

Employment and Employee Benefits in Mexico: Overview

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A Q&A guide to employment and employee benefits law in Mexico.

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; and relocation of employees.

Scope of Employment Regulation

1. Do the main laws that regulate the employment relationship apply to:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Laws Applicable to Foreign Nationals

Employment rights provided by the Constitution of the United Mexican States (*Constitución Política de los Estados Unidos Mexicanos*) (Constitution) and the Federal Labour Law (FLL) will apply to anyone rendering personal "subordinated" services in Mexico, including foreign nationals, even if the parties agree to the application of the law of another jurisdiction or another type of relationship in the corresponding agreement. These rights include:

- Employment benefits, for example:
 - Christmas bonus (*aguinaldo*);

- vacations; and
- vacation premium (an amount paid to an employee on top of the employee's regular pay for vacation days).
- Working conditions, for example:
 - maximum working schedule;
 - weekly day of rest (rest period); and
 - statutory days of rest (public holidays).
- Payment of employees' profit-share.
- Protection against dismissal.

Employment rights in Mexico are inalienable. Therefore, foreign nationals rendering personal subordinated services in Mexico will be entitled to Mexican employment rights regardless of any choice of law clause included by the parties in their employment agreement (even if employees waive their entitlement to these rights). Due to a long history of social struggle in Mexico, the FLL and Mexican labour courts are very protective towards employees. In this regard, the FLL specifically provides that in the event of doubt, the most favourable interpretation to the employee must prevail. As a result, any foreign company interested in assigning employees to Mexico is strongly advised to seek independent legal advice to mitigate any potential employment liabilities.

Under Mexican legislation it is possible to engage an individual through different types of relationships such as services providers or commission agents, in which cases Mexican employment rights will not apply in principle. Despite this, under the FLL, whether an individual is considered to be an employee does not depend on the type of agreement executed between the parties but on the existence of the following elements:

- Rendering of a personal service.
- Subordination of the services either to a legal entity or an individual.
- Payment of a salary.

Labour courts can determine the existence of an employment relationship when these elements are present even if the parties have agreed to another type of relationship in the corresponding agreement.

Laws Applicable to Nationals Working Abroad

The FLL is only generally applicable in Mexico. However, the FLL can also govern the employment relationships of Mexican nationals working abroad that:

- Were hired in Mexico, and whose employment agreement is governed by the FLL.
- Were recruited and selected in Mexico through mechanisms agreed between Mexico and any foreign government.
- Work in ships or vessels with a Mexican flag, regardless of whether the ship is in Mexican territory.
- Were hired by a Mexican employer, whether it was a Mexican individual or legal entity.

Special obligations apply in the above cases which include the following:

- The employer will be liable for the payment of any repatriation expenses.
- The individual employment agreement must be presented to, and approved by, the Mexican labour court.
- If the employer does not have a permanent establishment and a fiscal or business address in Mexico, the employer must pay a deposit to guarantee the fulfilment of its contractual obligations.
- Additional obligations may apply depending on the specific case.

The general rule is that Mexican legislation (including the FLL, international treaties executed and ratified by Mexico and any other Mexican laws relating to employment) will not apply to the employment relationship of a Mexican national hired by a foreign legal entity, provided that the employment relationship does not fit into any of the categories listed above.

Employment Status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of Worker

Employees. Under the FLL, employees are individuals who provide personal subordinated services to another individual or legal entity. The FLL distinguishes the following categories of employees:

- **Unionised and non-unionised employees.** The FLL defines unionised employees as those who are members of a legally incorporated union (and not those to whom a collective bargaining agreement (CBA) applies).
- **Trust employees.** The FLL defines trust employees as those who perform:
 - management, inspection, vigilance, or oversight activities, when these are of a general nature (even if such activities are conducted on a general basis within a specified area or department of a company or establishment); and/or
 - personal services for the employer (so that they are in personal/direct contact with the employer regardless of their position/activities).

The classification of a trust employee relies on the nature of the activities performed, rather than on the label or title designated to their position.

- **Indefinite term, definite term, and seasonal employees.** The FLL also classifies employees depending on the term of their employment relationship.

Independent contractor. Under Mexican legislation, independent contractors are individuals who render their independent, professional services without being subject to subordination. The relationship with independent contractors is of a civil/commercial nature, is ruled by civil/mercantile legislation, and does not constitute an employment relationship. As a result, such persons are not entitled to benefit from the employment rights provided to employees. However, it is important to note that whether a person is considered to be an employee or an independent contractor is a matter determined by the courts based on the manner in which the services are rendered, irrespective of the title given to the employee or independent contractor or the type of agreement executed between the employer and the employee/independent contractor/self-employed person.

If independent contractors are subject to any elements of subordination (for example, the imposition of a specific work schedule, the obligation to attend a workplace, the delivery of work-related tools, the existence of a fixed and consistent compensation, and so on) they can claim that their relationship has been misclassified (as they are, in fact, employees subject to the protections afforded by Mexican employment law). If the labour authorities determine the existence of an employment relationship, the employer will be liable to pay:

- The mandatory employment benefits to the employee that are set out in the FLL (that is, profit sharing, Christmas bonus, vacations, and vacation premium).
- The administrative sanctions that apply for simulating the existence of a commercial relationship.
- The appropriate social security contributions (for employees) that must be paid to the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*) (IMSS).
- The appropriate payroll taxes (for employees) to the tax authorities, along with any additional penalties and surcharges.

