pursuant to the FLL and the Social Security Law (SSL), all employees have the right to paid disability leaves if they suffer any illness or injury, whether such are work-related or not. In order to be entitled to such paid disability leaves, the corresponding illness or injury has to be certified by the medical personnel of the Mexican Social Security Institute (IMSS). Depending on the particular circumstances of the illness or injury, the IMSS shall determine the duration of the disability leave and the type of disability (temporary disability, partial permanent disability or total permanent disability).

Provided that the corresponding employer and employee comply with the payment of social security contributions as per the FLL and the SSL, the IMSS shall be responsible for the payment of the employee's medical service in the case of illness or injury whenever the employee receives the corresponding medical certificate. Notwithstanding the foregoing, the economic subsidies granted by the IMSS may vary depending on the type of disability and term thereof.

Additionally, the FLL and the SSL provide defined paid disability leaves in the following cases.

- Maternity – female employees are entitled to a paid maternity leave of 12 weeks in the case of childbirth (six weeks prior to and six weeks after childbirth). Employees are allowed to request the transfer of four weeks of the pre-childbirth period to the post-childbirth period, subject to the opinion of the employer, the activities carried out by the employee and the authorisation from the IMSS' medical personnel.
- Adoption – female employees are entitled to a paid adoption leave of six weeks in the case of adoption of a child (granted immediately after receiving the adopted infant).
- Paternity – male employees are entitled to a paid paternity leave of five working days in the case of childbirth or adoption of an infant (granted immediately after childbirth or after receiving the adopted infant).

Leaves of absence for childcare only apply in the following cases: (i) female employees are entitled to two resting breaks per day of half an hour each during the nursing period (alternatively, parties may agree to reduce the working schedule of female employees by one hour during this period) and (ii) parents of infants diagnosed with cancer shall be allowed to take their children to the corresponding medical treatment.

Confidentiality and Non-disparagement

All employees are obligated to maintain strict confidentiality over any technical, commercial and manufacturing secrets concerning products in which elaboration process they are involved in directly or indirectly, or which employees may have access due to their activities. Likewise, employees are obligated not to disclose confidential administrative matters that may cause a damage to the company in the case of disclosure.

The disclosures carried out by employees in connection with trade secrets or any other confidential matters that may affect their employer are construed as a "justified" cause for termination, in terms of which employers may terminate their employment relationships without the payment of severance.

The FLL does not provide non-disparagement obligations for employees or employers; however, in specific cases and subject to the analysis of the specific circumstances, disparagement by either the employee or the employer in connection with the other party may be construed as a "justified" cause for termination, in terms of which: (i) employers may terminate the employment relationship without the payment of severance; or (ii) employees may terminate the employment relationship and claim payment of severance.

Employee Liability

From an employment perspective, employee liability is limited to (i) suspension of the employee without salary payment for a period that may not exceed eight working days provided that the employer has the corresponding Internal Workplace Regulations duly filed before the labour authority; (ii) deductions to employees' salaries in the specific cases permitted by the FLL and subject to the deductibility caps determined therein; and (iii) "justified" termination of the employment relationship without payment of severance if the employee is responsible for one or more of the actions or omissions provided by the FLL as justified causes for termination.

In addition to the foregoing, in limited situations employers may pursue civil and/or criminal actions against employees if there is a breach of civil and/or criminal legislation.

2. Restrictive Covenants

2.1 Non-competition Clauses

The Mexican Constitution (the "Constitution") provides the "freedom of work" principle in terms of which no person

can be prohibited from engaging in any profession, industry, commerce or activity that they choose to, provided that the corresponding activity is legal. Pursuant to the foregoing, there is no legal action that can actually restrict a person from competing. However, there are certain mechanisms that may be implemented to disincentivise employees and particularly former employees from competing against their employer or former employer.

From an employment standpoint, non-compete obligations may be established as restrictions to employees from carrying out any activities during the working schedule that are not directly related to the services to be carried out pursuant to their employment relationships. Enforcement of non-complete obligations beyond the employee's working schedule is very difficult from an employment standpoint. Furthermore, such a mechanism is only valid during the existence of the employment relationship.

