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GUIDE TO EMPLOYMENT LAW IN MEXICO

NEW YORK | VIENNA | LONDON | MEXICO CITY | CHICAGO | HOUSTON | SYDNEY

1. INTRODUCTION

The Mexican Federal Constitution of 1917 was the first constitution worldwide to contain social rights.[1] Its recognition and protection of labor law rights in Article 123 in particular was revolutionary, and served as a model for others. Article 123 of the Constitution sets forth minimum standards for labor law and social welfare, including, *inter alia*, the right to strike, minimum wage rights, working hours, rest days, compensation and occupational hazards.

These rights were then further regulated through the Mexican Federal Labor Law (*Ley Federal del Trabajo*) ("FLL") and the Social Security Law (*Ley del Seguro Social*) ("SSL").

Both laws have been subject to several reforms over the years. These have implemented, *inter alia*, international labor law standards developed by the International Labor Organization. The latest major reforms came into force in 2012 and more recently in 2019 (see Chapter 2.1).

We would like to give you a general overview using this "Basic Primer on Mexican Employment Law". This booklet does not provide an all-encompassing or highly advanced report on the Mexican labor market.

Nonetheless, it tries to point out some of the issues that are of interest for those dealing with employment law matters in Mexico based on our experience. Due to the limited scope of this booklet, it cannot serve as a substitute for case-specific advice in every instance.

[1] Nestor de Buen, El Sistema Laboral en Mexico *128* (UNAM)

2. LEGAL FRAMEWORK

In contrast to other jurisdictions, Mexico's employment law is mostly codified in one source, namely, the FLL. However, there are multiple sources of law which also create rights and obligations with respect to employment law and social welfare matters. The most important sources are:

1. Legislation;
2. International treaties;
3. Collective bargaining agreements; and,
4. Individual employment agreements.

2.1. **Legislation**

Legislation on employment law and social welfare matters is contained in three main instruments:

1. The Mexican Federal Constitution;
2. Mexican Federal Labor Law (*Ley Federal del Trabajo*); and,
3. Social Security Law (*Ley del Seguro Social*).

There are also rules and regulations arising from these instruments which contain details on the implementation of the rights and obligations set forth in the above-mentioned laws.

LABOR LAW REFORM 2019

On 1 May 2019, the Mexican Government published an amendment to the Mexican Labor Law framework which came into force on 2 May 2019 (the "Labor Law Reform 2019"). Among the most important changes, the Labor Law Reform

2019 introduces the new Conciliation and Labor Registration Center (*Centro de Conciliación y Registro Laboral*) (the "Center").

The Center, which belongs to the administrative authorities, will decide on most labor law disputes in the first instance in future. Labor tribunals will be competent for most labor law disputes in the second instance. These labor tribunals will belong to the judiciary. This new two-step dispute resolution mechanism will replace the existing system of labor boards (*juntas de conciliación y arbitraje*), which belong exclusively to the administrative authorities.

The Labor Law Reform 2019 stipulates that the new dispute resolution system must start operating within three to four years. In the meantime, the current system will remain in function until the labor tribunals and the Center are fully established and operating in accordance with the Labor Law Reform 2019.

2.2. **International Treaties**

Mexico has a monist system of international law. Therefore, international treaties ratified by the Mexican State automatically become part of its legal framework without further implementation. International treaties are ranked at the level of the Mexican Federal Constitution. The most prominent example of an international treaty influencing Mexican labor law is the ILO Convention No.98 and Annex 23-A together with its Protocol of Amendment in the USMCA.

2.3. **Collective Bargaining Agreements**

Collective bargaining agreements are concluded between unions and employers. The provisions in a collective bargaining agreement apply to all employees in a company except for trusted employees (see Chapter 4). Provisions in these agreements which are more beneficial to the employee than the ones contained in his/her individual employment agreement prevail.

2.4. **Individual Employment Agreements**

Individual employment agreements are sources of rights and obligations for the parties thereto. Provisions in these agreements that undermine employees' inalienable rights are considered null and void.

3. KEY PLAYERS AND INSTITUTIONS

The key players in an employment relationship are:

1. The employee. The law defines the term 'employee' very broadly as every individual who provides a personal subordinated service to another individual or legal person regardless of his/her profession or level of education. The most important characteristic is subordination. Employees are classified according to their functions and the type of employment relationship entered into (see Chapter 4).