Entitlement to Statutory Employment Rights

As a general rule, all employees are entitled to the same employment benefits and conditions. However, the FLL also grants the following special rights/conditions for certain categories of employees:

- **Unionised employees.** The highest salary of a unionised employee within an organisation is considered when calculating the formula to be used for the distribution of employees' profit sharing. The FLL provides that in the case of equality of circumstances, employers are to prefer unionised employees against non-unionised ones.
- **Trust employees.** The FLL imposes special conditions on trust employees rather than granting them additional entitlements. Trust employees:
 - are not entitled to reinstatement in the case of termination of their employment relationship;
 - are not entitled to receive profit sharing (applicable to general directors, general managers, and general administrators);
 - cannot join the same union as non-trust employees; and
 - cannot exercise the right to strike.

The salary of trust employees can also be capped when considering the formula to be used for the distribution of employees' profit sharing (where profit sharing can be applied), and employers can dismiss trust employees, with cause, where the reason for the dismissal is a reasonable loss of trust in that employee.

- **Definite term employees.** The severance payment to which employees hired for a definite term are entitled in the case of wrongful termination is different to that of employees hired for an indefinite term (in most cases it is higher for definite term employees, but this ultimately depends on the length of the temporary contract).

Time Periods

As a general rule, employment relationships in Mexico are entered into for an indefinite term. As an exception, and when the nature of the activities so requires, the parties can agree to an employment relationship of a different duration, as follows:

- Definite term employment.
- Employment for a specific task/project.
- Seasonal term employment.

There is no maximum period for any of these terms of employment, and their duration is determined by the nature of the work itself.

In addition to the above, the parties to an employment agreement can also agree to an initial training period, which generally must not exceed 90 days. However, initial training periods of up to 180 days duration can be agreed between the parties for:

- Employees in managerial/oversight positions.
- Employees who perform administrative activities that are general in scope.
- Employees who perform activities that require specialised technical or professional knowledge.

Employment relationships for an indefinite term or any other term (except for initial training) exceeding 180 days can be subject to a probationary period which, generally, should not exceed 30 days. However, a probationary period of up to 180 days can be agreed for the same three employment positions described in the bullet points directly above.

Background Checks

3. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

Restrictions/Prohibitions on Conducting Background Checks

The FLL does not regulate the recruiting process, and consequently it does not impose any restriction or prohibition on carrying out background checks on applicants.

However, the Federal Law on the Protection of Personal Data in the Possession of Private Parties (Data Protection Law) imposes a number of requirements in connection with the collection, storage, treatment, and transfer of personal information, including the obligation to obtain the consent of the owner of such information (that is, the applicant) to store, treat and transfer the corresponding data. In addition, under the Data Protection Law and the Constitution, employers must refrain from asking questions of an applicant that could lead to discrimination unless there is strong justification for posing such questions.

Mexico's Supreme Court of Justice has repeatedly ruled that requiring a criminal record certificate as a prerequisite to engage in activities is unconstitutional (with certain limited exceptions), finding that practice to be in violation of the constitutional principles of non-discrimination, equality, and social reintegration. Furthermore, the National Criminal Enforcement Law restricts the issuance of criminal record certifications (the limited exceptions to this restriction are outlined in this law, and background checks are not one of those exceptions).

Background Checks by Third Parties

Additional data privacy implications may also arise where a third party carries out the background checks on the employer's behalf.

Regulation of the Employment Relationship

4. How is the employment relationship governed and regulated?

Written Employment Contract

Employers must execute written individual employment agreements with their employees. Further, the FLL expressly states that employees must be provided with a signed copy of their employment agreement. Individual employment agreements must include information on the following matters:

- Personal information of the employer and the employee.
- Term of the employment relationship and whether it is subject to a probationary or initial training period.
- Activities to be performed by the employee.
- Place of work.
- Working schedule.
- Salary (including the timing, place, and form of payments).
- Training and instruction provisions.

- Employment benefits.
- Any other terms agreed between the parties.
- Appointment of the employee's beneficiaries (in the case of the employee's death).

Although the FLL does not require individual employment agreements to be in Spanish, if an employment agreement must be submitted as evidence before the labour authorities it must be translated into Spanish if it was originally drafted in another language. Further, in litigation, the employer will bear the burden of proving that the employee speaks the language in which the employment agreement was drafted, and that the employee consequently understood its content at the time of execution.

Implied Terms

Where the parties did not enter into an individual employment agreement, or the agreement provides for employment conditions that are inferior to the statutory minimums set out in the FLL, the minimum statutory conditions provided by the FLL will automatically apply (unless there is evidence to prove that the employee is in fact entitled to superior employment conditions than those provided by the FLL, in which case, those superior employment conditions will apply).

Collective Agreements

Historically, for a CBA to be binding, it had to be executed between a representative of the employer and the union, filed before the labour court, and admitted by that authority. Notwithstanding the foregoing, based on an amendment to the FLL published in May 2019, a new procedure with regards to the execution of CBAs was introduced, as follows:

- The relevant union must obtain a representativeness certificate (which demonstrates that it represents the employees of a company/workplace) and follow the process set out in the FLL, which includes a voting procedure among the corresponding employees that must be validated by the Federal Labour Conciliation and Registration Centre (Registration Centre).
- The union must negotiate the terms of the CBA with the employer.
- After notifying the Registration Centre and subject to validation by that authority, the union must carry out a consultation procedure following the process set out in the FLL, under which 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, it must then:
 - be executed in writing between a representative of the employer and the union;
 - be filed before the Registration Centre, alongside the documentation required by the FLL, including the representativeness certificate; and
 - be approved by the relevant authority.

In addition to the above, the FLL also contains certain provisions based on contract law that govern where a contractual agreement (rather than a CBA) is entered into by one or more workers' unions and several employers, with the aim of establishing the conditions under which work must be performed in a particular branch of industry. Such a contract can be executed by filing an application to the Registration Centre and following the specific process set out in the FLL.

5. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Under the FLL, employees have the right to claim "wrongful" termination of their employment relationship when their terms and conditions of their employment are reduced or unilaterally modified by the employer to the extent that the modification has a detrimental effect on the employee.

However, there are some collective procedures that employers may be able to follow to reduce benefits. Where an employer can show a genuine and reasonable need to reduce benefits, certain special terms and rules may apply that allow for that reduction (although the labour court has the sole discretion to decide whether a reduction in benefits can be implemented, and if so, which reductions can be applied).

Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

Minimum Wage

Mexico has a general minimum wage that applies to all employees, regardless of their age, industry, and experience. Additionally, there are "professional minimum wages" that apply to certain employees depending on their profession, craft, or activity. Professional minimum wages apply to all employees within the specified job, regardless of their age, industry, and experience.

Both the general minimum wage and the professional minimum wage are applied at different rates depending on the geographical area in which an employee works:

- One rate applies exclusively to the 43 municipalities that integrate the "Free Zone of the Northern Frontier".
- Another rate applies to the rest of the country.

Minimum wages are determined and increased periodically by a National Commission comprising representatives of employees, employers, and the government. The general minimum wages for 2024 are:

- MXN374.89 per working day (an average of MXN11,246.70 per four-weekly period for an employee working a six-day week, when calculated together with the mandatory vacation premium that applies on top of basic salary (see

Question 7, Holiday Entitlement: Minimum paid holiday entitlement) for the 43 municipalities that integrate the "Free Zone of the Northern Frontier".

- MXN248.93 per working day (an average of MXN7,467.90 per four-weekly period for an employee working a six-day week, when calculated together with the mandatory vacation premium that applies on top of basic salary (see *Question 7, Holiday Entitlement: Minimum paid holiday entitlement*) for the rest of the country.

Professional minimum wages are equal to, or higher than, the relevant geographically applied general minimum wage, and different rates apply depending on the profession, craft, or activity.

The FLL does not provide for any salary cap. However, tax legislation provides for specific caps in connection with deductions over salaries and employment benefits. The Social Security Law (SSL) also provides a salary cap for the payment of social security contributions.

Salary must be paid in legal tender at the place where the employee provides their services and within the employee's work schedule or immediately thereafter. With the employee's prior consent, salary can be paid through an electronic wire transfer into a bank account, onto a debit card or by any other electronic means. Any expenses or costs associated with these alternative payment methods are covered by the employer.

Bonuses

In practice it is common to reward employees through contractual/discretionary performance bonuses. However, this is not required by law (the FLL only mandates the payment of statutory benefits).

Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

Working Hours

Restrictions on working hours. The FLL provides for maximum working hours depending on the time of day/night during which the activities are performed. Furthermore, the FLL provides that employees must be granted a rest period of at least one day of rest for every six days of work. The FLL classifies work shifts as follows:

- Daytime: between 6.00am and 8.00pm.
- Night-time: between 8.00pm and 6.00am.
- Combined: encompassing periods of both daytime and night-time work shifts, provided that the period corresponding to the night-time work shift is no longer than three and a half hours (otherwise, it will be considered as a night-time work shift).

The maximum daily duration of each work shift is as follows:

- Eight hours for a daytime work shift (48 hours per week).
- Seven hours for a night-time work shift (42 hours per week).
- Seven and a half hours for a combined work shift (45 hours per week).

Overtime pay. The FLL contains specific provisions relating to overtime. Particular provisions also apply to the work shifts of special jobs as determined by the FLL (for example, crews of boats and aircrafts, drivers, domestic employees, doctors during their residency period, and so on). All employees who work overtime are entitled to overtime pay regardless of their position, salary level or any other factor. Employees cannot opt out of receiving overtime pay. To the extent that overtime pay is applicable, it must be paid at a rate of:

- Twice the ordinary hourly rate, in cases where the overtime does not exceed nine hours in a single week.
- Three times the ordinary hourly rate, in cases where the overtime exceeds nine hours in a single week.

Special restrictions applicable to shift workers. Despite the above, the maximum duration of each work shift per day can be increased by the parties to allow employees to enjoy an additional rest day or rest period, provided that the maximum working hours permitted per week are not exceeded.

Rest Breaks

Rest breaks during the working day. Employees who provide their services in a continuous daily, nightly, or combined work shift are entitled to an unpaid rest break of at least 30 minutes. If employees cannot leave the workplace during rest breaks, the rest break is instead counted as effective working hours and is considered to form part of the paid work shift.

Rest periods between working days. The FLL provides that employees must be given a rest period of at least one day for every six days of work, which, to the extent it is possible, should take place on Sundays. Furthermore, the parties are allowed to increase the duration of the daily working schedule during the week to allow employees to enjoy an additional rest day or rest period during the week, provided that the maximum working hours permitted per week is not exceeded. The FLL does not impose any additional rest periods between working days.

Special provisions for night/shift work. The FLL prohibits minors and pregnant women from working a night-time work shift.

Holiday Entitlement

Minimum paid holiday entitlement. The FLL provides for a minimum vacation period that all employers must grant to their employees. Minimum vacation days are dependent on the employee's length of service as described below:

- 12 days' vacation after one year's service.
- 14 days' vacation after two years' service.
- 16 days' vacation after three years' service.
- 18 days' vacation after four years' service.
- 20 days' vacation after five years' service.

- As at the sixth year of service, an employee's vacation entitlement will increase by two days for each additional five years' service.

Employers must pay full salary and benefits during the employee's vacation period. In addition to the paid holiday entitlement outlined above, employees are also entitled to be paid a vacation premium consisting of at least 25% of their base salary during the vacation period.

Public holidays. The FLL provides for the following seven paid mandatory days of rest each year:

- 1 January (New Year's Day).
- The first Monday of February (Constitution Day).
- The third Monday of March (Commemoration of 21 March).
- 1 May (Labour Day).
- 16 September (Independence Day).
- The third Monday of November (Revolution Day).
- 25 December (Christmas Day).

