



EMPLOYER GUIDANCE ENSURING RESPECT FOR FREEDOM OF ASSOCIATION AND THE RIGHT TO BARGAIN COLLECTIVELY

AMERICAS GROUP: MEXICO COMMITTEE
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In June 2024, the Mexico Committee of the Americas Group adopted this updated version of its Guidance tool on Freedom of Association and Collective Bargaining for supplier and wholly-owned facilities in Mexico. The recommendations below take into account the new legal requirements of Mexico's Labour Justice Reform of 2019 and the new industrial relations reality after the completion of the collective bargaining agreement (CBA) legitimation process. They are applicable to both suppliers and manufacturers in the apparel sector, but could also be adapted for other sectors in Mexico.

The recommendations include references to relevant articles of Mexico's reformed Federal Labour Law (LFT), as well as International Labour Organization (ILO) Conventions and Recommendations. Many international brands, including those in the Mexico Committee, require full compliance with national labour laws and ILO Conventions 87 and 98 on freedom of association and the right to bargain collectively as part of their due diligence in garment producing countries.

APPLICABLE TO ALL WORKPLACES

Employers should:

Adopt an FOA Policy: Adopt a policy expressing your commitment to the right of all workers employed by your company to freedom of association (FOA) and collective bargaining, and effectively communicate that policy to all workers and management personnel, including new employees. (See Model Employer FOA Policy, pps. 8-9)

Federal Labour Law: *Article 357 guarantees the right of workers to constitute organizations as they see fit, without previous authorization, or to affiliate to them, if they respect the statutes of such organizations. Article 387 obligates employers to negotiate a collective bargaining agreement when a union representing at least 30 percent of the workers requests negotiations.*

International Standards: *ILO Convention 98, ratified by Mexico in 2018, enshrines the right of workers to collective bargaining with their employer on the terms and conditions of their employment.*

Facilitate FOA training: Facilitate training on FOA and the right to bargain collectively with all management personnel and workers. Such training should be carried out by independent labour rights experts or, whenever possible, Secretary of Labour and Social Welfare (STPS) personnel. In most cases, it is advisable that training with management personnel and workers be carried out separately. Training materials should include the company's FOA policy, as well as educational materials prepared by the STPS and/or the Federal Centre for Conciliation and Labour Registration (Federal Centre).

Federal Labour Law: *Article 153-E requires the establishment of mixed commissions on training with equal representation of workers and management. In addition, remediation plans for most Rapid Response Labour Mechanism (RRLM) cases under the tri-national trade agreement have included requirements for FOA training to be carried out by STPS. Such remediation plans must be agreed to by both the US or Canadian governments and the Mexican government.*

What Was the CBA Legitimation Process?

Mexico's May 2019 labour justice reform not only guaranteed workers the right to participate in personal, free, direct and secret ballot votes on initial collective bargaining agreements (CBAs) and revisions to those CBAs, but also in one-time-only votes on whether to legitimize an existing CBA. If workers voted "no" or the union failed to hold a legitimation vote, the CBA was terminated. However, workers must continue to enjoy the rights and receive the benefits of the terminated CBA.

According to the Secretariat of Labour and Social Welfare (STPS), the purpose of the CBA legitimation process was to eliminate so-called "protection contracts" and "verify that workers know and approve the content of their collective bargaining agreements." The votes, which were to be completed within the first four years of the reform, were organized by the union that held title to the CBA, and overseen by the labour authorities or a notary public.

The CBA legitimation process has now been completed. According to the STPS, in total over 100,000 CBAs have been eliminated because no vote took place, approximately 30,500 CBAs were legitimated, and only 663 were voted down by workers.

In the post-legitimation context, workers continue to have the right to be represented by a union of their free choice and to vote on new CBAs and negotiated revisions to CBAs.

Adopt a grievance mechanism: Adopt a grievance mechanism where workers can file anonymous complaints with the Human Resources Department or other designated senior management staff regarding any violations of the FOA policy. Inform all management personnel of your company's policy of zero tolerance for violations of FOA, and that any personnel who commit such acts will face disciplinary measures commensurate with the violations, up to and including dismissal.

This mechanism should guarantee confidentiality for the complainant and a commitment to investigate and resolve such complaints in a timely manner, including taking disciplinary action commensurate with the violation against those found to be responsible, up to and including dismissal.