2. The employer. The term 'employer' is defined as the individual or legal person benefiting from the services of one or more employees. Managers and directors of a company who exercise management functions are considered representatives of the employer.

3. The unions. Unions are associations that can be formed either by at least twenty employees or by three employers. The main purpose of unions is to defend and enhance the rights of their members.

4. The mixed commissions. Mixed commissions are bipartite organs composed of representatives from both parties to an employment relationship, i.e., an employer and an employee. Their main purpose is to ensure that particular aspects of labor law are complied with in a workplace. In some regards, they can be compared to works councils in other jurisdictions.

Currently, the main labor institutions are:

1. The federal and local labor boards. The labor boards are administrative organs with the following primary functions: (i) the resolution of labor disputes; (ii) the ratification of the validity of consensual termination agreements; and (iii) the registration of unions.

2. The Center. This organ was introduced by the Labor Law Reform 2019 in order to replace the existing labor boards. The Center will attempt to conciliate labor law disputes. However, there are certain disputes which may not be resolved through conciliation. Exceptions include, for example, disputes concerning discriminatory conduct by the employer, social welfare benefits, the appointment of an employee's beneficiaries on his/her death and human rights violations. Disputes which cannot be solved thorough conciliation or disputes exempted from conciliation will be brought to labor tribunals directly. Furthermore, the Center is responsible for certain administrative tasks such as the registration of unions and collective bargaining agreements (see Chapter 13).

3. The national commissions. National commissions are bodies at the national level which regulate particular aspects of labor law such as minimum wages and profit sharing. National commissions are composed of employers', employees' and governmental representatives.

Works councils do not exist in Mexico. However, employees' unions and so-called mixed commissions have similar influence and powers at plant level (see Chapter 13.1).

4. TYPES OF EMPLOYEES

Mexican law does not distinguish between white-collar workers and blue-collar workers. However, the law differentiates between different types of employees

depending on their functions and the type of employment relationship entered into with the employer.

The FLL differentiates between the following types of employees:

1. Permanent Employees. Permanent employees (trabajadores de planta) are characterized by the company's permanent need for the services they provide. In other words, the services these employees provide must be part of the company's normal, constant and uniform activities.

2. Casual Employees. Casual work employees carry out occasional activities which do not constitute a permanent need on the part of the employer.[2]

3. Trusted Employees. Employees with functions involving high levels of trust are called trusted employees (trabajadores de confianza). Employees qualify as trusted employees if they perform management, inspection, surveillance and accounting control on a general basis. Trusted employees are subject to a particular set of individual and collective rights and obligations. For example, they are treated differently with respect to profit sharing (see Chapter 7.7). Finally, they are excluded from certain collective rights such as affiliation to a union with non-trusted employees.

4. Managers and Directors. An employee who exercises general management functions at a high level is considered an employer's representative. As such, managers' conduct towards other employees can give rise to liabilities for the employer. For instance, sexual harassment by a manager can obligate the employer to pay a severance fee (see Chapter 6.4).

5. Foreign Employees. An employer can hire foreign employees upon the fulfillment of certain requirements. A foreign employee may only be

[2] Mario de la Cueva, El Nuevo Derecho Mexicano del Trabajo 227 (2018).

employed if, all things being equal, a Mexican employee is not available. In every company, the percentage of foreign employees must not exceed 10%. With respect to collective matters, foreign employees cannot be part of a union's board of directors (see Chapter 13). However, they are free to join a union.

6. Commercial Agents. Commercial agents are individuals who offer products, goods and services in exchange for a premium. Generally, the law provides that commercial agents who provide their services to an employer on a permanent basis are regarded as employees of the employer for all purposes. An employment relationship does not arise where they do not execute their work personally or they are only involved in isolated operations.

The FLL also sets forth special rules for certain types of employees such as, *inter alia*, employees working on ships, aircrafts and trains, employees working in agricultural fields and mines, artists and athletes. These special rules have to be considered if an employee falls in one of these categories.

5. OUTSOURCING

Subcontracting, commonly referred to as outsourcing, is a popular way of benefitting from certain types of work without bearing responsibility for labor matters. Therefore, it is often economically attractive for employers. Subcontracted work is work by means of which an employer, known as a subcontractor, executes work or renders services with its proper employees for a contractor. The contractor determines the subcontractors' tasks and supervises the execution of the contracted services or work.