In connection with the agreement of non-compete obligations with former employees, parties may address such matter through independent consideration. In general terms, civil legislation allows parties to agree to any obligations they choose. In this regard, non-compete obligations may be addressed through civil agreements in terms of which the former employee agrees not to perform certain activities or engage in specific competitive businesses for a definite term in a determined geographic area in exchange for a periodical payment agreed between the former employee and the former employer (or any other party) for these purposes.

Pursuant to the constitutional protection of the freedom of work, the implementation of a non-compete civil agreement does not impede former employees from performing the restricted activities or engaging in competitive business. Notwithstanding the foregoing, if former employees breach their obligations as per a non-compete civil agreement (i) they will not be entitled to receive any future payments in connection with the consideration agreed in the aforementioned agreement and (ii) the former employer may seek payment of damages before a civil court. In order for the payment of damages to apply, such must be an immediate and direct consequence of the lack of compliance of the former employees' non-compete obligations

In order to increase enforceability of non-compete obligations, such restrictive covenants may be entered into for a definite term in a determined geographic area. Any additional limitations to the non-compete obligation may increase enforceability thereof since the complete prohibition of competing in any way may be considered by civil authorities to be overly broad and beyond what is strictly necessary to protect the legitimate business interests of the former employer. If the civil courts consider that the non-compete obligation is too broad, there is a risk that such is deemed as a violation of the constitutional principle of the "freedom of work".

2.2 Non-solicitation Clauses - Enforceability/ Standards

Employees

Mexican legislation does not regulate non-solicitation of employees. In this regard, labour courts are reluctant to issue any ruling in connection with the validity of non-solicitation obligations, arguing that such obligations are not of an employment nature; therefore, non-solicitation clauses should be included in a civil agreement.

As opposed to non-compete obligations, non-solicitation of employees does not necessarily contravene the constitutional principle of freedom of work since such a restrictive covenant does not directly prohibit a person from engaging in any profession, industry, commerce or activity that they choose to. Notwithstanding the foregoing, there are certain mechanisms that may be implemented in order to increase the enforceability of non-solicitation obligations with respect to employees addressing this matter through independent consideration.

As previously discussed, in general terms civil legislation allows parties to agree to any obligations they choose. In this regard, non-solicitation obligations may be addressed through civil agreements in the terms of which the obligated party agrees not to solicit employees from the other party for a definite term in a determined geographic area in exchange for a periodical payment of the consideration agreed between the parties for these purposes.

To the extent that the corresponding non-solicitation civil agreement is lawful, reasonable and does not have a significant negative impact on the trade/business of the obligated party, such might be held valid and enforceable by civil courts.

Customers

Mexican legislation does not regulate non-solicitation of customers. In this regard, labour courts are reluctant to issue any ruling in connection with the validity of non-solicitation obligations, arguing that such obligations are not of an employment nature.

Notwithstanding the foregoing, from an employment standpoint, customer lists may be conferred with the nature of confidential and sensitive information, the disclosure of which could potentially damage the company. Consequently, such customer lists may be awarded protection as confidential information as per labour (being considered as "justified" cause for termination of employment) and criminal (imposition of economic penalties and even imprisonment) legislation.

In addition to the foregoing, in order to increase the enforceability of non-solicitation obligations with former employees, parties may address such matter through independent consideration. In general terms, civil legislation allows parties to agree to any obligations they choose. In this regard, non-solicitation obligations may be addressed through civil agreements in terms of which former employees agree not to solicit customers with whom they had contact pursuant to their employment relationship with the former employer. Such non-solicitation agreements shall provide that the non-solicitation obligation is limited to businesses that directly compete with the activities of the former employer, that such is only applicable for a definite term in a determined geographic area, and that the former employee shall be entitled to a periodical payment of the consideration agreed between the former employee and the former employer (or any other party) for these purposes.

We consider that the complete prohibition of soliciting any customers whatsoever is overly broad and goes beyond what is strictly necessary to protect the legitimate business interests of the former employer, particularly if non-solicitation obligations extend to any business that is not in competition with the former employer. If civil authorities consider that the non-solicitation obligation is too broad, there is a risk that such is deemed as a violation of the constitutional principle of the freedom of work.

3. Data Privacy Law

3.1 General Overview

The Federal Law on the Protection of Personal Data in the Possession of Private Parties (the "Data Protection Law") regulates the obtaining, processing, transfer, use and storage of personal data (either sensitive or not) held by private parties. Since employers are private parties that hold personal information of employees, such have to comply with the obligations provided in the Data Protection Law.

