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Global Tax Alert

News from Americas Tax Center

Mexico publishes labor reform measures

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On 1 May 2019, Mexico's Government published, in the *Official Gazette*, a decree that modifies the Federal Labor Law and other related laws.

Key elements of Mexico's labor reform

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), the decree establishes new processes for the election of union leaders. The decree also provides new processes for executing and reviewing collective bargaining agreements.

The decree creates the Federal Center of Conciliation and Labor Registry, which will be responsible for registering labor union organizations and collective bargaining agreements, as well as directing the conciliation phase of labor procedures.

Additionally, the decree establishes a new labor justice system, which includes new phases and rules for labor trials (e.g., preliminary conciliation hearing). It also establishes a transition process for the Federal Judicial Branch to begin hearing labor lawsuits.

Employers should be aware that the decree requires the employer and employee to agree to replace the current payroll receipt with the payroll receipt printed as CFDI (digital tax receipt - invoice). The digital tax receipt may be used as evidence in a trial involving a labor conflict once the contents of the receipt

are verified through the Tax Administration Service (Servicio de Administración Tributaria) web portal. The previous law did not address digital tax receipts. This modification is intended to align the labor law with technology.

The decree further requires employers to implement a protocol to prevent discrimination and address violence and harassment cases. Although the previous law prohibited acts of discrimination, the new obligation to implement a protocol to prevent discrimination is intended to regulate discriminatory actions related to gender and sexual harassment.

Main changes in collective labor relations

Employees

The decree grants employees more participation rights in labor union decisions regarding the organization and formation of the leadership. Employees may participate directly in collective bargaining agreement negotiations and the strike process.

Employers

The decree establishes guidelines to prevent employers from being involved in the process of a union's formation, organization and operation. The decree also includes provisions on an employer's role in collective bargaining agreements. Specifically, employers must deliver a copy of the collective bargaining agreement approved by the corresponding authorities (i.e., labor courts and Federal Center of Conciliation and Labor Registry, once it begins operations) to employees.

Labor unions

For a labor authority (i.e., labor courts and Federal Center of Conciliation and Labor Registry, once it begins operations) to approve a collective bargaining agreement, the labor union must have the support of at least 30% of the personnel covered by the agreement. For this purpose, labor unions must request and obtain the Certificate of Representativeness.

The decree retains the "exclusion for admission" clause, which requires an employer to only hire employees affiliated with the union holder of the collective bargaining agreement. After the hiring, the employee is free to change unions.

Relevant aspects of labor procedures

The decree requires labor cases involving individuals and labor unions to take place in federal and local courts, as appropriate. The local labor courts must begin operating

within three years, and the federal labor courts must begin operating within four years, of the decree's effective date (1 May 2019).

For labor conflicts, the decree requires the parties to attend a preliminary conciliation hearing. If the parties are unable to reach an agreement, the employee may file a claim in court, and the statute of limitations period will be suspended.

The decree requires the evidence to be attached to the complaint and the answer to the complaint. The decree adds new rules for some evidence, such as testimony and expert opinions.

During a trial, the employer has the burden of proof for dismissing the claim.

Main functions of the Federal Center of Conciliation and Labor Registry

The Federal Center will begin operating within two years of the decree's effective date (May 1, 2019). The Federal Center will:

- ▶ Issue the Certificate of Representativeness required for labor unions to operate
- ▶ Carry out the registration of collective bargaining agreements and internal shop rules, as well as of labor union organizations
- ▶ Verify that a majority of the employees support the clauses contained in the collective bargaining agreement and the formation of the union leadership

To reduce the number of trials in the federal and local courts, the Federal Center also will be able to mediate labor conflicts.

Implications

These modifications to the labor law will bring new challenges to the dynamics among companies, employees, and labor unions. As a result, companies should (1) analyze and rethink talent management processes, (2) adapt their policies and procedures to the new provisions in the Federal Labor Law, and (3) identify, develop, and implement key actions that will enable them to continue operating in accordance with the new legal framework of the Mexican market.

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