The labor and social security obligations outlined in the FLL and the SSL have to be met by the contractor and the subcontractor for outsourcing to be lawful. Otherwise, the contractor will be jointly liable with the subcontractor for all obligations arising from the employment relationship.

For outsourcing to be legally valid, it necessary to comply with the following conditions at least:

1. The outsourced tasks must not cover activities carried out in the contractor's workplace which are the same or similar in their totality to the ones performed by the contractor;

2. Outsourcing has to be justified by its special nature;

3. Employees of the company to which work has been outsourced have to perform specialized tasks which cannot be performed by the contractor's employees; and,

4. Contracts between contractors and subcontractors must be concluded in written form.

6. INDIVIDUAL WORK RELATIONSHIPS

6.1. **General**

An employment relationship is defined as the carrying out of personal work or services by one person who is subordinate to another. According to this definition, the key element for the establishment of an employment relationship is subordination. **Subordination** refers to the employer's right to control and instruct the employee. Whenever this element is present, the parties are regarded as having implicitly entered into an employment relationship to which the provisions of the law apply. This happens irrespective of how a contract is characterized, e.g., where it is termed a commercial agency agreement (see Chapter 4) or an employment agreement.
The law prescribes that the specific working conditions have to be recorded in written form. A written agreement outlining the specific working conditions has to contain the following at least:

1. Name, nationality, age, gender, marital status, population registry number (clave única de registro de población), tax identification number (registro federal de contribuyentes) and employee's and employer's domicile;

2. Whether the employment relationship will last for the duration of a particular task or a fixed term, a season, an indefinite period and, where appropriate, whether it is subject to an initial course of training or a probationary period;

3. The service(s) to be provided, described as precisely as possible;

4. The workplace;

5. The working hours;

6. The amount of salary and the payment terms;

7. The day and place of payment of salary;

8. The obligation to provide training programs;

9. Other working conditions, like rest days, vacations and further agreements made between the employee and the employer; and,

10. The designation of beneficiaries for the payment of salary and benefits accrued but not yet collected at the time of the employee's death or those generated through their death or disappearance resulting from a criminal act.

The absence of a written agreement does not deprive the employee of his/her statutory rights. The lack of this formality is attributable to the employer as he/she bears the burden of proof. Put briefly, the written form is not an element of validity but serves more to discharge the employer's burden of proof.

6.2. **Duration of the Employment Relationship**

There are various categories for modeling the duration of an employment relationship. In the absence of an agreement regarding the duration, the employment relationship will last for an indefinite period. The law provides for the formation of the following:

1. An employment relationship for an indefinite period of time;
2. An employment relationship for a fixed term;
3. An employment relationship for the duration of a specific task;
4. An employment relationship on a seasonal basis;
5. Probationary periods; and,
6. Initial training periods.

6.3. **Suspension of Employment Relationships**

The suspension of employment relationships safeguards the continuity of contractual relationships. It helps to avoid the definite termination of employment relationships where there is sufficient and justified cause. It allows for interruptions to employment relationships without affecting the essential subsistence of employment agreements. As a general rule, it temporarily exempts both employees and employers from fulfilling their essential obligations (work and payment of salary).

LEGAL REASONS FOR SUSPENSION

The most important reasons for suspension are the following:

1. Temporary disability caused by an accident or disease;
2. Disciplinary measures;
3. The end of a particular season;
4. The lack of necessary documents
5. The pre-trial detention of the employee followed by exoneration;
6. The performance of constitutional duties and the designation of employees as representatives before state agencies or labor institutions;
7. Contagious disease; and,
8. Health contingencies.

PARENTAL LEAVE AND RIGHTS

Generally, working women have the right to **twelve weeks** of maternity leave consisting of six weeks before and six weeks after the birth of a child. Postnatal maternity leave may be extended to eight weeks where children are born with any type of disability or require medical attention in hospital.

The maternity leave periods mentioned above can be subject to an extraordinary extension when mothers are impeded from resuming work due to health conditions arising from pregnancy or childbirth.

Mothers registered with the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social*) are entitled to 100% of their salary during regular maternity leave. Furthermore, seniority rights, Christmas bonuses and participation in profit sharing schemes are not affected by maternity leave.

Fathers are entitled to five days of paid paternity leave following the birth of their children. Their salary will be paid in full by the employer during this period.