In this regard, employers must get employees' consent in order to obtain, process, transfer, use and store their personal information. Furthermore, employers may only use employees' personal information for the legitimate purposes informed to them (there are limitations as to the personal information employers can obtain from employees insofar as such may lead to discrimination or is not required for any legitimate purpose), they have to store such information in accordance with the provisions of the Data Protection Law, allow employees to modify and limit the use of the personal information provided to them, abide by the regulations of the Data Protection Law in connection with how and to whom can they share any personal information in their possession, as well as when and how they delete such information.

In cases where a third party participates in any stage of personal data processing on behalf of the employer, the latter shall ensure that the data processor abides by the same principles set forth in the Data Protection Law and in the privacy notice delivered to employees. In order for employers to be able to transfer personal information in connection with the employees to a data processor, it has to comply with the following requirements: (i) obtain consent of the employees in order to transfer their personal data; (ii) communicate the privacy notice to the data processor; and (iii) the data processor shall assume the same obligations that correspond to the employer.

4. Foreign Workers

4.1 Limitations on the Use of Foreign Workers

As a general rule, the FLL provides that at least 90% of the employees hired by Mexican employers should be Mexican nationals. Employers that do not comply with the aforementioned limitation could be subject to the imposition of economic penalties.

The limitation described above is not applicable for: (i) general directors/managers; (ii) all technicians and professional employees shall be Mexican nationals, unless there are no employees available for a specific field, in which case foreign employees may be hired temporarily, provided they do not exceed 10% of the employees of that specialty (in this case, foreign employees shall train Mexican employees); and (iii) any doctors that render their services to a company shall be Mexican nationals.

4.2 Registration Requirements

Mexican employers who hire foreign nationals to render services in Mexico have the obligation to register before the Mexican National Migratory Institute (NMI) and follow the process to hire foreign employees, which includes issuing job offers for each foreign national they intend to employ and submitting a request for a work visa with respect to each foreign employee they hire.

Even though employers are the only parties responsible for the registration before the NMI, foreign employees who render services in Mexico for a Mexican employer also have other obligations, which include: (i) presenting documentation requested by the NMI; (ii) starting the process for the issuance of the work visa in the Mexican Consulate of the employee's country and concluding it before the NMI after the employee's arrival to Mexico; and (iii) renewing their work visa if their engagement in Mexico is longer than the period for which such was issued.

5. Collective Relations

5.1 Status/Role of Unions

Unions are defined as associations of employees or employers incorporated for the study, improvement and defence of their respective interests. The key role of unions in Mexico is the negotiation and execution of CBAs and annual renewals thereof that regulate the labour relationships of unionised employees.

For purposes of enforcing their role, employees' unions are allowed to implement strike actions against employers that consist of the temporary suspension of work carried out by a group of employees. A strike in Mexico ceases any type of activity within the premises of the employer and usually affects the totality of the employees that render their services in that location.

In general terms, unions may implement strike actions when the purpose thereof is to:

- achieve a balance between the employer and employees;
- demand the execution or the annual renewal of a CBA;
- claim the compliance of the terms of the relevant CBA;
- demand the compliance with employees' profit sharing;
- support a strike carried out by another union; or
- demand annual increases to daily salaries.

5.2 Employee Representative Bodies

The only bodies that exclusively represent employees as per the FLL are employees' unions. The FLL provides the conditions for the institution of unions, including: (i) their purpose must be to study, improve and defend the interests of their members (union members can also seek protection of their rights individually); (ii) such may be integrated with at least 20 employees; (iii) unions shall be registered before the Labour Ministry in the case of federal jurisdiction or local labour courts in the case of local jurisdiction (by May, 2021 registration of all unions shall be made before the Federal Labour Conciliation and Registration Centre [the "Registration Centre"]); and (iv) such shall present the documentation described by the FLL before the aforementioned authorities, including a list with personal details of union members that shall be renewed each three months.

Labour authorities may not deny registration to those unions that comply with the aforementioned requirements. Unions' registrations can only be cancelled in the case of (i) dissolution; (ii) lack of compliance with legal requirements; or (iii) lack of compliance with the union's purpose. Labour courts are responsible for resolving over the cancellation of unions' registrations.