Additionally, every six years there is an additional mandatory rest day when a new president of the country takes office. Electoral legislation may also provide for additional mandatory rest days as required.

Mandatory rest days are not included in the minimum paid holiday entitlement. The employer must pay full salary and benefits for mandatory rest days. There is no entitlement to statutory unpaid holiday.

Flexible Working

The FLL does not provide any statutory right for employees to request to work flexibly. Further, Mexican legislation does not regulate flexible working schedules, and so the implementation of any such schedule must be carefully analysed and documented to mitigate any potential employment liabilities.

Illness and Injury of Employees

8. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Entitlement to Paid Time Off

Employees are entitled to paid time off in the case of illness or injury, whether or not such illness/injury has been caused by work. The illness or injury must be certified by the medical authorities of the IMSS for the paid time off to apply (as the IMSS

covers the payment of salary during such time off, subject to specific rules that determine the actual percentage of salary to be paid). The maximum time limit regarding the amount of paid time off that an employee can take is 52 weeks (whether the illness or injury is work related or not). If the illness or injury continues after this period, the IMSS will grant one of the following to the employee:

- Total or partial permanent disability (depending on the severity of the illness/injury), where the illness or injury is work related.
- Disability for non-occupational illness/injury status, where the illness or injury is not work related.

The effect of either of these grants is that the affected employee will receive a life-long pension from the IMSS. The amount of that pension is calculated based on the employee's salary and varies depending on the specific entitlement. Employers are only obligated to pay the retirement fragment of the social security contributions during the 52-week period of illness or injury, and all other elements of such contributions are suspended. After the 52-week period concludes, the employer contributions cease provided that the employment relationship is terminated.

Entitlement to Unpaid Time Off

There are no provisions in the FLL or the SSL concerning entitlements to unpaid time off due to illness and injury. Despite this, these regulations provide for unpaid leaves of absence, or temporary suspensions of the employment relationship, when the employee:

- Has a contagious illness.
- Has a temporary disability caused by an accident or illness which is not work related.
- Is in preventive custody and is subsequently acquitted.
- Is arrested.
- Is complying with mandatory public services and duties under the Constitution.
- Is assigned as representative before the labour courts or governmental labour bodies.
- Lacks the documents required by applicable legislation to render their services (where these are the responsibility of the employee).
- Is hired for a seasonal term, and the season has ended.
- Is granted a licence for medical care leave (where the employee has a child up to the age of 16 who has been diagnosed with cancer).

Recovery of Sick Pay from the State

The state (through the IMSS) is responsible for paying for both sick pay and employees' medical services in the case of illness or injury (whether these have been caused as a result of work or not) whenever an employee has been provided with the corresponding medical certificate by the IMSS' medical personnel. The SSL allows employers, under certain circumstances, to recover sick pay if they execute an agreement with the IMSS under which the employer directly provides medical services and paid time off to employees.

Provisions Concerning COVID-19

The Mexican Federal Government issued numerous legislative decrees relating to COVID-19, which included social distancing measures. However, these legislative decrees and measures were terminated on 9 May 2023. Employees who become ill with COVID-19 are entitled to a paid leave of absence in the usual manner that sick leave is provided to employees (on the understanding that their illness is certified by the IMSS for the paid time off to apply).

Rights Created by Continuous Employment

9. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory Rights Created

The duration of employees' paid vacation period depends on their length of service (see *Question 7, Holiday Entitlement*). Two of the statutory severance provisions determined by the FLL are calculated based on employees' seniority. The FLL also grants extraordinary protection against dismissal to employees with 20 years' service or longer. Additionally, where all other circumstances are equal, employees with a longer length of service are to be preferred over their peers when considering promotions, reductions to the workforce, work suspensions, and so on.

Consequences of a Transfer of Employee

The consequences of a transfer of employee will vary depending on the way in which the employees are transferred. For example, where the previous employer has effectively been substituted for the new employer by means of an employer substitution (that is, a company transfers its rights and obligations relating to the employment relationships of the transferred employees to the new employer), the employees' original terms and conditions of employment (including seniority) must be maintained. However, where the original employer terminates the existing employment relationships and the new employer rehires the employees, the terms and conditions of employment can be altered. The same general protections from dismissal in any employment relationship apply where employees are dismissed as a direct result of a transfer (that is, a transfer is not considered "just" cause for terminating an employment relationship and consequently such dismissal gives rise to the same rights as those for "wrongful" dismissal).

Fixed-Term, Part-Time and Agency Workers

10. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

Temporary Workers

Fixed-term and fixed-task employees. Fixed-term and fixed-task employees are entitled to the same rights and benefits as permanent employees, regardless of their position, except with regard to severance payments (as statutory severance payments for fixed-term or fixed-task employees vary depending on the duration of their employment relationship). There is no limit to the duration of fixed-term or fixed-task employment agreements. However, if upon the expiration of the term agreed upon the work for which the employee was hired continues to subsist, the employment relationship will be extended for the entire time that work continues to subsist.

Seasonal employees. Seasonal employees who provide seasonal services (through discontinuous periods) have the same rights and obligations as permanent employees, in proportion to the time worked. However, these employees are only entitled to participate in employee profit sharing to the extent that they have worked for at least 60 days throughout the corresponding year.

Agency Workers

An amendment to the FLL which was published in April 2021 has generally prohibited the outsourcing/subcontracting of personnel (that is, where an employer provides the services of its own employees to another person/entity). The outsourcing of personnel can now only take place where subcontracted employees provide "specialised services" (defined as services that are not part of the corporate purpose or preponderant economic activity of the person/entity for whom the services are being provided). Under this amendment, such subcontracted employees providing specialised services are considered to be independent contractors and are not entitled to the same rights and benefits as the employees of the person/entity for whom the specialised services are being provided.

