

# LABOUR & EMPLOYMENT 2022

Contributing editors

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# Mexico

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## LEGISLATION AND AGENCIES

### Primary and secondary legislation

- 1 | What are the main statutes and regulations relating to employment?

Labour and employment matters in Mexico are mainly regulated by article 123 of the Constitution of the United Mexican States (the Mexican Constitution) and the Federal Labour Law; however, the Social Security Law and the National Housing Institute Law must also be carefully considered when analysing employment-related matters in Mexico.

### Protected employee categories

- 2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Yes. The Federal Labour Law expressly prohibits discrimination in the workplace based on ethnic origin, citizenship, gender, age, disability, social status, health conditions, religion, opinions, sexual preference, marital status or any other circumstance against human dignity, and prohibits sexual harassment in the workplace. Further, the Anti-Discrimination Law was enacted in March 2014 and although it does not have a direct impact on employers, it may come into play if an individual believes he or she has been discriminated against in an employment setting.

### Enforcement agencies

- 3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

Local and federal labour boards are the main labour and employment law enforcement agencies in Mexico. Labour boards function as trial courts and their awards may be appealed to federal courts. There are, however, other agencies in charge of supervising and enforcing compliance with specific employer obligations, mainly:

- the Employment and Social Prevention Secretariat;
- the Mexican Social Security Institute;
- the National Housing Fund Institute; and
- the National Immigration Institute.

## WORKER REPRESENTATION

### Legal basis

- 4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Yes. Mexican employers are required to establish the following committees formed by combinations of employer and employee representatives:

- a safety and hygiene committee;
- a training committee (if there are more than 50 employees);
- a profit-sharing committee;
- a seniority and tenure committee; and
- an internal work regulations committee.

Employer representatives are usually the head of human resources and another high-level administrative executive. Employee representatives can be any other company employees.

### Powers of representatives

- 5 | What are their powers?

Mexican employers are required to establish committees formed by combinations of employer and employee representatives (eg, a safety and hygiene committee and an internal work regulations committee). These committees have limited authority. They have the power to negotiate and approve applicable employee handbooks, internal regulations or policies and their implementation procedures, as and when needed.

## BACKGROUND INFORMATION ON APPLICANTS

### Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

Employers in Mexico are generally free to establish the necessary requirements for employment, including the submission of job applications asking for background and personal information so long as the information is relevant to the position. There is nothing in the Federal Labour Law preventing employers from conducting background checks through third parties, and even then, employers must comply with anti-discrimination and data privacy obligations under applicable laws in Mexico.

### Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

Employees are obliged to submit to employer-mandated medical examinations under sub-paragraph X of article 134 of the Federal Labour Law.

Generally, the examination must be provided for in employee manuals or company policies and be reasonable. Employers may not test for, or ask questions related to, pregnancy or engage in any other type of discriminatory conduct. Further, employers must comply with data privacy obligations under applicable laws in Mexico.

### Drug and alcohol testing

8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

No. Employment may be denied solely because the applicant refused to take a drug and alcohol test; however, the employer must be mindful of its obligations to comply with data privacy laws in Mexico and avoid engaging in discriminatory conduct.

## HIRING OF EMPLOYEES

### Preference and discrimination

9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Yes. Under equal circumstances, employers are required to give preference in hiring to:

- Mexicans over foreign nationals (only 10 per cent of the employees of a single employer can be foreign nationals);
- employees with more seniority;
- individuals who are economically responsible for their families and whose employment is their sole source of income;
- individuals who have completed the obligatory basic education;
- trained individuals;
- individuals with the skills and knowledge required for the job; and
- unionised employees.

The Federal Labour Law expressly prohibits discrimination in the workplace based on ethnic origin, citizenship, gender, age, disability, social status, health conditions, religion, opinions, sexual preference, marital status or any other circumstance against human dignity, and it prohibits sexual harassment in the workplace. Further, the Anti-Discrimination Law may come into play if an individual believes he or she has been discriminated against in an employment setting.

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

The Federal Labour Law provides that employment conditions must be in writing, and the most common way to do this is through an employment agreement.

However, an agreement's existence is not essential to the creation of an employment relationship and the lack of a written contract will not affect the employee's rights under the Federal Labour Law. In the event of litigation, the absence of a written contract will be weighed against the employer by the labour boards and, as a result, the evidential burden to the employer will be increased.