6.4. **Unilateral Termination of Employment Relationships**

The unilateral termination of an employment relationship raises important concerns for the employer. Mismanagement of a unilateral termination can have effects which are both very costly and time-consuming.

TERMINATION BY THE EMPLOYER

Termination by the employer is commonly denominated as dismissal (*despido*). An employer makes known to an employee that his or her services are no longer required through dismissal.

Mexican labor law is different from the law of other countries where employment relationships are generally based on an employment-at-will rule.[3] Employers in Mexico may only dismiss employees without severance payment on the basis of certain statutory grounds. The most important grounds listed in the FLL are:

1. Deceitful information on the employee's credentials;

2. Dishonest or violent behavior;

[3] Mark E. Zelek and Oscar de la Vega, An Outline of Mexican Labor Law, Labor Law Journal (July 1992), pp. 466-470, p 467.

3. Serious damage to the employer's property owing to intent or negligence;

4. The endangerment of safety in the workplace;

5. Immoral behavior in the workplace;

6. The disclosure of trade secrets or confidential information;

7. More than three unjustified absences within 30 days constitute justified cause for unilateral termination;

8. Unjustified refusal to carry out the employer's orders and instructions;

9. Working under the influence of alcohol or drugs unless the employee provides the employer with a corresponding medical prescription;

10. The imposition of a prison sentence on the employee; and,

11. A lack of documents required for the performance of services where the failure is attributable to the employee and lasts for more than two months.

The burden of proving the existence of one of these grounds lies with the employer.

The employer is obligated to notify the employee of the grounds for dismissal and the dates on which the respective conduct took place. This has to be done within one month of learning of the grounds for dismissal.

Termination by the employer which is justified by one of the grounds outlined above does not result in severance payment. In this case, the employer only has to pay a release payment – the so called "*finiquito*", which comprises a prorated payment of due salary, vacation days and vacation premium, Christmas bonus

and any other contractually agreed bonuses that the employee was due to receive in the particular year.

By contrast, where the dismissal is unjustified, the employee can claim before the labor authority:

1. Either the reinstatement of the employment relationship; or,

2. The payment of severance.

Reinstatement. The employer may refuse to reinstate an employee in the case of:

1. Trusted employees (see Chapter 4);

2. Employees with less than one year of seniority;

3. Domestic employees;

4. Casual employees (see Chapter 4); and,

5. Wherever the employer proves that, given the nature of the employee's functions, the relationship cannot be re-established.

In addition to a severance payment, the refusal to reinstate the employee due to one of the above-mentioned grounds will grant the employee the right to receive a payment consisting of 20 days of salary per year worked.

SEVERANCE PAYMENT

Severance payment or 'constitutional compensation' which arises from unilateral termination is calculated differently depending on whether the employment relationship was for a fixed or indefinite term. As most employment

relationships are based on indefinite term agreements, we will focus on the amount for this type.

Compensation in this scenario is three months of **aggregate salary** (*salario integrado*). Unlike daily salary, aggregate salary consists of the daily salary plus the amount of rights accrued.

Justified and unjustified dismissals also result in the payment of seniority premiums.

TERMINATION BY THE EMPLOYEE

An employee can also terminate an employment relationship unilaterally on justified grounds set forth in law. In these cases, the employee is entitled to severance payment. The grounds for termination are similar to the grounds mentioned in the sections above. However, they also include a reduction in salary and unilateral changes to the agreed working conditions.

RENUNCIATION

The employee has the right to unilaterally terminate the employment relationship at any time and without cause. The FLL does not provide for a statutory notice period. However, it is common practice that employees provide a two-week notice period.

On renunciation, the employee will be entitled to a release payment (*finiquito*), but not to a severance payment.

7. WORKING CONDITIONS

7.1. **Working Hours**

Work time is the time during which the employee is at the employer's disposal for work. The maximum duration of work time per day depends on the time of day at which the work is performed:

1. Daytime shift (between 6:00 and 20:00 hours): a maximum of eight hours;

2. Night-time shift (between 20:00 and 6:00 hours): a maximum of seven hours; or,

3. Mixed shift: a maximum of seven and a half hours comprised of a mixture of daytime and night-time hours provided that the night-time part constitutes less than three and a half hours, otherwise it will be deemed a night-time shift.

