Long-Awaited Labor Law Reform in Mexico

Introduction

The recent Federal Labor Law reform in Mexico is one of the most significant legislative developments of the administration led by former President Felipe Calderón, succeeding where numerous previous reform proposals have failed and left the country’s labor law unaltered since 1970. From the employer perspective, the reform’s impact is undoubtedly mixed, as many of the previous law’s most burdensome requirements remain in place and some additional responsibilities have been imposed on employers. Yet the amendments usher in a major modernization of Mexican labor law and provide some needed clarity to companies doing business in Mexico, while addressing some of the most important reforms sought by the business community. This article offers an overview of the recent measures and their impact on employers.

Background

The history of Mexican labor law is deeply entwined with the country’s economic and social history. During the 19th century, Mexico faced a series of wars, leaving many social and economic problems unattended for decades. In the 1870s, a war hero named General Porfirio Díaz rebelled against the government and ultimately assumed power. Díaz ruled for 30 years (a period known as the Porfiriato) under a policy that aimed for modernization and progress. With abundant natural resources and growing foreign investment, the country experienced rapid economic growth.

The widespread prosperity enjoyed by many during this period, however, did not extend to all workers and, as time went by, employees demonstrated against poor working conditions. After a series of strikes, riots and other protests, the Mexican Revolution formally started in November 1910 against the reelection of President Díaz.

As a result of the revolution, the newly-elected Congress enacted the Mexican Constitution of 1917. In the labor law field, article 123 of the Constitution was created to protect the working class. The Constitution gave power to the Federal Congress to enact a federal law to rule equally in every state and to cover every kind of labor relationship with the exception of those between the government and its employees.
Although designed to protect workers while achieving a balance between the interests of employers and employees, the Federal Labor Law, last updated in 1970, limited employers’ options in a manner that often unintentionally harmed employees. One particular problem was that the law did not specifically define certain aspects of the employment relationship. In addition, a legal principle emerged in Mexico in which courts favor the weaker party whenever there is ambiguity in the law. Under this principle, the law is always to be construed in favor of workers.

The recent reform measures were designed, among other things, to increase productivity and bring Mexico’s labor law in line with the realities of today’s workplace.

**The Reform**

Congress reviewed and discussed three different proposals (one per political party) before coming to an agreement with respect to labor law reform. It took the support of the President in office and the newly-elected President, Enrique Peña Nieto, for Congress to finally reach an agreement on the proposed changes. On November 30th, 2012, President Calderón published the Reforms of the Labor Law, which took effect on December 1, 2012 (although the time established for compliance with some of the new provisions vary).

Some of the main areas of reform include the following, which are discussed further below:

- New rules against discrimination and harassment.
- New forms of individual labor contracts.
- New outsourcing requirements.
- Updated sanctions.
- More rights for working women.
- Enhanced union transparency.
- Establishment of training and productivity committees.

**Clarifications Regarding Discrimination and Harassment**

While Mexico’s labor law was designed to promote equality among workers by prohibiting any kind of distinction, the concept of discrimination was never mentioned or defined. One key goal of the 2012 reform was to eliminate any kind of barrier between men and women and provide the same opportunities for all. Significantly, the amendments make clear that it is unlawful to discriminate on account of national or ethnic origin, sex, age, health, disability, religion, migratory status, sexual orientation, or civil status, among other prohibited categories. The new law also defines sexual harassment and establishes such harassment as a lawful cause for termination (along with bullying). These new protections, while directly addressing the interests of employees, also support the multinational’s global compliance program by bringing Mexico’s law in line with the antidiscrimination laws of other nations and the global mandates of corporate policy.

**Types of Employment**

The 2012 reform measures aim to promote flexibility in work arrangements and encourage hiring. While the prior regime made it extremely difficult for employers to staff job functions requiring temporary or seasonal work arrangements, for example, the new law specifically allows for temporary and seasonal employment.

Another significant aspect of the reform measures is that employers in Mexico may now pay an hourly rate, which must be at or above the minimum wage.
By allowing an hourly wage payment, employers can better staff certain types of work.

The new law also provides for a 30-day probationary period to confirm that the employee has the necessary skills for the job. The period may be extended to 180 days for positions of administrators, managers, directors, or those who need special professional knowledge. If the employee does not satisfy the requirements after the end of the period by passing the exams established by the employer, the labor relationship can be terminated. The probationary period can only be used once per employee and has to be in writing.

