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NEWS ALERT

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REFORM TO THE FEDERAL LABOR LAW

This past April 29, 2019, the Mexican Senate approved an important initiative to reform the Labor Law ("LFT") (the "Reform"), whose principal provisions regulate freedom of association, syndication and collective bargaining negotiation rights, as well as the substitution of the Conciliation and Arbitration Boards for Courts of the Judicial Power of the Federation and State Courts in order to further expedite the procedures set forth in the LFT. The Reform will enter into force on the following day after its publication in the Federal Official Gazette.

The Reform derives from the need to carry out the legislative adjustments that correspond to:

- The constitutional amendment approved on February 2017 in matters of labor justice;
- The ratification of Agreement 98 of the International Labor Organization (ILO) on freedom of association and collective bargaining, and;
- The signing of the Commercial Agreement between the United States of America, the United Mexican States, and Canada (USMCA) on November 2018.

Freedom of Association. Among the most important modifications made by the Reform are the measures to eliminate "white" unions, which are unions that are in essence simulated unions and are effectively created by the employer under its own conditions with the objective of blocking the possibility of a real union and real collective bargaining agreements.

The new provisions establish protective measures against the meddling of employers in union activities, prohibition of obligating an employee to join a union, elections of directors by means of personal, free and secret votes as well as clear accountability of its affiliates. For their part, employers may request the cancellation of a union if it incurs in acts of extortion against them, while requesting a payment in cash or otherwise, in order to abstain from calling a strike or from initiating a conflict of ownership of the collective bargaining agreement.

The figure of union Certificate of Representation is created, which will be a document that unions shall obtain if they want to negotiate a collective bargaining agreement with a company or call for a strike. The objective of such document is that the union proves that it represents the workers and prevent the creation of virtual or white unions without membership and representativeness that currently exist in the country.

Collective bargaining agreements will be submitted for review and approval of workers, and must be approved by the majority of them, and must be reviewed at least once in the following four years after the entry in force of the Reform.

Judicialization of Labor Justice. Another one of the significative modifications of the Reform is the judicialization of labor justice, by this, the Conciliation and Arbitration Boards that belong to the Executive Branch of government will be substituted by Courts of the Judicial Power of the Federation and State Courts.

Courts dependent of the Federation shall begin its functions within the four years following the entry into force of the Reform, while Courts of the States shall begin its functions within three years following the entry into force of the Reform.

In order to address the conciliatory and labor registry functions, the creation of the following organisms are considered:

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National Center of Conciliation and Labor Registry, which will be in charge of the conciliatory functions at a federal level, as well as attending all acts and procedures relative to recordation of all unions, collective bargaining agreements, labor agreement and Internal Work Regulations. The recordation functions will initiate within two years following the entry in force of the Reform.

Conciliation Centers at a state level, which will have the conciliatory functions at a state level and shall initiate its functions within three years following the entry into force of the Reform.

A stage of conciliation must be exhausted before the corresponding Conciliation Center before you are able to resort to the Labor Courts. In case an agreement is reached, an agreement will be entered and will be considered a final unappealable decision (*res judicata*). In case no agreement is reached during the stage of conciliation, the Conciliation Center will issue a certificate of non-conciliation, so that, if the case may be, the parties may file a lawsuit before the corresponding Labor Court. Only in specific cases set forth in the law, the conciliation stage will not have to be exhausted.

Other significative reforms.

Gender equality and non-discrimination. The Reform recognizes gender equality. Work shall be developed in conditions that will ensure dignified living and health of workers and its family members. It also sets forth the creation of a work environment free of discrimination and violence (art. 3, LFT).

Conducts against public order. It adds as conducts against the public order, all those legal acts that tend to hide the existence of a work relationship in order to avoid complying with labor and social security obligations, as well as registering workers with a salary inferior to the one they receive in reality (Art. 5, LFT).

Designation of beneficiaries. The designation of beneficiaries in case of death or disappearance of the worker shall be a requirement in the individual labor agreement (Art. 25, LFT).

Private agreements. The agreements entered without the intervention of the labor authorities will be valid, and only the nullity of what may be considered a waiver of worker rights may be claimed, while the validity of the rest of the agreement shall be maintained (Art. 33, LFT).

Notice of termination, justified dismissal. The failure to notify the termination of a worker, or by means of the labor authority, supposes a wrongful dismissal, allowing the employer to offer evidence in the contrary to prove that the dismissal was justified (Art. 47, LFT).

Notoriously inadmissible acts trial. The following, among others, are to be considered as notoriously inadmissible acts in trials: (a) demanding the signature of blanc documents in the hiring of workers, or during the labor relationship; (b) the declaration of facts that are notoriously false by any of the parties in regards to salary, work hours or seniority; (c) demand the ownership of a collective bargaining agreement without having workers affiliated to the union existing in the workplace (Art. 48 Bis, LFT).

Severance payment deposit in case of refusal to reinstate a worker. A possibility is established for the employer to deposit the severance payment for wrongful dismissal in case the principal legal action of the worker is for the reinstallation and the employer refuses to do so in accordance with the exceptions set forth in the law. However, if it is not proven that the worker is under the application of such exceptions, the deposit will not produce any effects and the Labor Court may use it to execute the issuance of its sentence (Art. 49, LFT).

New employer obligations: (a) Delivery of a copy of the collective bargaining agreement and its revisions within 15 days following its filing before the Federal Center of Conciliation and Labor Registry (Art. 132 Frac. XXX, LFT); (b) Implementation of a protocol to prevent discrimination for matters of gender, attention of cases of violence and sexual harassment, and to eradicate forced labor and child labor (Art. 132 Frac. XXXI, LFT); (c) Set forth and distribute in the workplace all documents related to the consultation procedure for the signing of the collective bargaining agreement, its comprehensive revision, its termination, and for the filing for the certificate of representation that the Federal Center of Conciliation and Labor Registry of the unions (Art. 132 Frac. XXXII, LFT).

New prohibitions for employers. Carrying out any acts or omissions that infringe upon any workers' rights while electing its representatives, or prone to exercise control over the union to which they are affiliated (Art. 133, LFT).

Domestic workers. Employers will have the obligation of enrolling its domestic workers before the Mexican Institute of Social Security and pay the labor-management quotas (Art. 377, LFT).

Protective measures for pregnant women and discriminatory abuses. The Reform considers possible cases of violence towards fundamental rights such as layoffs because of pregnancies or by discrimination. The Labor Court may order necessary measures to avoid that fundamental rights are suspended, such as social security (Art. 685 Ter, LFT).

Payroll receipts. The Reform considers internet based Fiscal Digital Invoices ("CFDI") that may substitute printed receipts (Art. 836-B, LFT).

As you may observe, the LFT reform compels companies to carefully revise its current labor relations, as well as its union situations. It is important to update corresponding documentation and implement new measures that the LFT establishes in order to comply with the new provisions and avoid any sanctions or other adverse situations.

Our team of expert labor attorneys are more than willing to assist you with this process.

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