Regardless of the type of shift, the minimum daily wage has to be paid in full (see Chapter 7.6).

OVERTIME

The law stipulates the maximum amount of overtime that an employee can be compelled to work. This maximum amount is three hours per day for no more than three days per week. Overtime within these limits must be remunerated at double the normal rate and does not require employees' consent.

Overtime exceeding three hours per day and three days per week is not mandatory. However, the employee may consent to exceed these limits provided that the employer remunerates each overtime hour at triple the normal rate.

REST PERIODS

During a working day, every employee is entitled to a break of **at least thirty minutes** in the middle of a shift. This will form part of the remunerated working hours.

7.2. **Rest Days**

The law differentiates between two types of rest days:

1. The weekly rest day; and,

2. Commemorative rest days, also known as statutory holidays.

WEEKLY REST DAY

The employee is entitled to at least one day of paid rest for every six working days.

This weekly rest day is normally Sunday. If the employee works on a Sunday, he/she is entitled to a rest day, his/her usual daily salary and an additional premium of at least 25%.

The employee is not obligated to work on his/her weekly rest day. If he/she does, the employer has to pay double salary for the services provided in addition to the salary corresponding to the rest day. In other words, if the employee works the entire day he/she is entitled to salary at triple the normal rate.

STATUTORY HOLIDAYS

There are nine statutory holidays in Mexico:

1. January 1st;
2. The first Monday of February;
3. The third Monday of March;
4. May 1st;
5. September 16th;
6. The third Monday of November;
7. The first day of December every six years where the Federal Executive Power changes on or the following business day (next: 1st of December 2024);
8. December 25th; and,
9. The day determined by federal and local electoral law on which elections are to be conducted. Presidential and Senate elections take place every six years and the election of the Lower House of Representatives takes place every three.

7.3. **Vacations**

The employee is entitled to at least six days of vacation per year of work after the first year of service. This annual leave is increased gradually with every subsequent year of service. After four years, an employee's vacation entitlement increases by two days for every four years of service. There is no maximum amount applicable. The following list illustrates employees' vacation rights:

Year 0	0 days of vacation
Year 1	6 days of vacation
Year 2	8 days of vacation
Year 3	10 days of vacation
Year 4	12 days of vacation
Year 5 to year 9	14 days of vacation

The employer must continue paying **full salary** and benefits during an employee's vacation period. In addition, the employee is entitled to a **vacation premium** consisting of 25% of his daily salary which is payable during the vacation period.

This premium must also be paid when vacation periods are not used. The right to vacation is forfeited one year after the date on which the right arose.

7.4. **Salary**

Salary is defined as "*an amount given in consideration for the service rendered by the employee*".[4] On top of their traditional salary, which is usually paid on a monthly, fifteen-day or daily basis, there are other payments and benefits which employees also receive on an ordinary and regular basis. The sum of all these payments is also referred to as remuneration.

[4] Supreme Court, May 2002, Jurisprudence 2a./J. 35/2002, registered under number186852.

For the calculation of severance payments, an aggregate salary (*salario integrado*) has to be calculated. The aggregate salary is obtained by adding the prorated vacation premium and the Christmas bonus to the remuneration.
The law allows the **payment of salary** to be determined:

1. Per unit of time (i.e. hour, day, month);
2. Per unit of work;
3. On a commission basis;
4. At a flat rate; or,
5. In any other way.

Only minimum wages are legally determined on a daily basis (see Chapter 7.6) and cannot be paid in kind.

7.5. Christmas Bonus

The employee is entitled to an annual Christmas bonus (*aguinaldo*). It is to be paid before the 20th of December in the equivalent amount of at least 15 days of salary. The timeframe for the calculation of this bonus is the calendar year.

7.6. **Minimum Wage**

Mexican law recognizes two forms of minimum wage, namely, the **general minimum wage** and the **professional minimum wage**. The former applies to a specific geographical region. The latter refers to specific branches of economic activity or to special professions, trades or jobs. Currently there are two geographical areas:

1. The general area for all municipalities of Mexico; and,

2. The so-called Northern Border Free Zone (Zona Libre de la Frontera Norte) ("Free Zone") which consists of municipalities bordering the USA.

The 2020 **general minimum wage** is MXN 123.22 pesos gross (approx. EUR 5.86) per day in the general geographic area and MXN 185.56 pesos gross (approx. EUR 8.83) per day in the Free Zone.