Services provided between companies of the same business group can also be considered as specialised services, but only provided that they are not part of the corporate purpose or the preponderant economic activity of the company that benefits from those services. If an employee is in fact performing activities set out in the corporate purpose or the preponderant economic activity of the company, that employee should be directly employed by that company.

To the extent that an employer wrongfully misclassifies persons who are, in fact, employees as independent contractors (see *Question 2, Categories of Worker*), the employer can:

- Be subject to a misclassification claim initiated by the employee.
- Be liable for the payment of specific sanctions, which are subject to determination by the relevant labour authorities.

Part-Time Workers

Part-time workers are entitled to the same statutory rights and benefits as full-time employees, on the understanding that it is feasible to provide part-time workers with a salary and fringe benefits in proportion to the hours that they work.

Discrimination and Harassment

11. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from Discrimination

The Constitution and the FLL prohibit any type of discrimination against employees. Employment legislation provides that certain sanctions can be imposed on employers who discriminate against their employees; however, it does not provide for any compensation for employees who have been discriminated against. The remedies for employees who are victims of discrimination consist of:

- Seeking the payment of damages before the civil courts based on the specific facts and merits of their own case.
- Terminating the employment relationship (such termination equates to an employer termination without cause, with the relevant liabilities on the employer that entails (see *Question 12, Severance Payments*).
- Filing a complaint before the National Council for the Prevention of Discrimination (*Consejo Nacional para Prevenir La Discriminación*) (CONAPRED), created specifically to redress discrimination matters with no pecuniary sanctions.

Additionally, though ordinarily the FLL requires that, prior to initiating a judicial procedure before the labour courts, employers and employees must complete a mandatory pre-judicial conciliatory procedure, conflicts related to discrimination and harassment are exempt from this requirement.

Finally, all employers must implement internal protocols and internal procedures which are aimed at:

- Preventing gender-based discrimination.
- Handling cases of violence and harassment.
- Eradicating the existence of forced labour and child labour.

Protection from Harassment

The FLL prohibits any type of harassment against employees. Employment legislation only provides that certain sanctions can be imposed on employers or employees who have been found guilty of harassing an employee; it does not provide for any compensation to be provided to employees who have been subject to harassment. The remedies available for individuals who have been subject to harassment consist of:

- Seeking the payment of damages before the civil courts, based on the specific facts of their own case.
- Terminating the employment relationship (such termination equates to an employer termination without cause, with the relevant liabilities on the employer that entails (see *Question 12, Severance Payments*).

See above, *Protection from Discrimination*, for the provisions concerning the exemption from the mandatory pre-judicial conciliatory procedure, and the implementation of employers' internal protocols and procedures concerning harassment.

Termination of Employment

12. What rights do employees have when their employment or employment contract is terminated?

Notice Periods

There is no obligation under the law for employees to notify employers in advance of a resignation. Notice obligations for employees are not recognisable or enforceable under local law. Employers are only legally obliged to provide written notice of dismissal to an employee who has been dismissed for just cause (see below, *Procedural Requirements for Dismissal*). Any other notice obligations for employers can be enforced if they have been agreed to (however, it is not common for employers in Mexico to agree to notify employees in advance of their employment termination).

Severance Payments

Dismissal without just cause (wrongful dismissal). Employees hired for an indefinite term who are dismissed without just cause (as defined in the FLL) are considered to be wrongfully dismissed and are entitled to claim reinstatement or the payment of mandatory severance. Mandatory severance comprised of the amounts described below (note that "daily total compensation" is equal to the employee's daily base salary, plus the daily proportion of any employment benefits ordinarily paid to the employee):

- 90 days of daily total compensation.
- 20 days of daily total compensation for each year of service.
- Seniority premium, equal to 12 days of daily base salary for each year of service (for the purpose of calculating the seniority premium, employees' salary is capped at twice the amount of the daily minimum wage).
- Any accrued salaries and benefits (including paid vacation, vacation premium, Christmas bonus and any other accrued benefit).

Employees hired for a definite term who are dismissed without just cause before the term agreed upon expires are entitled to a severance payment, though this is calculated differently from that applicable to indefinite term employees as follows (in most cases, the applicable severance payment will be higher than that applied to indefinite term employees, but this ultimately depends on the duration of the definite term contract):

- Employment relationships for a fixed term of under one year:
 - an amount equivalent to the salary for half the time that the services were rendered; plus
 - 90 days' salary.

- Employment relationships for a fixed term of one year or more:
 - six months' salary for the first year of employment; plus
 - 20 days' salary for each of the following years of employment; plus
 - 90 days' salary.

Dismissal for just cause. Where an employee is dismissed for just cause under the FLL, that individual will only be entitled to the payment of accrued salary and benefits (and will not be entitled to any of the other statutory severance payments outlined above). Some examples of actions that amount to just cause for dismissal include:

- That the employee, during the course of the performance of their services, carries out dishonest acts, or acts violently, towards the employer, the employer's family, or the company's personnel, clients, or service providers.
- That the employee performs immoral acts, harassment, or sexual harassment against any person within the workplace.
- That the employee disobeys the employer (or the employer's representatives), without a justifiable cause, with respect to the work for which the employee is hired.

Procedural Requirements for Dismissal

Where the parties reach an agreement to terminate the employment relationship through mutual consent, there is no requirement to file a notice of the termination with the Labour Court (although the parties can opt to execute an employment termination and release agreement and ratify it before the Labour Court).

