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EY LAW Flash

Mexico's Labor Reform: a new perspective on labor unions & labor justice



As you well know, yesterday was discussed and approved in the Mexican Senate the bill by which various provisions of the Federal Labor Law and other related laws are amended, added, and repealed; with which, it is anticipated that, in the next few days, the President of Mexico will enact and publish the amended text of said Law.

The provisions established in the Law set the tone for a new stage in the labor union agenda, a situation that imposes a dynamic of different collaboration among employees, employers, labor unions, and the corresponding authorities.

Below we describe some of the most relevant changes:

a) Key elements of Mexico's Labor Reform

The new provisions set forth in the Federal Labor Law will be based on three key axes:

1. **Labor union democracy.** New processes are instituted for the election of union leaders, as well as to execute and review collective bargaining agreements. The above, in accordance with the provisions of certain international agreements ratified by Mexico, as well as with the labor chapter of the United States-Mexico-Canada Agreement (USMCA).
2. **New conciliation and labor registry functions.** The Federal Center of Conciliation and Labor Registry begins its functions, with the objective of register labor union organizations and collective bargaining agreements, as well as directing the conciliation phase of labor procedures.

3. **New labor justice system.** To make the judicial function more efficient, new phases and rules for labor trials are incorporated (e.g. preliminary conciliation hearing). In addition, it also establishes a transition process for the Federal Judicial Branch to begin hearing labor lawsuits.

It is important to mention that the new law provides the replacement of the payroll receipt printed by CFDI (Digital Tax Receipt - Invoice) prior agreement between the employer and employee and will be considered as evidence in a trial if its content is verified in the Tax Administration Service (Servicio de Administración Tributaria) portal. The foregoing was not provided in the previous law and the change attends to advance in line with technology.

It is also provided that the employers will be required to implement a protocol to prevent discrimination and address cases of violence and harassment. Although the previous law sanctioned acts of discrimination, the obligation on implementing a protocol in the new law aims to regulate discriminatory actions by reasons of gender and sexual harassment.

b) Main changes in collective labor relations

Employees

- ▶ Employees will have greater participation in labor unions decisions regarding the organization and formation of the leadership.
- ▶ Employees can participate directly and personally in the bargaining process of the collective agreement and within the strike process.

Employers

- ▶ The Law establishes a series of guidelines so that employers are not involved in the process of formation, organization, as well as within the action of the unions, especially in the collective bargaining function.
- ▶ Employers will have the obligation to deliver a copy of the collective bargaining agreement approved by the corresponding authority to employees.

Labor unions

- ▶ In order to execute and review collective bargaining agreements, labor unions must have the support of at least 30% of the personnel covered by the corresponding collective agreement. For this purpose, labor unions are required, by law, to request and obtain the Certificate of Representativeness.
- ▶ The collective bargaining agreements that are not reviewed within four years following the entry into force of the bill, shall admit calls for strikes for the signature of a collective bargaining agreement.
- ▶ The exclusion for admission clause remains in the Law. This clause provides that, when a collective bargaining agreement is agreed, the employer is required to only hire employees who are affiliated to the union holder of the collective bargaining agreement. After the hiring, the employee is free of changing union.

c) Relevant aspects of labor procedures

1. Individual and collective trials will be held before the courts of the Federal Judicial Branch and before the Local Branches, as appropriate.
2. The States' courts must take office within a maximum period of three years and the federal courts in a period of four years, both after the entry into force of the new Federal Labor Law.
3. In case of labor conflicts:
 - a) The parties will be obliged to attend a preliminary conciliation hearing.
 - b) Failure to reach an agreement may bring the dispute to court. This procedure interrupts the statute of limitations period to file a claim by the employee.

4. The evidence shall be attached to the claim and to the answer to the complaint. New rules are provided for some evidence, such as the examination (confessional), testimonial and expert evidence.

During a trial, the burden of proof on the dismissal will be of the employer, regardless if it offers the reinstatement to the employee.

- ▶ In addition, this Federal Center will have a conciliatory function for labor conflicts. The above aiming of reducing the number of trials within labor courts.

These amendments to the labor law will bring new challenges to the dynamics between companies, employees, and labor unions. In this context, it will be essential for organizations to analyze and rethink talent management processes, adapt their policies and procedures, as well as to identify, develop, and implement key actions which enable them to continue operating in accordance with the new legal framework of the Mexican market.

d) Main functions of the Federal Center of Conciliation and Labor Registry

- ▶ The Federal Center will commence functions within a period no longer than two years after the entry into force of the new Federal Labor Law.
- ▶ Issue the Certificate of Representativeness necessary for the functioning of the labor unions.
- ▶ Carry out the registration of collective bargaining agreements and internal shop rules, as well as of labor union organizations.
- ▶ The Federal Center will verify the effective support of the majority of employees regarding the clauses contained within the collective bargaining agreement and the formation of the union leadership.

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