Professional minimum wages currently (2020) vary between MXN 125.64 pesos gross (approx. EUR 5.98) and MXN 275.90 pesos gross (approx. EUR 13.13) in the general zone and MXN 185.56 pesos gross (approx. EUR 8.83) and MXN 260.49 pesos gross (approx. EUR 12.40) in the Free Zone.

7.7. **Profit Sharing**

Profit sharing is an additional payment to the salary that is applicable when the employer generates profits. The law exempts certain employers from the obligation to distribute profits. For instance:

1. Newly created companies during the first year of operation;

2. Newly created companies dedicated to the advancement of a new product during the first two years of operation;

3. Newly created companies related to the extraction of natural resources during the exploration period; and,

4. Companies generating less than MXN 300,000.00 pesos of annual income.

Certain employees are statutorily excluded from profit sharing:

1. General managers of a business;

2. Trusted employees have a limited right to participate in the distribution of profits;

3. Employees whose salary depends on commissions cannot be entitled to an amount of profits exceeding one month of average salary; and,

4. Temporary employees who have worked fewer than 60 days during the employer's fiscal year.

Profit sharing must be done within sixty days following the employer's annual payment of taxes. Therefore, profit sharing payments are due on or before the 30th of May for legal entities and on or before the 29th of June for individuals. Mexican law does not allow for deviating fiscal years.

7.8. **Seniority and Preferential Rights**

Seniority and preferential rights recognize the relevance of job stability in labor law.

Seniority rights include the following:

1. Seniority premiums payable on termination of the employment relationship;

2. Preference or promotions; and,

3. Immunity after 20 years of service. An employee with such seniority can only be dismissed if the grounds for dismissal are particularly severe or render the continuation of the employment relationship impossible.

8. RESTRICTIVE COVENANTS

In Mexico, it is a common practice to include restrictive covenants in individual employment agreements which are comprised of non-competition clauses and clauses which prohibit the solicitation of clients and employees.

8.1. **Non-Competition**

Under a non-competition covenant, the employee may neither run an independent business nor enter into transactions on their own account or on the account of third parties in the specific trade of the employer. The temporary scope of this covenant usually extends beyond the termination of an employment agreement for a limited period.

Non-competition obligations may be established as restrictions placed on employees that prevent them from carrying out any activities during work

shifts that are not directly related to the services to be carried out pursuant to their employment relationships.

However, due to the constitutional freedom that grants the right to work, non-competition obligations which extend beyond an employee's work shift or which extend beyond the termination of an employment agreement face obstacles to their enforcement which are difficult to overcome.

8.2. **Non-Solicitation**

Under a non-solicitation covenant, the employee agrees not to solicit employees or clients from the employer. The temporary scope of this covenant usually extends beyond the termination of an employment agreement.

Non-solicitation agreements are not necessarily a violation of the freedom to work. However, they might be considered as such if they are drafted in broad and absolute terms.

From a labor law standpoint, violation of an obligation not to solicit clients during an employment relationship might be deemed a breach of confidentiality which amounts to justified cause for termination.

Similar to non-competition restrictions, it is advisable to conclude a civil agreement which delimits the scope of the restriction as far as possible and which offers a periodic payment in exchange for increasing the extent to which these covenants may be enforced.

9. DATA PROTECTION

The collection, storage and use of information held by the employers about their prospective, current and past employees is governed by the Federal Law on the

Protection of Personal Data in the Possession of Private Parties (*Ley Federal de Protección de Datos Personales en Posesión de Particulares*). The respective data may only be processed insofar as the purpose and content of the data is justified by the statutory requirements imposed on the employer and the employee's confidentiality is safeguarded. Employees have the right to modify and limit the use of their personal information by the employer.

The transfer of the employee's data to third parties requires the employee's consent and the employer must inform the employee about the third party's identification data and the purpose of the transfer.

10. INVENTIONS MADE IN THE COURSE OF SERVICE

The law briefly regulates the attribution of the naming, ownership and exploitation rights for inventions made in a company. Inventions are classified in two categories:

1. Service inventions; and,

2. Free inventions.

Service inventions refer to inventions made by an employee hired for research and development work. Free inventions refer to inventions made by any employee or any group of employees who work in a company.