Unions have the right to freely choose their representatives. In this regard, unions must inform labour authorities of the board that was elected for controlling the organisation in question. Furthermore, the internal regulations of the unions shall provide the procedure for the election of their board, the number of members thereof and the term during which the board shall continue in force, which shall be a definite period. The board of a union must be elected by a personal, free, direct and confidential voting process carried out by the members of the union. Election of unions' boards are subject to verification by labour authorities.

The representation of unions lies with the general secretary, unless the incorporation documentation of the union provides for additional representatives. Representatives of unions are accountable before union members in connection with the wealth of the organisation and shall provide reports in this regard at least on bi-yearly basis.

The FLL prohibits and sanctions any form of interference from employers in employees' unions. Unions may join federations (group of unions) and confederations (group of federations), which in general terms are subject to the same obligations as unions.

5.3 Collective Bargaining Agreements

CBAs are agreements executed by one or more employees' unions and an employer, several employers or a union of employers, with the goal of establishing the employment terms and conditions under which the unionised employees will render their services, including (i) scope of application of the CBA; (ii) working schedules; (iii) days of rest and vacations; and (iv) salaries and benefits, etc. Employers that hire employees who are affiliated to a union have the obligation to enter into a CBA upon request of the union.

In order for a CBA to be binding, the following steps must be followed:

- the relevant union must obtain a representativeness certificate (which purpose is to demonstrate that it represents the employees of a company/workplace) following the process set forth in the FLL, which includes a voting process amongst the corresponding employees that shall be validated by the Registration Centre;
- the union shall negotiate with the employer the terms of the CBA;
- after notifying the Registration Centre and subject to validation by such authority, the union shall carry out a consultation procedure following the process set forth in the FLL whereby the majority of the unionised employees to be bound by the CBA must approve its content through a personal, free and confidential voting process;
- if the CBA is approved through the consultation procedure, such has to be executed in writing between a representative of the employer and the union and filed before federal labour courts in the case of federal jurisdiction or local labour courts in the case of local jurisdiction (by May 2021, registration of all CBAs shall be made before

the Registration Centre), alongside the documentation required by the FLL, including the representativeness certificate; and
- the relevant authority shall approve the CBA.

CBAs must be renewed every year in connection with increases to salaries and every two years in connection with the totality of the agreement, including benefits. In order for annual renewals to the CBA to be binding, the same process described above shall be followed except for the obtaining of the representativeness certificate.

If an employer refuses to enter into a CBA, to renew such, or if it violates the terms and conditions provided therein, the corresponding union shall have the right to implement a strike action.

As a general rule, there can only be one CBA in a particular workplace. Notwithstanding the foregoing, there may be several CBAs within the same workplace if different guild unions represent employees of different professions, crafts or activities, in which case each CBA shall apply to a specific group of employees.

6. Termination of Employment

6.1 Grounds for Termination

General Terms of Termination

Employment relationships in Mexico are governed by the "stability in work" 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.

In this regard, the FLL provides the following "general" causes of termination of employment relationships:

- mutual consent of the parties;
- death of the employee;
- termination of the engagement in connection with employment relationships for a definite term or specific task;
- physical or mental disability of the employee that makes it impossible to continue the employment relationship;
- force majeure or the employer's physical or mental disability that makes it impossible to continue the employment relationship;
- notorious non-profitability of the business;
- exhaustion of the corresponding minerals in the mining industry; and
- legally declared bankruptcy if the creditors determine to close the company or permanently reduce its activities.

In addition to the aforementioned "general" causes for termination, the FLL provides specific causes in terms of which employers and employees may terminate the employment relationship without liability if the other party carries out any of the specific wrongdoings determined by the law as "justified" causes for termination. If an employer terminates the employment relationship pursuant to an action or omission of an employee that is construed as a "justified" cause for termination, it will not be obligated to the payment of severance. If an employee terminates the employment relationship pursuant to an action or omission of the employer that is construed as a "justified" cause for termination, the corresponding employee will be entitled to seek payment of statutory severance as per the FLL.

If the employer terminates the employment relationship with an employee for any other reason besides the "general" or "justified" causes for termination, the employer will be obligated to the payment of the statutory severance as per the FLL.

Termination Procedures

The procedure to formalise the termination of the employment relationship varies depending on the grounds for dismissal as described below.