Where the employer terminates the employment relationship with just cause (as defined under the FLL), the employer must provide written notice to the employee, clearly specifying the behaviour(s) that led to the dismissal and the date on which the dismissal occurs. The notice must be either:

- Delivered personally to the employee (at the latest, on the date of dismissal).
- Communicated to the Labour Court within five business days before the dismissal date.

The Labour Court does not analyse the dismissal when the corresponding dismissal notice is filed, it only notifies the employee of the dismissal. Failure to provide a dismissal notice to the employee (either personally or through the Labour Court) will automatically mean that the Labour Court will start with the assumption that the dismissal was unjustified (though evidence to the contrary certifying that the dismissal was justified can still be admitted to, and considered by, the Labour Court).

13. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection Against Dismissal

Grounds for dismissal. Mexican employment legislation is subject to the "job stability" principle and therefore seeks to protect stability in employment. As a result, all employees are granted protection from dismissal so that employers can only terminate an employment relationship for just cause where an employee commits any of the specific wrongdoings listed as just causes for dismissal in the FLL (see also [Question 2](#) regarding trust employees' protection against dismissal). The parties cannot agree to additional causes for termination of employment outside of those specifically set out in the FLL.

Procedural requirements for dismissal. For the procedural requirements concerning just cause dismissals, see [Question 12, Procedural Requirements for Dismissal](#).

If an employee challenges a just cause dismissal, the employer bears the burden of proving, at the Labour Court's discretion, that the employee is in fact responsible for committing the specific wrongdoing that the employer claims provided just cause for the dismissal. To the extent that the employer fails to prove the employee's wrongdoing, and the dismissal is considered unjustified, the employee will be entitled to receive the applicable statutory severance payment (see [Question 12, Severance Payments](#)), along with back wages. Back wages amount to the salary that would have applied to the employee from the dismissal date and up to 12 months after that date (if litigation is not concluded within that 12-month period, the employee is still entitled to receive the same salary payments, but an additional 2% monthly interest will also be charged over amounts exceeding 15 month's salary).

Prerequisites to qualify for protection against dismissal. In principle, there are no prerequisites for employees to qualify for protection against dismissal. The only situation where a different criterion will apply concerns employees hired in an employment relationship that is either:

- For an initial training period.
- Subject to a probationary period.

In both of these cases, if the employee in training/subject a to probationary period did not demonstrate that they have (or have acquired) the appropriate knowledge or skills required to perform the tasks for which that employee was hired, then a simpler process for the termination of employment will apply, provided that the termination of employment occurs no later than immediately after the completion of the training/probationary period.

Protected Employees

All employees are entitled to protection against dismissal (except for just cause dismissal) (see [Question 12](#)): also see [Question 2](#) for the particulars regarding trust employees' protection against dismissal.

Employees who have been issued a temporary disability certificate by the IMSS cannot be dismissed until either:

- The temporary disability period ends.
- The employee is issued with a permanent disability certificate (in which case, the employment relationship will be terminated accordingly).

Although no express protection is set out by the law, employees cannot be dismissed solely because of specific or personal circumstances, such as pregnancy, religious practices, affiliation or non-affiliation to a particular union, or political beliefs. Such an action may be considered to constitute an act of discrimination against the employee.

There is no express restriction that prohibits an employer from dismissing a pregnant employee (on a general basis) who is not in the disability period, provided that the pregnancy is not the reason for the dismissal. However, such a scenario should be carefully analysed by the employer to prevent any possible discrimination claim.

Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

The competent authorities to resolve all employment disputes in Mexico arising from employment relationships between private parties are the Federal Labour Conciliation and Registration Centre, the local Labour Conciliation Centres, and the local or federal Labour Courts.

The Federal Labour Conciliation and Registration Centre oversees the registration of all CBAs, internal workplace regulations and unions, and is responsible for the mandatory pre-trial conciliatory procedure at a federal level. The local Labour Conciliation Centres carry out the referred conciliatory procedure on a local level. Both local and federal labour courts derive from the judicial branch of the government and are responsible for the resolution of individual and collective labour litigation.

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

Resolution of employment disputes before any of the labour authorities described above is free of charge. However, each party must bear its own legal fees in connection with any claim or procedure (the government can assign free representation for employees if they so request).

Redundancy/Layoff

15. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of Redundancy/Layoff

Individual redundancies are not regulated by the FLL. Therefore, an individual redundancy is not considered a just cause for dismissal, and consequently a dismissal on this ground gives rise to the same entitlements as those that arise for wrongful dismissal (see *Question 12, Severance Payments*). Collective redundancies (which are understood as the collective terminations of employment relationships) are only allowed in the specific cases set out in the FLL (see below, *Collective Redundancies*).

Procedural Requirements

Individual redundancies are not regulated by the FLL and are consequently considered to constitute wrongful termination of the employment relationship under Mexican legislation. Individual layoffs (that is, the individual suspension of an employment relationship) are only permitted in the specific cases provided by the FLL (see [Question 8](#)).

Collective layoffs (the collective suspension of employment relationships) are permitted only in the specific circumstances set out in the FLL and can only be implemented to the extent that the employer is granted authorisation from the labour court to conduct collective layoffs. Such circumstances include (among other things):

- Acts of God.
- An employer's disability or death (where the employer is an individual) that results in the necessary suspension of work.
- A lack of raw materials beyond the employer's control.
- An excess in production.
- The temporary non-profitability of the business.
- A lack of economic funds for the normal execution of the work that is beyond the employer's control.
- The failure of the state to disburse amounts it has committed to pay as consideration for contracted works or services (provided that such amounts are indispensable).
- A suspension of work declared by the sanitation authorities due to sanitary emergencies.

Layoffs (whether individual or collective) that effectively amount to dismissal are considered to constitute wrongful termination of the employment relationship under the FLL.