***Federal Labour Law:** While there are no specific requirements in the Federal Labor Law (LFT) for employers to adopt such a mechanism, it has been recommended in most of the remediation plans for Rapid Response Labour Mechanism (RRLM) cases under the trinational trade agreement. The UN Guiding Principles on Business and Human Rights also offers guidance on non-state grievance mechanisms. Proper grievance mechanisms and grievance handling are also required by many international apparel brands, including those in the Mexico Committee.*

Be Transparent about the Union: Where there is a union, or more than one union, inform all workers, including new employees at the time of their hiring, of the name(s) of the union or unions, the federation to which it is/they are affiliated, and the names of the union representatives and how to contact them.

***Federal Labour Law:** While there are no specific requirements in the LFT for employers to provide workers information on the union(s), there are new requirements for the union to be transparent regarding its statutes and for union members to elect their leaders by personal, free, direct and secret-ballot votes.*

Ensure No Discrimination: Do not threaten, dismiss, blacklist (lista de exclusion) or otherwise penalize or discriminate against any worker in hiring, promotions, demotions or transfers for his/her present or past union activities or for ceasing to be a member of the union holding title to the CBA and/or for attempting to form or join another worker organization.

***Federal Labour Law:** Article 3 requires a workplace environment that is free of discrimination and violence. Article 133 forbids various actions or omissions that could constitute anti-union discrimination, such as coercion, retaliation, inducements and blacklisting to discourage or prevent worker's exercise of FOA. As well, the Codes of Conduct and Benchmarks of the Fair Labor Association (FLA) and many international brands that are not part of the FLA prohibit these practices.*

Remain Neutral: Where there is more than one union or union in formation in the workplace, remain neutral and refrain from making any statement or taking any action that would place one organization at an advantage or disadvantage in relation to the other(s), including in union representation elections between two or more unions for title to the CBA, and do nothing to delay, influence or prejudice the results of such elections. Respect and do not attempt to influence workers' decisions regarding the deduction of union dues to be transferred to the union of their choice.

***Federal Labour Law:** Article 357 prohibits acts of interference by employers or their representatives in the affairs of a union, including its formation, function or administration. Acts of interference are considered those actions and measures that tend to encourage the constitution of workers' organizations dominated by an employer or employer's association, or that support in any form worker organizations with the intent to subject them to control. Article 897-F outlines procedural rules for union representation elections (recuentos) by personal, free, direct and secret ballot vote, and Article 897-G notes that penalties may be assessed against employers for actions favouring one union over another in such votes.*

Allow union representatives access to the workplace and its facilities. When a union has affiliates in the workplace, allow the union's representatives access to the workplace and workers in order to carry out their legitimate worker representation functions without disrupting the production process. When there is more than one union, allow their representatives equal access to the workplace and to facilities necessary to carry out their worker representation functions, such as private meeting spaces and/or offices and equipment. Best practice is to negotiate a written agreement with the union or unions that spells out the terms and conditions of access to the workplace and its facilities.

International standard: Although the LFT does not address union representatives' access to the workplace or facilities in the workplace, ILO's Convention 135 and Recommendation 143 include the right of union representatives to have access to the workplace and workers to effectively represent them.

Ensure non-interference. Do not interfere in the internal affairs of any union, for instance through bribes, inducements or other means to encourage workers

to renounce their union affiliation, or use financial or other means to place a union under the control of your company.

Federal Labour Law: Article 133 IV states that it is prohibited to force workers by coercion or any other means to join or withdraw from the union or group to which they belong, or to vote for a certain slate, or any other act or omission that violates their right to decide who should represent them in collective bargaining. Also see Article 357 on page 3.

Constitute Mixed Commissions. Ensure that all legally mandated mixed (worker/management) commissions are properly constituted and functioning effectively.

Federal Labour Law: Various sections of the LFT require the formation and establish the mandate of mixed commissions, including Article 153 E on the mixed commission for productivity, training and education; Article 509 on the mixed commission for health and safety; Article 987 on the mixed commission for profit sharing; and Article 424 I on the mixed commission for workplace rules.



WORKPLACES WHERE THERE IS NO CBA

Applicable to workplaces where there has never been a CBA or where a previous CBA was terminated.

Employers should:

Be transparent about terminated CBAs and continuation of benefits. When the CBA has been terminated in a legitimation vote or because the vote was not held, inform the workers of that situation, and continue to respect the rights and provide all the benefits superior to what is required by law.