- In the case of termination of employment pursuant to the "general" causes provided by the FLL, parties may formalise such termination of employment through an employment termination and release agreement (if applicable) or follow a procedure before the labour court to formalise the termination;
- If an employer terminates the employment relationship of an employee with "justified" cause as per the FLL, it shall notify the corresponding employee in writing, specifying the conduct(s) that motivate the termination "for cause" and the date or dates when such took place. The aforementioned termination notice shall be delivered personally to the employee or it may be filed before the corresponding labour court within the next five business days as of the effective termination date, in which case the labour court shall formally notify the employee of the corresponding termination notice. Failure to comply with the notification process will be considered as an "unjustified" termination of employment, entitling the employee to claim reinstatement to his or her job, or payment of the statutory severance.
- If an employer terminates the employment relationship of an employee without "justified" cause as per the FLL, and provided the employee agrees to such termination of employment (usually subject to the payment of statutory severance or any other amount agreed between the parties), parties may formalise such termination through an employment termination and release agreement.

Collective Redundancies

Collective conflicts of economic nature are procedures in terms of which the employer or the employees (either

through a union or through the majority of the employees) may request from the labour court the modification of the employment conditions or the collective suspension or termination of the employment relationships in connection with the personnel of a company/workplace. To this effect, the party that filed the collective conflict of economic nature must present evidence supporting its request, including documentation and an expert analysis related to the financial situation of the company/workplace and the need for the proposed actions. The labour court shall try to get the parties to the conflict to settle; however, if they do not reach an agreement, a process will be followed whereby ultimately the labour court shall approve or reject the request to modify the employment conditions of the workplace or the collective suspension or termination of the employment relationships.

The FLL specifically provides that, in the event of doubt, the most favourable interpretation to the employee shall prevail; therefore, it is likely that labour courts will resolve any collective conflict economic nature according to the foregoing. Furthermore, it should be noted that a strike action suspends any collective conflict of economic nature that may be in process, unless employees agree to the continuation thereof.

6.2 Notice Periods/Severance

Notice Periods

The FLL does not provide any obligation either for employers or employees to notify the other party of the dismissal/resignation in advance. Notwithstanding the foregoing, employers may voluntarily agree to provide notice in advance to employees in the event of termination of their employment relationships. This practice is not common in Mexico.

Severance

The statutory severance provided by the FLL for employees hired for an indefinite term is comprised by the following concepts:

- 90 days 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 a salary cap of twice the minimum wage; and
- accrued salaries and employment benefits as of the termination date.

Daily total compensation comprises employees' daily base salary plus the daily proportion of any employment benefit or any other concept paid to employees as part of their compensation.

In addition, in the 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.

Severance payment for employees hired for a definite term in the case of "unjustified" termination is different to that of employees hired for an indefinite term (in most cases it is higher, but ultimately it depends on the length of the temporary contract).

As described above in further detail, the specific procedure to be followed in order to formalise the termination of the employment relationship varies depending on whether such termination is based on: (i) the "general" causes provided by the FLL; (ii) "justified" cause(s) as per the FLL; or (iii) "unjustified" termination of employment as per the FLL.

In principle, employers do not require external authorisation if the termination of employment is motivated by "justified" or "unjustified" causes as per the FLL. However, in the case of termination of employment for "justified" cause, if the affected employee challenges the validity of such termination, the employer shall demonstrate to the labour court's discretion the causes that led to such "justified" termination.

If the employer terminates the employment relationship due to one of the "general" causes set forth in the FLL, it may seek the authorisation of the labour court in connection with such termination.

6.3 Dismissal for (Serious) Cause (Summary Dismissal)

Summary Dismissal

According to the "stability in work" principle, an employer can only terminate the employment relationship with an employee without liability and with no obligation to pay severance when the latter commits any of the specific wrongdoings set forth in the FLL as "justified" causes for termination of employment. The parties cannot agree to additional causes for termination of employment.

Procedure and Formalities

As previously discussed, if an employer terminates the employment relationship of an employee with "justified" cause as per the FLL, it shall notify the corresponding employee in writing, specifying the conduct(s) that motivate the termination "for cause" and the date or dates when such took place. Such notification shall be made within the following 30 days from the date on which the employer became aware of the "justified" cause(s) for termination.

