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New labor reform

On May 1st, the Federal Official Gazette (“FOG”) published the Decree which amends, adds and repeals several provisions of the Federal Labor Law, among other laws, regarding labor justice, union freedom and collective bargaining (“Decree”).

After being approved by the Chamber of Deputies on April 11, and later by the Senate on April 30, the labor reform (“Reform”) aims to harmonize the corresponding legislation with the following:

• Amendments to articles 107 and 123 of the Mexican Constitution concerning labor justice, published in the FOG on February 24, 2017.

• Principles set forth in the Right to Organize and Collective Bargaining Convention, also known as Co98, of the International Labor Organization, ratified by Mexico on November 23, 2018.

• Commitments resulting from the United States-Mexico-Canada Agreement (USMCA), signed on November 30, 2018.

The recent labor reform focuses on three fundamental issues:

I. Labor justice

1. Conciliation and Arbitration Boards disappear under the Reform.

2. Labor disputes shall be resolved by the federal and local courts of the Federal and Local Judicial Powers, as well as by the following entities, of new creation:

a) Federal Conciliation and Labor Registry Center (“Federal Center”)
b) Local Conciliation Centers

3. Conciliation Centers will be decentralized public bodies in charge of the conciliation proceedings introduced by the Reform into the labor legislation.

4. The Reform provides that, prior to resorting to the courts, workers and employers must undergo **a prior conciliation procedure** before the federal or local Conciliation Center, as the case may be, unless there is a special proceeding provided for that specific conflict or where it is exempt.

Conciliation proceedings interrupt the statute of limitations and may not exceed 45 calendar days. All agreements reached thereunder will preclude any further claims and will serve, at the same time, as enforceable titles.

The following conflicts are exempt from conciliatory proceedings:

- Employment discrimination, pregnancy occupation or sexual harassment.

- Transfer on death beneficiaries.

- Social Security benefits.

- Protection of fundamental labor rights such as freedom of association, union and collective bargaining freedom, labor trafficking, forced or child labor.

- Disputed holding of collective bargaining agreements.

- Challenge of union bylaws or their amendment.

5. Resolutions of no conciliation must be presented before the federal or local court handling the trial, which will comprise the following procedural stages: lawsuit, summoning, rebuttal, evidence presentation and objection, reply and counterclaim, preliminary hearing and trial hearing.

6. In order to promote the effectiveness and speed of court proceedings, the Reform provides that trials must be predominantly oral and conciliatory, and will be governed by the principles of celerity, economy and procedural simplicity.

7. The Reform introduces the use of electronic means for notifications, hearings records and other proceedings, as well as the creation of electronic mailboxes for both parties.

II. Collective bargaining agreements

1. In addition to its conciliatory function, the Federal Center shall also be responsible for the registration of all collective bargaining agreements, internal work regulations and unions, as well as related administrative procedures.

2. The validity of collective bargain agreements will depend on the approval of workers, expressed through their free, personal and secret vote.

3. For this purpose, the union must obtain from the Federal Center the so-called Record of Representation (“Record”) confirming that the union is endorsed by at least 30% of the workers covered by the collective agreement.

4. Additionally, a consultation must be carried out among workers for the approval of the collective bargaining agreement or its review, who will vote freely and in secret. Approval will depend on the majority vote of workers and shall be confirmed by the Federal Center.

5. Employers are prohibited from intervening in both the procuring of the Record and the consultation of collective agreements.

6. Existing collective bargaining agreements should be reviewed at least once within a period of four years after the Reform enters into force.

III. Unions and freedom of association

1. Exclusion clauses in collective bargaining agreements are explicitly prohibited. Workers who cease to belong to the union because of resignation or dismissal may not be fired because of it.

2. Workers are free to associate and participate in unions, and will have the following rights:

- No worker can be forced to join or abstain from joining a union.

- Union officials will be elected through the free vote of their members and may not remain in office indefinitely or during periods that may hinder democratic processes.

3. Employers are prohibited from:

- Compelling workers to join or resign to a union or to vote for a particular candidate, as well as violating their freedom to designate union officials.

- Controlling the union in any way.

4. Unions are prohibited from:

- Carrying out any form of extortion against employers. In such cases, union registration may be cancelled.

- Intervening in tax evasion or non-compliance schemes.

- Exerting violence, sexual harassment or discrimination practices against its members, the employer o third parties.

- Assuming the employer's position in order for him to bypass obligations.

- Simulating votes and consultations.

- Hindering the free vote of workers.

- Receiving handouts from employers.

5. The Reform opens the door for workers to organize in any way they consider appropriate, without having to adjust to the common union types (i.e., industrial, guild, trade or company unions).

6. For a strike to prosper, in cases where a collective agreement is at stake, unions are obliged to adjoin the Record issued by the Federal Center, in order to certify the support of workers.

The Record will be valid for 6 months from its issuance. In the event of a strike, such validity shall be extended until the conflict ends.

The Reform includes other noteworthy provisions, such as the following:

a) The cover-up of employment relations through simulation for the evasion of labor or social security obligations will have no legal effects, nor will the registration of workers with lower salaries than those actually paid.

b) Employers shall carry the burden of proof in disputes over wrongful dismissal. Plain denial of such dismissal does not overturn the burden nor does a job offer to the employee.

c) Employers must enroll household employees in the Mexican Social Security Institute and pay the corresponding fees. This provision will enter into force once necessary regulatory adjustments are made for their incorporation to the compulsory social security scheme.

d) Employers, in agreement with workers, must implement a protocol to prevent discrimination, violence and sexual harassment, and to eradicate forced or child labor.

e) Collective bargaining agreements shall be signed in triplicate. Each party will receive a copy, and the third will be deposited at the Federal Center.

f) Employers must provide their workers a print copy of the initial collective agreement or its review within 15 days following its deposit in the Federal Center.

g) Outsourcing provisions remain unchanged.

Implementation Calendar

1. The Reform entered into force on May 2.

2. Its implementation will be gradual and the Coordination Council for the Implementation of the Reform to the Labor Justice System will be in charge.

3. The Federal Center will start to function as registry for unions and collective agreements within a period of maximum 2 years and, as stated in the Decree, “according to budgetary possibilities”.

4. Local conciliation centers and courts will start to function within a maximum period of 3 years.

5. The Federal Center will start to function as conciliatory authority within a maximum period of 4 years, as will the federal courts.

6. Until the Center begins to function as registry, Conciliation and Arbitration Boards and the Ministry of Labor will continue to carry out such activities.

7. Proceedings currently in process will be concluded by Conciliation and Arbitration Boards and the Ministry of Labor.

8. Matters initiated after the Decree shall be in charge of Conciliation and Arbitration Boards and the Ministry of Labor until courts and conciliation centers are effectively in office.

9. Unions will have one year from the entry into force of the Decree to adjust their consultation procedures to the Reform.

10. Provisions related to the election of union officials through workers' free vote will enter into force within 240 days following the Decree. Same deadline applies for unions to adjust their bylaws in this regard.

For full text of the Decree, click on link below:

https://www.dof.gob.mx/nota_detalle.php?codigo=5559130&fecha=01/05/2019

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