Employment contracts must include at least the following information:

- the name, nationality, age, gender, tax and personal identification numbers, and domicile of the employee and employer, as applicable;
- the term of employment (indefinite or for a specific project or period);
- indication of whether employment is subject to a trial period;
- the services to be rendered by the employee, as well as the position of employment;
- the place or places where the services must be rendered;

- the work schedule and number of hours worked throughout the week, with at least one weekly rest day;
- compensation;
- training programmes and requirements;
- the fringe benefits payable to the employee; and
- any other condition of employment that is not contrary to the law.

11 | To what extent are fixed-term employment contracts permissible?

A fixed-term employment contract is permissible only if the nature of a particular task or service requires such employment or the employee is required to temporarily substitute for another employee.

### Probationary period

12 | What is the maximum probationary period permitted by law?

Probationary periods may not exceed 180 days for employees performing leadership and management positions, or those in technical or specialised professional work, or 30 days for base-level employees. Employment of trainees may not exceed 180 days for employees in leadership and management positions or technical or specialised professional work, or 90 days for base employees.

In no event may temporary employment be consecutive (eg, re-employing a temporary worker on a temporary basis) or last for more than one year.

### Classification as contractor or employee

13 | What are the primary factors that distinguish an independent contractor from an employee?

Under the Federal Labour Law, employment is presumed whenever an individual renders subordinated services to another person for remuneration, regardless of the legal origin of the relationship. In that sense, when analysing an independent contractor relationship concerning an employment relationship, labour boards undertake a detailed factual analysis and disregard the form given to the agreement. As a general matter, the two distinctive elements identified by labour boards as fundamental to a labour relationship are economic dependence and subordination, which are understood as the authority of the employer to dictate the actions of the employee and the employee's duty of obedience.

### Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

Temporary staffing of personnel through recruitment agencies (outsourcing) is prohibited unless, among other things, it is limited to specialised services. The contracting of third-party service providers (including outsourcers or staffing agencies) that place employees in a third party's facility (a contracting party) is highly regulated in Mexico. It can only occur when it involves activities different to those provided in the contracting party's bylaws as the main corporate purpose thereof and carried out by other employees during the ordinary course of business of the contracting party. Further, as a result of recent amendments to applicable laws (2021), failure by a third-party service provider to be duly registered as such with the Registry of Specialized Services (REPSE), and in compliance with employment, social security and tax laws will expose both the contracting party and the third-party service provider to employment, tax, and, in some instances, criminal liability.

In summary, all outsourcing agreements entered into in Mexico must, at a minimum, meet the following criteria:

- the third-party service provider (staffing agency or outsourcer) must be duly registered with the REPSE;
- the third-party service provider (staffing agency or outsourcer) must provide the hiring party with periodic reports on compliance with employment, tax and social security obligations;
- the agreement should not cover the contracting party's principal activity as provided in the bylaws thereof;
- the agreement should not cover employees with tasks equal or similar to the ones carried out by other employees of the hiring company in the ordinary course of business; and
- the outsourced positions must be justified by the specialised nature of the jobs, such as work that requires a company to bring in a specialist.

## FOREIGN WORKERS

### Visas

- 15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerical limitations on short-term visas or visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction. However, under the Federal Labour Law and applicable Mexican immigration law, work visas are required for foreign individuals to work in Mexico, and the employee base of Mexican employers must comprise at least 90 per cent Mexican citizens. The exception to the general rule is that, for technical and professional employees, employees must be Mexican citizens, but foreign employees may be employed temporarily if there are no Mexican employees available with the required skills for the position, in which case, Mexican employees must be trained to permanently occupy that position. Mexican citizenship restrictions do not apply to chief executive officers, general managers or administrators. Further, an employer's doctors, where required, must be Mexican citizens.

### Spouses

- 16 | Are spouses of authorised workers entitled to work?

To the extent the spouse is granted a visa as an economic dependant of the employee holding the 'primary' work visa, that spouse will not be allowed to work in Mexico unless a change in migratory status is obtained from the National Immigration Institute (INM).

### General rules

- 17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

Under the Federal Labour Law and applicable Mexican immigration law, work visas are required for foreign individuals to work in Mexico, and the employee base of Mexican employers must comprise of at least 90 per cent Mexican citizens. The exception to the general rule is that, for technical and professional employees, employees must be Mexican citizens, but foreign employees may be employed temporarily if there are no Mexican employees available with the required skills for the position, in which case Mexican employees must be trained to permanently occupy that position. Mexican citizenship restrictions do not apply to chief executive officers, general managers or administrators.