In the case of service inventions, the ownership of invention and the right to exploit the patent belongs to the employer if the inventions were made in the workplace.

In the case of free inventions, the ownership of the invention belongs to the inventor. However, the employer is entitled to a preferential right to acquire the economic rights from the inventor.

11. DISPUTE RESOLUTION

Currently, the labor boards are the competent authorities for solving disputes arising from employment relationships.
The claimant may submit a claim with the federal or local tribunal as applicable in the following locations:

1. With the tribunal located at the place where the parties concluded the employment agreement;

2. With the tribunal located at the place where the defendant is located;

3. With the tribunal located at the place where services were rendered. If the services were rendered in more than one location, with the tribunal located at the last location; and,

4. With the tribunal located nearest to the union's domicile in cases where the defendant is a union.

The ruling of a labor board can be challenged through a constitutional judicial proceeding (*amparo*) when the ruling violates the constitutional rights of the parties to the dispute.

Following full implementation of the Labor Law Reform 2019, the new two-tier dispute resolution system will replace the current system (see Chapter 2.1).

The FLL does not provide the opportunity to resolve labor disputes through private arbitration. The jurisdiction of labor disputes is exclusively in the hands of the labor boards (in future, the Center and the labor courts).[5]

12. STATUTORY TIME LIMITS

The FLL provides two statutory time limits for the exercise of employees' rights, namely, general and specific time limits. The general statutory limit is one year after the date on which the right arose. It applies when the law does not stipulate a specific time limit. Specific statutory time limits depend on the type of right at stake. However, they range from one month to two years.

13. COLLECTIVE WORKING RELATIONSHIPS

13.1. **Unions, Federations and Confederations**

Mexican employees enjoy freedom of association and the right to engage in union activity. This implies, *inter alia*, that nobody may be forced to participate. It also implies a personal, free, direct and secret election procedure for management positions within a union.

In contrast to many other jurisdictions, Mexican labor law does not provide for works councils at plant level. However, there is union representation within the workplace. Together with certain functions of the mixed commissions, this allows for a level of influence comparable to that possessed by works councils in other jurisdictions.

[5] First Collegiate Court in Labor Matters of the First Circuit, December 1995, Tesis Aislada I.1o.T.28 L, registered under number 203588.

UNIONS

The law defines unions (*sindicatos*) as an association of employees or employers constituted for the study, improvement and defense of their respective interests.

Trusted employees cannot participate in an employees' union with other types of employees. However, they can establish their own union.

An employees' union can be formed with a minimum of 20 employees. An employers' union requires a minimum of three employers in one or more fields located in one or more cities.

The primary task of unions consists in the negotiation and review of the terms of a collective bargaining agreement concluded with an employer on at least an annual basis. They also have the authority to enforce the rights contained therein. Examples of these rights include working conditions, benefits, wage tabulators, etc.

Foreign employees may affiliate with a union. However, the law forbids their participation in the union board.

FEDERATIONS AND CONFEDERATIONS

A federation (*federación*) is a union of unions (*sindicatos*). A confederation (*confederación*) is a union of federations (*federaciones*).

Federations and confederations do not directly participate in collective employment relationships (e.g. the negotiation of collective bargaining agreements). Rather, they serve as political and social instruments for lobbying purposes. Unions with low political or bargaining power benefit from coalitions with stronger unions for the purpose of lobbying and the promotion of legal reforms.

13.2. **Collective Bargaining Agreements**

Collective bargaining agreements (*contratos colectivos de trabajo*) are written agreements between one or more employees' unions and one or more employers' unions. Their purpose is the establishment of working conditions.

Collective bargaining agreements have to contain at least:

1. The names and addresses of the contracting parties;
2. The companies and establishments which it covers;
3. Its duration;
4. Regulation of working hours;
5. Regulation of rest days and vacations;
6. Regulation of the amount of salary;
7. Clauses relating to the (initial) training and education of employees in the company or establishment; and,
8. The bases for the integration and functioning of the commissions that must be integrated in accordance with the law.

The effects of collective bargaining agreements apply to all persons working in a company. This holds true even if they are not members of the union that concluded it. However, trusted employees can be excluded from the effects of the working conditions contained in a collective bargaining agreement.

To register and amend a collective bargaining agreement with the labor boards (in future, with the Center), the union must prove that it is backed by at least 30%

of the employees which are subject to the respective collective bargaining agreement.

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