Redundancy/Layoff Pay

Where individual redundancies are made, employers must make the same full statutory severance payments that are due for wrongful dismissal (see [Question 12, Severance Payments](#)).

Where collective layoffs (that is, the collective suspension of employment relationships) are made, employers must pay severance pay as determined by the labour court (not exceeding the amount of one month's salary, subject to certain exceptions) for collective layoffs (employers are released from the obligation to pay salary and benefits during the period of suspension).

If layoffs are made that effectively constitute a dismissal (whether individual or collective), employers must make full statutory severance payments (see [Question 12, Severance Payments](#)), unless the dismissals amount to a collective redundancy (see below, [Collective Redundancies](#)).

Collective Redundancies

Collective redundancies are only permitted in the specific circumstances set out in the FLL. Such circumstances include (among others):

- Acts of God.
- An employer's disability or death (where the employer is an individual) that results in the necessary termination of work.
- The non-profitability of the business.
- The depletion of the product (in the extraction industries).
- A legally declared insolvency or bankruptcy where the relevant authority, or the creditors, determine either:
 - the definitive closure of the business; or
 - the permanent reduction of the business's operations.

The employer must obtain authorisation from the labour court to implement collective redundancy. If a collective redundancy is approved by the labour court, the employer must pay the affected employees a partial statutory severance pay (employers are released from the obligation to pay the severance for 20 days of daily total compensation per each year of service: see *Question 12, Severance Payments*).

Employee Representation and Consultation

16. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management Representation

Employees are not entitled to management representation.

Consultation

Employee consultation is required in connection with the following matters:

- Productivity, training, and instruction (for companies with 50 or more employees).
- Health and safety.
- Preparation of internal workplace's regulations.
- Distribution of profit sharing.
- Preparation of employees' seniority chart.

Under the FLL, employers must establish joint commissions on the matters listed above, integrating an equal number of representatives from the employer and the employees, for both parties to agree on the actions that should be taken.

Major Transactions

The FLL does not provide any obligation to consult employees in connection with major transactions. However, for transactions that require a transfer of employees, it may be necessary to informally approach the union (where there is one in place) to mitigate the risk that the union implements strike action if it disagrees with the terms of the transfer.

17. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

The labour authorities (whether as a result of their monitoring activities or through employees' complaints) can sanction employers who fail to integrate the joint commissions described in [Question 16](#) or who incorrectly create or operate them. These sanctions can include:

- The imposition of economic penalties.
- The imposition of a duty to appropriately incorporate the corresponding joint commissions.
- A reversal of the actions taken by such joint commissions.

Employee Action

Where the employer fails to set up the joint commissions, or where the employees disagree with the integration, decisions or actions of such commissions, employees can file a claim before the labour authorities.

Consequences of a Business Transfer

18. Is there any statutory and/or common law protection of employees on a business transfer?

Automatic Transfer of Employees

When a company transfers its entire business, including assets (that is, it undergoes a merger), employees are automatically transferred to the acquiring entity, which becomes a substitute employer. In principle, there are no notification obligations triggered in stock transactions. There is no automatic transfer of employees on a simple transaction of assets.

Protection Against Dismissal

On a merger, employees maintain the same protection against dismissal as they had before the merger.

Harmonisation of Employment Terms

Since the FLL prohibits any reduction in employment conditions, if any reduction is required to achieve the harmonisation of employment terms, the employer must terminate the current employment relationships of the affected employees (with or without full severance pay, depending on the agreement with such individuals) and initiate new employment relationships with different terms. Employees' consent is required to both terminate the existing employment relationships and initiate new ones.

Employer and Parent Company Liability

19. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer Liability

Employment legislation does not generally regulate employer liability for the acts of employees. Such liability depends on each area of law and the specific regulations of that area. However, employers can be liable for the acts of their employees, especially if the employee was representing the employer when they committed the act or was following the employer's instructions.

Parent Company Liability

Employment legislation does not generally regulate parent company liability for the acts of employees of its subsidiaries, and liability will depend on each area of law and the individual regulations of that area.

Employer Insolvency

20. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee Rights on Insolvency

Legally declared insolvency, where the relevant authority or creditors determine the definitive closure of the business or the permanent reduction of its operations, is considered as a cause for collective redundancy (see Question 15, *Collective Redundancies*). Furthermore, monies owed to employees have superiority and take precedence over all other creditor claims in the case of employer insolvency.

State Guarantee Fund

There is no state fund which guarantees the repayment of any employment debts in the case of an employer's insolvency.

Health and Safety Obligations

21. What are an employer's obligations regarding the health and safety of its employees?

Employers have the following health and safety obligations:

- To ensure optimal health and safety conditions to avoid work-related accidents and diseases.
- To set up a health and safety joint commission to investigate causes of work-related accidents and diseases and propose/implement preventative measures, as well put a stop to activities when they may pose imminent health and safety hazards.
- To observe the Official Mexican Standards in connection with health and safety.
- To obtain the corresponding permits and authorisations on health and safety matters.

Economic penalties can be imposed for breaches of the above obligations (which depend on the specific obligation that has been breached, and the severity of the breach).

Taxation of Employment Income

22. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign Nationals

Individuals who have established their residence in Mexico will be regarded as Mexican residents (regardless of the number of days they spend in Mexico). Where individuals also have other addresses in other countries, a tiebreak rule regarding the factual centre of vital interest of those individuals will be applied to determine their residency. For international employees who both reside in Mexico and who maintain an address in their home country, further analysis must be made with respect to any tax treaty provisions, and the tiebreak rules may lead to a different outcome than those applicable under the domestic tax rules to define that individual's tax residency.