Another new alternative for employers is a preliminary contract of three months for general employees and six months for positions of administrators, managers, directors, or those who need special professional knowledge. If the employee does not acquire the desired skills after the end of the period, the labor relationship can be terminated. It can only be used once per employee and has to be in writing.

Before terminating a new employee after either the initial training or probationary period, the employer must first consider the opinion of the Joint Commission for Productivity and Training.

Both the probationary period and initial training period could help employers avoid costly penalties and severance payments in cases where a new employee is unable to meet the requirements of a job. The additional flexibility is of course welcome news to employers, but in a broader sense the measures encourage new hiring by lowering the risk of staffing errors and accordingly should be viewed as positive by both the business community and employees.

**Changes in Subcontracted Work or “Outsourcing”**

The reform law provides specific regulations with respect to employer outsourcing arrangements. Specifically, outsourcing arrangements are only permitted in accordance with the following rules:

- Outsourcing cannot be used to execute all the activities of a business operation.
- It must be justified by having a special nature.
- The subcontracted work cannot be equal or similar to the work performed by the rest of the beneficiary/customer’s employees.

In addition, the contract between the beneficiary (the customer) and the outsourcing company must be in writing. The beneficiary must also be sure that the outsourcing company complies with social security standards and other legal requirements. Finally, transferring workers from one company to another in order to create a subcontracting relationship whereby they receive reduced labor benefits is forbidden. Failure to comply with these rules results in the beneficiary of the work being deemed the employer of the outsourcing company’s employees.

While employers would no doubt prefer greater flexibility to outsource tasks in the context of the modern workplace, the reform does at least provide greater clarity as to the conditions under which subcontracting is permitted.

**Back Pay**

A priority for employers during the reform process was to reduce the pressure to settle unmeritorious labor claims created by the need to pay backpay compensation coupled with extensive delays in court proceedings. Under the old law, where an employee proved that his or her termination was wrongful and claimed reinstatement-
ment, the employer had to pay what the employee would have earned from the day of the termination until the employer complied with the court’s resolution. Because of delays in court proceedings, there were examples of small and medium companies that went into bankruptcy after paying the excessive amounts of money required by this law. Businesses were in favor of change since, in the past, litigants used this provision to put pressure on employers to settle even very weak claims for fear that an adverse decision, however unlikely, could ruin the enterprise.

The reform preserves the rights of employees without imposing excessive burdens on employers by limiting back wages to 12 months. Once this period concludes, a monthly capitalized interest of two percent over 15 months of salary will accumulate on the amount due.

**Additional New Obligations for Employers**

There are new additions to the obligations of employers aimed to follow international standards, including:

- **Disability**: The work place must be accessible to handicapped people for centers with 50 or more employees.
- **Paternity Leave**: Employers must grant paid paternity leave of 5 business days.
- **Protections for Working Mothers**: The law provides protections for working mothers, including enhanced leave flexibility and shorter shifts to accommodate nursing mothers.

**Union Transparency and Accountability**

Though the reform law that was ultimately enacted did not include employer proposals aimed at curbing excessive union power, the amendments do make some changes with respect to union transparency. Prior to the reform measures, it was customary that the labor courts made public the collective bargaining agreements (CBA’s) between unions and companies, but there was no obligation to do so. It was common to encounter employees who did not know the content of their CBA’s. The reform makes the courts responsible for publishing the CBA’s and such documents now must be available to the public. In addition, CBA’s, company regulations, and official standards must be displayed in a visible area.

To enhance accountability, unions must also provide an accounting of all union finances to the government every six months. Employees may bring a cause of action if the union does not provide them with this accounting.

**Repeal of Closed-Shop Rule**

Commonly known as the “exclusion clause,” the prior law provided that any employee who voluntarily separated or was expelled from the union had to be terminated from his or her labor relationship as well. The Supreme Court in Mexico ruled that the provision was unconstitutional and the reform law has now eliminated it entirely.

**Creation of the Joint Committee of Productivity and Training**

Consistent with the reform measure’s emphasis on productivity, the former Joint Training Committee has extended its scope to become the new Joint Committee for Productivity and Training. Under the new law, employers that have 50 employees or more must form such a committee, which is composed of representatives of the employer and the employees in order to plan and establish the training programs and evaluation
systems. The main objective of these programs is to increase productivity and improve the education level, labor competence and skills of the employees.

**Conclusion**

As with most reforms, the Mexico labor law reform process reflects a balance of interests, and certainly not all of the business community’s goals were realized. Employers should find much to cheer, however, in the modernization of the labor law to conform with international standards, the increase in clarity, and the specific measures which address some of the more vexing problems faced by employers under the old law.

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