The aforementioned termination notice shall be delivered personally to the employee or it may be filed before the corresponding labour court within the next five business days of the effective termination date, in which case the labour court shall formally notify the employee. Failure to comply with the notification process will be considered as an "unjustified"

termination, entitling the employee to claim reinstatement to his or her job or payment of the statutory severance.

Consequences
The statute of limitation for employees to file a complaint challenging the justification of their termination of employment is two months as of the date on which the employee is formally notified thereof.

If the affected employee challenges the justification of the employment termination, the employer will have the burden to prove to the labour court's discretion that the employee is in fact responsible for the corresponding "justified" cause for termination. The FLL specifically provides that in the event of doubt, the most favourable interpretation to the employee shall prevail; therefore, it is likely that the labour court will resolve according to the foregoing.

Failure to prove that the employee was in fact responsible for the corresponding "justified" cause(s) for termination argued by the employer in the termination notice shall result in the reinstatement of the employee to his or her job or in the payment of the statutory severance and back salaries, depending on the action carried out by the employee.

6.4 Termination Agreements

Procedures Required for Termination Agreements
As previously discussed, parties to an employment relationship may formalise the termination thereof through the execution of an employment termination and release agreement if the grounds for termination are (i) the "general" causes provided by the FLL (except for the specific causes that require approval from the labour court) and (ii) "unjustified" termination of employment as per the FLL.

Employment termination and release agreements may be executed privately between the parties or before the labour court in order to seek their ratification. If parties ratify the employment termination and release agreement before the labour court, the latter shall review the content of the termination agreement in order to confirm that such is compliant with the provisions of the FLL. Furthermore, in this scenario parties shall comply with any particular requirements set forth by the labour authority (eg, the employer's legal representative shall demonstrate its legal personality and parties will have to make the corresponding termination payment before the labour court in the form requested by the authority, etc).

Requirements for Enforceable Releases
In Mexico the granting of releases is a common practice; however, proper caution should be taken since employees are protected by the "acquired rights" and the "no resignation of rights" principles. According to these principles, even if employees agree to grant releases, if such contain any sort of resignation of rights, authorities will consider the releases to be null and void.

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

In order to ensure the validity and enforceability of employment releases, parties may ratify the termination and release agreement before the labour court, which will, after reviewing the termination agreement and the releases included therein, issue a resolution awarding legal validity and enforceability if such are not in violation of the law.

6.5 Protected Employees

Protection Against Dismissal for Particular Categories of Employees.
In principle, all employees are entitled to protection under the "stability in work" 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. The only exceptions to the foregoing are trust employees. In this regard, employers may terminate the employment relationships of trust employees with justified cause and without the obligation to pay severance when they have reasonable motives to distrust them. Furthermore, trust employees cannot claim reinstatement to their jobs in case of "unjustified" termination of employment.

Employees with a seniority of 20 years and over are entitled to a "superior" protection against dismissal. In this regard, employers may only terminate the employment relationship of employees under this category provided that they carry out any of the "justified" causes set forth in the FLL and that such are particularly grave or make it impossible to continue the employment relationship.

Implications for Employee Representatives.
The FLL does not award any additional protection against dismissal to employee representatives.

7. Employment Disputes

7.1 Wrongful Dismissal Claim

If the employer unilaterally terminates the employment relationship with an employee for any other reason besides the "general" or "justified" causes for termination set forth in the FLL, such termination shall be considered as "unjustified". Under this scenario, employees can claim (i) reinstatement to their jobs or (ii) payment of the statutory severance.

The statute of limitation for employees to file a complaint challenging the justification of their termination of employ-

ment is two months as of the date on which the employee is formally notified thereof.

If the affected employee challenges the justification of the employment termination, the employer will have the burden to prove to the labour court's discretion that the employee is in fact responsible for the corresponding "justified" cause for termination. Failure by the employer to prove that the employee was terminated for a "justified" cause(s) shall result in the reinstatement of the employee to his or her job or in the payment of the statutory severance and back salaries, depending on the action exercised by the employee.