Nationals Working Abroad

Mexican residents must pay income tax on all the income they earn on a worldwide basis. Therefore, compensation earned from both Mexican employers and foreign sources is subject to tax in Mexico. Only where a Mexican national is no longer resident in Mexico will income tax not be payable in Mexico.

23. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of Taxation on Employment Income

Employment income is taxed at progressive rates from 1.92% up to a maximum of 35%, depending on the employee's income.

Social Security Contributions

Social security contributions must be paid by:

- Employees through withholding, which is achieved by the employer applying an overall rate of 2.77% over the adjusted daily wage.
- The employer, who must pay an overall rate of 9.66%. The income regarded as the basis for calculating these contributions is subject to a cap that is determined based on a multiple of the value of the Unit for Measurement and Adjustments (UMA). The maximum amount of salary that can be used to calculate the social security contributions equals 25 times the UMA (which currently amounts to an estimated MXN2,710).

Intellectual Property (IP)

24. If employees create IP rights in the course of their employment, who owns the rights?

In principle, the employer owns the IP rights created by employees in the course of their employment, during their working schedules or using employer's tools/facilities/information. However, it is advisable to specifically agree, in writing, the extent of the employer's IP rights over any creative works of the employee created in these circumstances.

Restraint of Trade

25. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of Activities

Restriction of activities during employment. It is possible to apply very limited restrictions on an employee's activities during employment, provided that the restricted activities would interfere with the employee's work/working schedule.

Restriction of activities after termination of employment. The Constitution provides for "freedom of work", and so employment-related restrictive covenants are usually non-enforceable. It is also advisable not to enter into any compensated civil employment-related restrictive covenants during the term of an employment relationship, as any compensation paid to the employee for such covenants may be considered to form part of their salary in the case of any legal dispute.

Post-Employment Restrictive Covenants

Employment-related restrictive covenants are usually non-enforceable. However, the parties can enter into a civil employment-related restrictive covenant under which the former employer pays the former employee certain sums of money in consideration for the former employee refraining from doing any of the restricted activities. The only sanction that can be applied if the former employee then carries out any of the restricted activities is the seizure of payments agreed between the parties and, in limited cases and subject to the particularities of the case, the payment of damages before the civil authorities.

Relocation of Employees

26. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Employers can include mobility clauses in individual employment agreements providing that employees are obliged to relocate as required by the employer. However, the scope of these types of clauses is limited, although neither the FLL nor the decisions issued by the Labour Courts specify the extent of such limitation. It is up to the Labour Courts to determine, at their entire discretion, whether a change to the workplace of an employee is reasonable or so excessive that it implies a change in the employment conditions which will entitle the employee to the payment of severance. In practice, employers tend to limit the exercise of mobility clauses to relocation within the same city, so that employees are not required to change their home address on relocation.

Where the relocation has been specifically agreed since the engagement of the employee and the employee agrees to relocate, the limitations described above will not apply. However, employers will still acquire a heavy burden of additional obligations (repatriation expenses, housing expenses, medical services, social security benefits, provision of information about competent authorities, approval of the agreement by the labour court, in some cases payment of a deposit to guarantee compliance with these obligations, visa/work permits, and so on), particularly when the employee is to relocate abroad.

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Recent Transactions

- Represented diverse clients regarding compliance with the subcontracting reform provisions.

- Advised many international companies on the options available to implement their worldwide compensation structures in Mexico (stock option plans, phantom equity awards, restricted stock unit plans and so on).
- Assisted many companies on redundancies for directors and executives.
- Advised a US global private equity firm on the financing of one of the most important Mexican airlines with the employment analysis of the restructuring plans, which involved securing the labour savings required to achieve long-term, sustainable economic results for the company.

Languages. Spanish, English

Professional Associations/Memberships. Member of the International Bar Association.

Publications

- *Chambers and Partners (Mexico Chapter), "Global Practice Guide for Employment", 2018 and 2019.*
- *Chambers and Partners (Mexico Chapter), "Global Practice Guide for Outsourcing", 2019.*
- *International Law Office: Employment & Immigration Mexico, "Remote Working Reform Enters into Force", 2021.*
- *Thomson Reuters, "Employment and Employee Benefits in Mexico: Overview", 2017, 2018, 2021, 2022, and 2024.*
- *International Bar Association, Employment and Industrial Relations Committee Publication, "Assignment of foreign employees to render services in Mexico".*
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- Counsel to a global third-party management company in the employment and social security due diligence leading to its acquisition of a large Mexican hotel group which represented more than 2,500 employees distributed nationwide.
- Counsel to a first-class railway network in the employment and social security due diligence leading to its acquisition of a pure transport holding company with railway investments in Mexico, involving numerous complexities such as negotiations with one of the country's most representative unions.
- Advised a US global private equity firm in the financing of one of the most important Mexican airlines with the employment analysis of the restructuring plans, which involved securing the labour savings required to achieve long-term, sustainable economic results for the company.
- Advised a global producer of components for renewable energy in the planning and implementation of the transfer of more than 2,500 employees (including unionised personnel) from a power management company leading its acquisition, while mitigating subcontracting liabilities.
- Represented diverse clients regarding compliance with the subcontracting reform provisions.
- Broad experience representing clients in all legal aspects of their labour relationships in Mexico, as well as other multijurisdictional labour issues, including legal advice and preparation of employment documents such as labour agreements, hiring and compensation schemes, employment benefits, collective bargaining agreements, modification of employment conditions, transfer of employees, termination of employment relationships, legal audits and so on.

Languages. Spanish, English

Professional Associations/Memberships. Member of the International Bar Association; British Chamber of Commerce in Mexico; National Association of Business Lawyers (*Asociación Nacional de Abogados de Empresa*).

Publications

- *Chambers and Partners, "Labour Law Amendments Impacting the Construction Industry", 2022.*
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