***Federal Labour Law:** Although the LFT does not explicitly require employers to inform workers of termination of the CBA, Transitory Article 11 establishes that benefits and working conditions provided for in any terminated collective bargaining agreement, which are superior to those established in this Law, must continue to be provided by the employer.*

Negotiate in Good Faith. Negotiate in good faith with the union that has received a Certificate of Representativity from the Federal Centre, confirming it has the support of at least 30% of eligible workers. When a union obtains a Certificate of Representativity, negotiate in good faith with that union for a Collective Bargaining Agreement.

***Federal Labour Law:** Article 387 establishes the obligation to negotiate a CBA when requested by a union. Article 390 requires the union to obtain a Certificate of Representativity from the Federal Centre in order to negotiate, sign and register a CBA.*

Refrain from Signing a Protection Contract. Where there is currently no CBA in the factory, do not sign a “protection contract” (a simulated collective bargaining agreement signed without the knowledge and/or consent of the workers) with an unrepresentative union or lawyer.

***Federal Labour Law:** Article 133, IV prohibits employers or their representatives forcing workers by coercion or by any other means to join a union or to withdraw from the union to which they are affiliated. Articles 390 BIS and 390 TER state that for the registration of an initial collective bargaining agreement, the union must first obtain the Certificate of Representativity from the Federal Centre, and the Centre will verify that the content is approved by the majority of workers covered by the agreement, through a personal, free, direct and secret-ballot vote.*



WORKPLACES WHERE THERE IS A CBA

Employers should:

Ensure Workers Receive the CBA. Where there is a signed collective bargaining agreement (CBA), ensure that all workers, including new employees at the time of their hiring, receive a copy of that agreement, as well as the date of its signing and any revisions made to the agreement.

***Federal Labour Law:** Article 132 XXX states that the employer must provide their workers, at no cost, a printed copy of the initial collective bargaining agreement or a revised agreement within 15 days of its deposit with the Federal Centre, and that workers should sign receipt of this copy. Regarding the consultation with the workers as to whether they support the content of the negotiated collective bargaining agreement, Article 390 TER II states that the union must provide workers a printed or electronic copy of the initial or revised collective bargaining agreement to be consulted in a timely manner and prior to the vote on the content of the CBA.*

Do not include an Exclusion Clause. When negotiating a collective bargaining agreement (CBA) or revisions to the CBA, do not include an illegal “exclusion clause” requiring dismissal of workers expelled from or who voluntarily resign from the union. Where there is an exclusion clause in an existing CBA, ensure that the clause is eliminated from the agreement at the earliest opportunity, and that no other clause is adopted subsequently that has the same effect.

***Federal Labour Law:** Article 391 X prohibits the inclusion of an exclusion clause for dismissal in a collective bargaining agreement. This means that contracts may no longer specify that workers can be fired for having been expelled from the union or for*

having renounced their union membership. Article 133 IV prohibits employers from forcing workers by coercion or by any other means to join a union or to withdraw from the union to which they are affiliated.

Be Transparent about other Agreements. Inform the workers of any other agreements between the employer and the union on the terms and conditions of their employment.

***Federal Labour Law:** Although the LFT does not explicitly require employers to inform workers of any other agreement negotiated with the union, Article 424 IV establishes the right of workers to file a complaint regarding legal omissions or violations in such agreements or in the workplace rules. As well, in its guidance tool for employers on the labour reform (in Spanish), the Secretariat of Labour and Social Welfare (STPS) urges employers to inform workers about agreements with unions concerning the terms and conditions of their employment.*

Provide Prior Notice of Negotiations. Give workers prior notice of negotiations of the first CBA, revisions to the CBA, or any other agreement between the union and employer on the terms and conditions of their employment.

***Federal Labour Law:** Although the LFT does not obligate the employer to provide prior notice of negotiations, Article 390 TER II of the reformed law does require the union to provide workers the text of the initial CBA and a revised CBA prior to the vote by the workers to approve it before it is registered with the Federal Centre.*



EMPLOYER RESPONSIBILITIES REGARDING WORKER VOTES

Applicable to workplaces where there is a vote by workers in accordance with the Federal Labour Law.

Employers should:

Allow union to post notices and results of votes.

When a vote on an initial CBA or revisions to the CBA has been scheduled, allow the union responsible for organizing the voting process to post the notice of the vote, as well as the results in the workplace. Best practice is to allow such notices to be posted in the same location where management posts relevant information for workers.