From an immigration law perspective, penalties imposed by the INM vary depending on several factors (eg, recurrence) and may range from nominal fines to deportation of the applicable employee. Also, the

employer risks being 'red flagged' by the INM and may face enhanced scrutiny when petitioning for work visas in the future from the INM. Under the Federal Labour Law, violators may face fines of up to 2,500 times the minimum wage.

### Resident labour market test

- 18 | Is a labour market test required as a precursor to a short or long-term visa?

No labour market test is required as a precursor to a short or long-term visa; however, although denials are unusual, immigration officers have ample authority to grant or deny short or long-term visas based on the evidence presented and the in-person interview.

## TERMS OF EMPLOYMENT

### Working hours

- 19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

There are restrictions on working hours and shifts, and the Federal Labour Law does not allow waiving or opting out of those provisions. Maximum work shifts are divided into three:

- day shifts: 6am to 8pm with a 48-hour maximum;
- night shifts: 8pm to 6am with a 42-hour maximum; and
- mixed shifts: with a 45-hour maximum.

Also, the maximum overtime that employees can be required to work is three hours per day, three days per week. That is, the maximum overtime permitted by the Federal Labour Law per week, in aggregate, is nine hours. There are no exceptions to this limit, and any excess will be paid at a rate of 300 per cent of the base salary (ie, \$3 per every \$1).

### Overtime pay

- 20 | What categories of workers are entitled to overtime pay and how is it calculated?

All employees are entitled to payment of overtime, regardless of their positions or any other qualification. Overtime is paid at a 100 per cent premium for the first nine hours of overtime per week and at a 200 per cent premium for any additional hours.

- 21 | Can employees contractually waive the right to overtime pay?

No, employees cannot contractually waive the right to overtime, and any agreement to that effect would be deemed null and void by labour boards.

### Vacation and holidays

- 22 | Is there any legislation establishing the right to annual vacation and holidays?

The Federal Labour Law establishes the following mandatory vacation time for all employees:

- six paid vacation days for the first year of employment;
- two days added for each year of employment until the fifth year of employment; and
- two additional days for every five years of service after the fifth year.

Further, the Federal Labour Law sets forth the following dates as mandatory holidays:

- 1 January (New Year's Day);
- the first Monday of February (Constitution Day);
- the third Monday of March (President Benito Juárez Day);

- 1 May (Labour Day);
- 16 September (Independence Day);
- the third Monday of November (Revolution Day);
- 25 December (Christmas Day);
- 1 December, every six years (Presidential Election Day); and
- the presidential inauguration day, every six years.

### Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Yes. The Federal Labour Law and the Social Security Law establish the right to sick leave and sick pay. However, there is no annual entitlement for these concepts. Employers are required to register their employees with the Mexican Social Security Institute (IMSS). In the event sick leave is needed, an employee is required to obtain a certificate from the IMSS describing the type of illness or injury suffered by the employee and the length of the applicable sick leave. It is the IMSS that decides whether the sick leave is warranted, as well as the amount to be paid to an employee during the illness or injury. The IMSS pays this amount directly to the employee, and the employer is not obliged to pay the employee's salary during the justified sick leave period.

### Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Under the Social Security Law and the Federal Labour Law, employees are entitled to up to 52 weeks of leave (which may be extended for an additional 52 weeks) in connection with a temporary incapacity (as declared by the IMSS) and permanent leave in connection with permanent incapacity. Also, the Federal Labour Law provides that if the incapacity is the result of a non-employment related risk, and it prevents the employee from performing his or her duties, the employer may terminate the employment with cause, but the employee will be entitled to a mandatory severance payment equal to one month's salary, plus 12 days of wages per year of employment. The employee may request that the employer, if possible, provide employment in another position that is appropriate to the employee's disability in lieu of termination.

Maternity and paternity leave is separately regulated by the Federal Labour Law and Social Security Law. So long as the mother has contributed to the IMSS for at least 30 weeks in the previous 12 months, then she has the right to a 12-week paid maternity leave, during which she will be entitled to receive full wages for 42 days (six weeks) before childbirth and 42 days (six weeks) afterwards. Under certain circumstances, the employee can transfer four of the six pre-delivery maternity leave weeks to the post-delivery period. Parental leave under the Federal Labour Law entitles male employees to a five-day paid paternity leave period upon the birth or adoption of a child.