7.2 Anti-discrimination Issues

The Constitution, the FLL and the Federal Law to Prevent and Eliminate Discrimination protect any employee against discrimination based on ethnicity, national origin, colour, culture, sex, gender, age, disability, social, economic, health or legal status, religion, physical appearance, immigration status, pregnancy, language, opinions, sexual preferences, political identity or affiliation, marital status, family status, family responsibilities, language, criminal record, homophobia, misogyny, xenophobia, racial segregation, anti-Semitism, as well as racial discrimination and related forms of intolerance, or any other that is prejudicial to human dignity or that aims to nullify or undermine the rights and freedoms of individuals.

Discriminatory acts by the employer or the employee may be construed as "justified" cause for termination of the employment relationship pursuant to the FLL.

In principle, affected employees have the burden of proof to demonstrate that they suffered any form of discrimination by the employer. If they present such evidence, it may be up to the employer to prove that it is not responsible for the alleged discriminatory actions.

Employment legislation only provides for sanctions against employers who discriminate against their employees; it does not set forth any compensation for affected employees. Individuals who are victims of discrimination may seek for the payment of damages before civil courts based on the particularities of their cases.

8. Dispute Resolution

8.1 Judicial Procedures

Specialised Employment Forums

On the date on which this publication was written (August 2019) the competent authorities to resolve all employment disputes in Mexico arising from employment relationships between private parties are Conciliation and Arbitration Labour Boards, bodies which derive from the executive branch of the government. Labour claims can be filed before the Federal or Local Conciliation and Arbitration Boards depending on the jurisdiction.

Notwithstanding the foregoing, on 2 May 2019 an amendment to the FLL came into force that provides – among other issues – the following.

- The creation of new Local and Federal Labour Courts of the Judicial Branch, which shall replace Conciliation and Arbitration Labour Boards in the resolution of labour conflicts. Local Labour Courts shall begin operations no later than 2 May 2022, whereas Federal Labour Courts shall begin operations no later than 2 May 2023.
- The creation of the Registration Centre, an authority that will be in charge of (i) the registration of all CBAs, internal workplace regulations and unions; and (ii) the new mandatory pre-trial conciliatory procedure at a federal level. The Registration Centre shall begin its registration activities no later than 1 May 2021, whereas it shall begin its conciliatory activities no later than 1 May 2023.
- The creation of Local Conciliation Centres, which will be in charge of the new mandatory pre-trial conciliatory procedure on a local level. Local Conciliation Centres shall begin operations no later than 1 May 2022.

Additionally, the Constitution provides a specialised forum to resolve employment disputes in Mexico arising from employment relationships between the government and its employees, which is the Federal Court of Conciliation and Arbitration.

Class Action Claims

The FLL does not regulate class action claims; however, it allows for other collective procedures, including:

- strike procedures;
- collective conflicts of economic nature; and
- even though the FLL does not include express provisions in this regard, several employees can file an employment complaint against one employer. This type of collective action is common in collective terminations of employment, where several employees claim the "unjustified" termination of their employment by the same employer. Nevertheless, these collective actions are not equivalent to class actions since (i) each plaintiff has to appear individually before the labour court in the corresponding litigation (there is not a leading plaintiff); (ii) it is not necessary that the plaintiffs meet certain criteria to constitute a class; and (iii) the labour court will not necessarily issue the same resolution in connection with each plaintiff, as the particular circumstances of each case may vary.

Representations in Court

The FLL provides that employment procedures shall be public, free, immediate, predominantly oral and conciliatory, and can only be followed as per the request of one of

the parties. Representatives of both parties have to appear personally before the labour court for each of the hearings in connection with the corresponding procedure. Representatives of the employers have to demonstrate their legal capacity through a notarised power of attorney, whereas employees may appear themselves before the court or through representatives who have to demonstrate their legal capacity through proxy letters.

8.2 Alternative Dispute Resolution

Arbitration

Private arbitration is not acknowledged by the FLL; the only authorities with the power to resolve labour disputes in Mexico are labour courts. If parties to an employment relationship agree to submit their differences to arbitration, such process and any resulting resolution shall not be considered binding and enforceable. Submission of a conflict to a private arbitration does not impede the parties from pursuing an action before labour authorities. Pursuant to the foregoing, private arbitration is not used in Mexico.

Pre-dispute Arbitration Agreement

Since private arbitration is not binding and enforceable in Mexico, pre-dispute arbitration agreements are not used.

8.3 Awarding Attorney's Fees

The FLL does not provide the payment of legal fees to any of the parties in case of success in a labour claim.

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