

CLIENT UPDATE

MEXICAN CONGRESS PASSES LABOR LAW REFORM

On September 1, 2012, President Felipe Calderón submitted to the Mexican Congress a proposal to amend the Mexican Federal Labor Act (the “FLA”). On November 13, the Mexican Congress approved a historic reform to the FLA, which became law after promulgation by the President and publication in the Official Daily of the Federation on November 30, 2012.

The reform’s objectives include increasing flexibility in the labor market and reducing hiring costs, improving productivity and competitiveness, promoting union transparency and democracy, and improving labor conditions, through which the Mexican Congress expects to establish better prospects for Mexico’s economic growth.

The following are key provisions of the amendments to the FLA:

- New types of employment relationships are permitted (e.g., trial period, initial training) to provide flexibility in the Mexican labor market
- Outsourcing regime is defined and regulated in order to expressly permit it and make sure that employers will comply with their labor and social security obligations to employees
- Payment of back wages (*salarios caídos*) is limited to a maximum period of 12 months plus certain interest in labor suits resolved after that period
- Provisions to enhance union democracy and transparency are accepted, including regulation of union registration, election of union boards and accountability
- Dignified work principles as defined by international treaties are adopted
- Additional termination causes for both employers and employees are established

Employment Relationships

The amendments to the FLA permit new types of employment relationships, including the following:

1. Trial Period

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The amended FLA provides that in labor relationships exceeding 180 days or established for an indefinite period of time, it is possible to establish a trial period equivalent to 30 days with the purpose of verifying that the worker has the necessary qualifications to perform the relevant job. In the case of management positions, the trial period can be extended up to 180 days. The employee shall enjoy the stipulated salary and corresponding social security benefits during such period.

If at the end of the trial period the employee has not shown the necessary skills to perform the relevant job, the labor relationship may be terminated without the employer incurring any liability as a result of that termination. The trial period may not be extended.

2. Initial Training

The amended FLA provides a period of initial training for a labor relationship whereby the employee shall render subordinated services under the direction and supervision of the employer, with the purpose of allowing the employee to acquire the knowledge and skills necessary to perform the intended job. The initial training term can be set for up to 3 months or up to 6 months in the case of management positions. During this period, the employee shall enjoy the stipulated salary and corresponding social security benefits.

If at the end of the training period the employee has not shown the necessary skills to perform the relevant job, the labor relationship may be terminated without the employer incurring any liability as a result of that termination. The initial training period may not be extended.

A trial period may not be applied simultaneously or consecutively with an initial training period. If a labor relationship continues after a trial period or an initial training period, such relationship shall be considered to be for an indefinite period of time and the trial or initial training period, as applicable, will be taken into account for seniority calculation purposes.

3. Seasonal Job

The amended FLA provides for a type of labor relationship for indefinite time for fixed and periodic works. This is envisaged for seasonal jobs or for jobs that do not require the rendering of services all week, month or year, as applicable. Seasonal job employees shall have the same rights and obligations than employees working for an indefinite time, in proportion to the time worked in each season.

Outsourcing

The amendments include a definition of employment under outsourcing regime as well as specific conditions and responsibilities.

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A failure to comply with the following conditions for employment under outsourcing shall cause the beneficiary of the services to be considered a direct employer for all purposes of the FLA, including social security obligations:

- a) Work shall not encompass the totality of the activities performed in the corresponding work place
- b) Work shall be specialized
- c) Work shall not include tasks equal or similar to those performed by the rest of the employees working for the beneficiary of the outsourcing services

The amended FLA expressly prohibits and penalizes the use of the outsourcing regime to simulate lower salaries and employee benefits or to inhibit the exercise of individual or collective employees' rights.

Back Wages

In labor suits in which the employer fails to prove the cause of a termination of a labor relationship, the payment of back wages as from the dismissal date is limited to a maximum period of 12 months. In the event a suit is not finalized or an arbitral award is not complied with within such term, the employee shall also be entitled to interest over an amount equivalent to 15 months of salary, calculated at a monthly rate of 2%, until payment is made.

Union Transparency and Democracy

The obligation of unions to register before the corresponding government authorities is ratified. The amended FLA requires that the authorities make the registration information available to the public, including collective bargaining agreements. Union bylaws shall be available for consultation in the internet pages of such authorities.

Additional obligations are required to be included in union bylaws, such as the procedure to elect the union board by a secret ballot vote under conditions determined by the general assembly, whether in an indirect or direct election. Union boards shall report to the general assembly on union accounts and finances, including union membership fees (*cuotas sindicales*), at least every 6 months.

Dignified Work and No Discrimination

The amended FLA incorporates a “decent work” concept understood as a job where employee’s dignity should be respected without any type of discrimination, where the employee has access to social security and is granted fair compensation and continuous training to increase productivity under optimal safe and hygiene conditions.

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Justified Termination Causes

The following additional causes for termination of an employee without liability for the employer are included: (i) that the employee incurs in violent actions or insults the employer, his or her family members, management or administrative personnel, clients or suppliers of the employer, unless it is in self-defense or as a reaction to provocation; and (ii) that the employee sexually harasses any person in the work place.

The employer shall deliver the termination notice to the employee personally or through the corresponding Labor Board.

The following additional justified termination causes without liability for the employee are included: (i) that the employer, his or her family members or representatives incur in violent actions, sexual harassment or insult the employee, its spouse and family members; and (ii) that the employer requires the employee to engage in certain types of conduct against his or her dignity.

Miscellaneous

Other relevant modifications worth mentioning include the following:

- a) The chapter on employee training was completely reformed to include productivity and competitiveness concepts under which it is clearly established that training is aimed not only at improving employees' quality of life and competence, but also their productivity. The amendments expand the scope of work of the Joint Training and Productivity Committees. The amended FLA also envisages the creation of a National Productivity Committee with the participation of authorities, employers, unions, employees and academic institutions FLA
- b) The amendments include the possibility of paying salary by hour of services rendered, provided that the employee's income calculated in this manner is not lower than income corresponding to a full daily working shift
- c) New regulations are incorporated for employers in the mining industry
- d) As to labor procedural regulations, the amendments include new rules in connection with legal representation, evidence, statute of limitations, burden of proof, among other, including the use of technology to modernize and expedite labor justice. Additional rules and operational concepts in connection with Federal and Local Labor Conciliation and Arbitration Boards are incorporated.

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Please do not hesitate to contact us with any questions.

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