### Mandatory employee benefits

25 | What employee benefits are prescribed by law?

The Federal Labour Law establishes the following mandatory benefits for all employees:

- seven days of mandatory holiday per year, in addition to the presidential inauguration day every six years and election day;
- six paid vacation days for the first year of employment, with two more days added each additional year of employment until the fifth year of employment; thereafter, employees are entitled to two additional days for every five years of service;

- a vacation premium equal to 25 per cent of their daily base salary for each day of vacation used;
- a year-end bonus of at least 15 days' salary; and
- participation in the distribution of 10 per cent of the pre-tax profits of the employer.

Employers may contractually grant other benefits to their employees, which are commonly known as 'extralegal benefits'.

### Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

Part-time employees are entitled to the same benefits as full-time employees.

### Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

No. As a general matter, there is no obligation under Mexican law for employers to make information on employees' (including executives') remuneration available to the public. That said, the Federal Labour Law does set forth anti-discrimination provisions intended to safeguard equal opportunity principles and, therefore, prevent discriminatory behaviour (including concerning payment) based on ethnic origin, gender, age, disability, social condition, religion, opinions, sexual preference, pregnancy, civil status or similar factors.

## POST-EMPLOYMENT RESTRICTIVE COVENANTS

### Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Non-compete arrangements on individuals are generally unenforceable under Mexican law as these are perceived by courts to limit an individual's constitutional rights to employment and to exercise a profession. That said, the Supreme Court has ruled that under very limited circumstances (eg, where there is proportionate compensation, and limitation of time and geographic scope), non-compete agreements may be enforceable. The enforceability of non-compete and non-solicitation arrangements in Mexico must be carefully analysed on a case-by-case basis. However, confidentiality arrangements (whether included in an employment agreement or a post-termination arrangement) can restrict employees from disclosing or using confidential information, even after the employment relationship has ended. An employee's breach of this agreement or clause can result in civil and criminal liability.

### Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Non-compete arrangements for individuals are generally unenforceable under Mexican law as they are perceived by courts to limit an individual's constitutional rights to employment and exercise a profession.

## LIABILITY FOR ACTS OF EMPLOYEES

### Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

As a general matter, an employer is liable for damages caused by its employees to third parties in the course of the employee's employment.

## TAXATION OF EMPLOYEES

### Applicable taxes

31 | What employment-related taxes are prescribed by law?

Any income related to employment, including the mandatory annual profit-sharing distributions and any income derived as a consequence of the termination of employment, will be subject to taxation. Payroll tax, income tax and social security contributions are the employment-related taxes prescribed by law; however, employers are also required to contribute to the National Housing Fund Institute and an employee retirement savings fund. All contributions are calculated based on the employee's salary, up to certain maximum levels.

## EMPLOYEE-CREATED IP

### Ownership rights

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

The general rule under the Federal Labour Law about employee-created intellectual property (IP) is that the employer owns the IP on any invention developed by its employees, provided that the development of the invention was within the scope of the employment relationship. If the employment agreement is silent regarding ownership of work product, but it establishes that research or improvement of the employer's processes is within the scope of employment, then the rightful holder is the employer.

However, if an employee's invention benefits the employer in such a way that the employee's wage is not proportional to the benefit received by the employer, the employee has the right to receive additional compensation. The parties must agree on the amount of the additional compensation, and in the absence of agreement, the labour boards will decide. In all other instances (eg, inventions developed by an employee without the proper provisions in the employment agreement, even if using the employer's resources), the proprietary rights associated with the invention belong to the employee; the employer only has a right of first refusal if the employee decides to assign applicable IP rights (eg, to file the patent or design application or the corresponding patents, and design registrations or patents or design applications).

Concerning work product that is susceptible to copyright, the employer will only be entitled to be acknowledged as the copyright holder if there was an individual employment agreement in writing with the employee. Further, that employment agreement must specifically state that all economic rights related to the copyrighted work product belong to the employer; otherwise, the default rule is that 50 per cent of the economic rights belong to the employer and 50 per cent to the employee. If there is no written employment agreement, or if it is silent about copyright ownership, then the employee will be entitled to all economic rights. The exception to this rule is copyright on software developed by an employee as part of his or her work duties, wherein the absence of a written employment agreement or if an employment agreement is silent in connection with copyright ownership, the work product (software) belongs to the employer.

## Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

Yes. The Federal Labour Law provides that the disclosure of trade secrets and confidential information is a cause for termination of employment. Also, the Intellectual Property Law includes several provisions protecting trade secrets and business information, including an obligation on the part of employees to maintain the confidentiality of information or trade secrets, and the imposition of penalties to employers that hire employees for the purpose of obtaining trade secrets.

## DATA PROTECTION

### Rules and obligations

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

Yes. The Federal Law on the Protection of Personal Data in Possession of Private Parties (the Privacy Act) protects employee privacy and personal data by, among other matters, requiring employers that intend to collect, use, disclose or store personal data of employees and personnel to provide a privacy notice and obtain the employees' consent. Express consent is needed for the storage, use or transmission when handling sensitive personal information (eg, race, ethnicity, health-related information, genetic information, religion, sexual, political, moral or philosophical preferences, union affiliation, and, in general, any information that could lead to discriminatory conduct). If the information is not considered sensitive personal information, the employer may rely on implied consent (but the privacy notice must still be delivered).

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

Under the Privacy Act, the privacy notice to be provided must include, at the very least, the following elements:

- the identity and domicile of the data controller;
- the purpose of the data processing;
- the option and means offered to the data owners (employees and other personnel) to limit the use or disclosure of personal data;
- the means for data owners to exercise the data owner rights under the Privacy Act;
- the type of data transfers intended to be made, if any;
- the procedures and means by which the data controller will notify the data owners of changes to the privacy notice; and
- when applicable, an indication that sensitive personal data will be processed.

Personal data may then be processed, but only for the purposes described and permitted under the privacy notice.

36 | What data privacy rights can employees exercise against employers?

Except for limited exceptions, the employees, as data owners, have the right under the Privacy Act to:

- request access to their personal data and the applicable privacy notice;
- request the correction of personal data when it is inaccurate, incomplete or outdated;

- request the deletion of personal data from a database; and
- decline the request of a data controller to process their personal data.

## BUSINESS TRANSFERS

### Employee protections

37 | Is there any legislation to protect employees in the event of a business transfer?

Yes. A business transfer is not a cause for the termination of employees under Mexican law.

Concerning asset sales, the Federal Labour Law incorporates the concept of 'employer substitution'. Under this concept, if an asset deal involves assets that are essential for the business operation, an employer substitution occurs automatically for all employees. On the other hand, if only certain assets are transferred, the employees whose jobs are related to those assets may be subject to an employer substitution.

When an employer substitution is triggered, the transferred employees' employment (eg, seniority and benefits) continues as if the transfer had not occurred, and the seller and purchaser remain jointly liable for all employment obligations (including social security obligations) relating to the transferred employees for six months following the employer substitution notice.

## TERMINATION OF EMPLOYMENT

### Grounds for termination

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Employees may only be terminated for 'cause'. The Federal Labour Law includes the following list of 15 events that constitute cause:

- use of false documentation to secure employment (applicable only within the first 30 days of service);
- dishonest or violent behaviour on the job;
- dishonest or violent behaviour against co-workers that disrupts work discipline;
- threatening, insulting or abusing the employer or his or her family, unless provoked or acting in self-defence;
- intentionally damaging the employer's property;
- negligently causing serious damage to the employer's property;
- carelessly compromising safety in the workplace;
- immoral behaviour in the workplace (including harassing or sexually harassing any individual in the workplace);
- disclosure of trade secrets or confidential information;
- more than three unjustified absences in a 30-day period;
- disobeying the employer without justification;
- failure to follow safety procedures;
- reporting to work under the influence of alcohol or non-prescription drugs;
- a prison sentence that makes it impossible for the employment relationship to continue or failure to deliver documents required by law to provide the employee's services; and
- the commission of any other acts of similar severity.

### Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

A notice of termination is not required for terminations without cause (these instances are generally documented by a resignation letter). In the case of terminations for cause, employers are required to provide a

written notice describing the conduct that triggered the termination and the date on which the conduct occurred or notify the applicable labour board in writing of the cause of termination within five days of the date of termination. Payments in lieu of termination notices are not allowed under the Federal Labour Law.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Employees may not be terminated unless there is cause as defined by the Federal Labour Law.

### Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Yes. The Federal Labour Law establishes the right to severance pay upon termination of employment without cause, but no severance pay applies to terminations with cause. As a general rule, in the event of a termination without cause, the employee is entitled to accrued wages and benefits, three months of integrated salary and a seniority premium of 12 days of salary for each year of service (capped at twice the minimum salary). Also, an employee dismissed without cause is entitled to claim his or her reinstatement. If an employee prevails in a lawsuit for wrongful dismissal, in addition to the employee's reinstatement, the employer will be liable for back pay from the date of the dismissal, with a one-year cap (plus a 2 per cent monthly surcharge thereafter). The employer may avoid reinstatement by making an additional severance payment for an amount equivalent to 20 days of integrated salary per year of employment.

### Procedure

42 | Are there any procedural requirements for dismissing an employee?

In the case of terminations with cause, a written notice of termination is required. If notice is not delivered, the termination will be deemed to be without cause.

### Employee protections

43 | In what circumstances are employees protected from dismissal?

Employment in Mexico is protected as a general matter, and an employee may only be terminated for cause as defined by the Federal Labour Law.

### Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

Yes, depending on the cause of the reduction in force, the employer may need authorisation from the applicable labour board; however, reductions in force must be carefully analysed as the request for authorisation is often burdensome and impractical. Direct negotiation with the employees and unions is customarily recommended.

### Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

The Federal Labour Law recognises employees' right of association to defend a common interest. Class or collective actions are generally filed

by unions. Employment-based claims, outside of union-related claims, are filed on an individual basis.

### Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

No.

## DISPUTE RESOLUTION

### Arbitration

47 | May the parties agree to private arbitration of employment disputes?

No. Employment disputes must be heard by the labour board.

### Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

The rights and benefits afforded by the Federal Labour Law are of public interest and, therefore, may not be waived; however, upon the termination of employment, the employer and employee may enter into a full waiver and release agreement that must be signed in front of, and authorised by, the applicable labour board. The waiver and release is generally accompanied by the payment of a settlement or severance amount, which includes, among other things, accrued wages and benefits.

### Limitation period

49 | What are the limitation periods for bringing employment claims?

The general limitation period for bringing employment claims is one year. However, some types of claims have different limitation periods:

- an employer's right to file a claim and terminate the employment with cause expires one month after the employer becomes aware of the cause for termination;
- an employee's right to file a claim of termination of employment without cause expires two months after his or her date of termination;
- an employee's right to file a claim for unpaid amounts related to employment disabilities expires two years after the date that his or her disability is determined; and
- the right to request that the labour board enforce a labour resolution or settlement expires two years after the date that the labour board notifies the respective party of the resolution or settlement.

## UPDATE AND TRENDS

### Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Mexico has adopted a 'stoplight' approach as a way to address the ongoing covid-19 pandemic. This means that the contagious rate is measured on a state-by-state basis and used to determine whether a particular state is classified as:

- Red (high risk): Social and economic activities will operate and be provided by state and federal authorities. The use of masks is mandatory in all public spaces.

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- Orange (medium risk): Social and economic activities are reduced to 50 per cent capacity. The use of masks is mandatory in all public spaces.
- Yellow (moderate risk): Social and economic activities are reduced to 75 per cent capacity. The use of masks is mandatory in all public spaces, recommended in open spaces where social distancing is not possible, and mandatory in public transportation.
- Green (without restrictions): Employers must continue to monitor state and federal guidance.

At all times, employers must continue to monitor state and federal guidance with respect to covid-19 measures and stoplights in workplaces' locations.

Further, employers should note that while an employer in Mexico can ask for evidence of vaccination, it cannot discipline an employee for failure to provide the same. Employees cannot be obligated to be vaccinated as a condition to return to work. Any vaccination mandate by employers is considered a violation of individual rights afforded by the Mexican Constitution, and termination (or any undertaking of disciplinary measures) due to the employee's refusal to vaccinate will be considered discriminatory and could result in a claim for wrongful termination and, consequently, the reinstatement of the employee or payment of mandatory severance under the law. Notwithstanding, employers can ask employees to submit to (and in fact have an obligation to conduct) periodic and reasonable covid-19 screening, and implement self-disclosure and virus-spreading prevention measures in the workplace. For instance, employers can ask for mandatory disclosure of:

- an employee's exposure to persons infected by covid-19 or travel to high-risk covid-19 jurisdictions;
- manifestations of covid-19 symptoms;
- daily temperature screening; and
- use of masks in the workplace, among other preventive steps.

Further, should any employee show symptoms, be exposed to infected people, or travel to a high-risk area, the employer could ask for a covid-19 negative test prior to allowing such employee to return to the workplace as a way to prevent the spread of the virus and to provide a healthy and safe environment for all employees.

# Morgan Lewis



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