***Federal Labour Law:** The 2019 labour reform created new voting processes, such as the vote to determine which union should obtain a Certificate of Representativity or the vote to support the content of the negotiated CBA. In any type of vote, both the notice calling for the vote and the results must be posted at the workplace by the union responsible for the process. Management must allow the union to comply with this obligation (Article 132 f. XXXII y XXXIII).*

Facilitate the voting process and cooperate

with labour authorities. In most cases, the union is responsible to select a location to hold a vote. If the union requests to have the vote in the workplace, collaborate by providing a secure location for it to take place. In

some cases, the labour authorities are responsible for conducting or overseeing a vote, such as some union representation elections. Fully cooperate with the labour authority conducting or overseeing the vote, and do nothing to obstruct or deny entry to the voting location to authorized observers of the vote.

***Federal Labour Law:** Although the LFT does not obligate the employer to provide a location for the vote, the Lineamientos Generales para los procedimientos de Democracia Sindical (General Guidelines for Procedures of Union Democracy GGPUD) requires that employers cooperate with the labour authority in voting processes. (GGPUD Article 12).*

Do not interfere in the voting process. Companies and their representatives must refrain from taking any action to influence the voting process or how the workers vote. Due diligence must be exercised to avoid making statements or taking actions that may be understood as indicating the employer's preferred option.

***Federal Labour Law:** The LFT forbids employers from coercing or influencing workers' votes (Article 133 f IV) or from having any involvement in the voting process (Article 390 ter f II, incise d).*



EMPLOYER FOA POLICY: KEY ELEMENTS AND MODEL POLICY

Key Elements of an FOA Policy

An FOA Policy should include the following commitments:

- Respect the right of workers to freedom of association, including the right to form or join a union of their free choice, and the right to bargain collectively.
- Refrain from and not tolerate any acts of discrimination, intimidation, reprisal, or threats of reprisal against workers for exercising their associational and collective bargaining rights.
- Negotiate in good faith for a collective bargaining agreement (CBA), as well as revisions to the CBA, with a union that has received a certificate of representativity.
- Refrain from interfering in the internal affairs of a union or in worker votes on a negotiated CBA or revisions to the CBA.
- Provide all workers printed copies of the employer's FOA policy and the collective bargaining agreement, where one exists.
- Respect the right of worker representatives, including union representatives not employed by the company, to freely carry out their legitimate union functions.
- Remain neutral and refrain from any actions that favour one union over another in cases where there is more than one union or union in formation in the workplace, as well as in union representation elections on which union will hold title to the CBA.
- Investigate and take disciplinary action commensurate with the violation in response to worker complaints of violations of the company's FOA Policy.

Model FOA Policy

[Name of Company] supports the right of workers employed by the company to freedom of association and collective bargaining, including their right to join or form a union of their free choice.

We do not tolerate acts of discrimination, intimidation, reprisal, or threats of reprisal against workers for exercising their associational and collective bargaining rights.

If a union has received a certificate of representativity, we commit to negotiating in good faith with that union for an initial collective bargaining agreement (CBA), as well as revisions to the CBA. We will not interfere in ratification votes by workers on a negotiated CBA or revisions to the CBA and will respect the results of such votes.

Our company will not interfere in the internal affairs of any union that has affiliates in our workplace. If there is more than one union established or in the process of formation, we will remain neutral and will not promote or favour one union over another, including in union representation elections on which union will hold title to the CBA.

We respect the right of worker representatives, including union representatives not employed by the company, to freely conduct their legitimate union activities.

We will ensure that all workers receive printed copies of this FOA Policy and the CBA, if one exists.

If there are violations of this policy, workers have the right to use the company's grievance procedure to file anonymous complaints without fear of retaliation.

The company commits to investigate such complaints of anti-union actions or threats by any employee, regardless of their position, and to impose sanctions commensurate with the violation, up to and including dismissal, if those allegations are verified.

The Americas Group (AG) is a multi-stakeholder forum composed of international brands and manufacturers and labour rights organizations working together to promote and support socially responsible apparel and footwear industries and decent work in the Americas.

As of June 2024, the AG Mexico Committee included: adidas, Carhartt, C&A, Dick's Sporting Goods, Fanatics, Fruit of the Loom, Gap Inc., Gildan, LS&Co., New Balance, Nike, Patagonia, PopSockets, Puma, PVH Corporation, Under Armour, VF Corporation, the Fair Labor Association (FLA) and the Maquila Solidarity Network (MSN).