

MEXICAN LAWS AND INTERNATIONAL CONVENTIONS ON HUMAN RIGHTS AT WORK

MAQUILA SOLIDARITY NETWORK



July 2024

During the last decade, Mexico has undertaken significant reforms of its labour laws and has ratified international conventions on human rights at work. The following summary outlines the most significant rights and obligations regarding freedom of association and collective bargaining under Mexican labour law and international conventions, as of July 2024. It highlights the international conventions ratified by Mexico, the elevation of those conventions to the Constitutional level, the constitutional reform to the labour justice system and revisions to the Federal Labour Law (LFT), as well as the labour rights obligations under the 2020 tri-national trade agreement, known as T-MEC in Mexico, USMCA in the US and CUSMA in Canada.

INTERNATIONAL CONVENTIONS

ILO Convention 87, Freedom of Association and Protection of the Right to Organize (ratified by Mexico in April 1950): Guarantees the right of workers and employers to establish and join organizations of their choosing without previous authorization.

ILO Convention 98, The Right to Organize and Collective Bargaining (ratified by Mexico in September 2018): Guarantees the right of workers to adequate protection against anti-union discrimination, including prohibitions against workers joining a union or requirements that they relinquish trade union membership in order to obtain employment, as well as dismissal of a worker because of union membership or participation in union activities. Prohibits any acts of interference by an employer in workers' organizations by financial or other means, with the objective of placing such organizations under the employer's control. Enshrines the right of workers to collective bargaining with their employer on the terms and conditions of their employment.

ILO Convention 135, Workers' Representatives (ratified by Mexico in May 1974): Guarantees the right of union representatives to have access to the workplace and workplace facilities necessary to carry out their worker representative functions, and prohibits any acts prejudicial to them, including dismissal based on their status or activities as worker representatives, or for their union membership or participation in union activities.

ILO Convention 190, Violence and Harassment (ratified by Mexico in July 2022): Guarantees the right to a world of work free from violence and harassment of workers and other persons, irrespective of their contractual status, including persons in training, interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer. States must prevent, sanction, and eradicate violence and harassment in the world of work, including gender-based violence and sexual harassment.



LABOUR PROVISIONS OF TRI-NATIONAL TRADE AGREEMENT



Chapter 23 of T-MEC (Labour Chapter): Requires each of the three signatory countries to adopt and maintain in its statutes and regulations, and practices thereunder, the right to freedom of association and collective bargaining, including the right to strike. Requires each country to address cases of violence, threats, and intimidation against workers, including violence and threats of violence directly related to exercising or attempting to exercise their right to freedom of association and collective bargaining.

Annex 23-A of T-MEC: Requires that the Mexican government adopt legislation in accordance with Mexico's Constitution that commits the government to do the following:

- Ensure the right of workers to engage in collective bargaining activities, and protection of their right to organize, form, and join the union of their choice;
- Prohibit employer domination or interference in union activities, discrimination or coercion against workers for their union activities or support, and refusal to bargain collectively with the duly recognized union;
- Verify that elections of union leaders, union representation elections, and ratifications of the initial collective bargaining agreement, and revisions to the CBA are carried out through personal, free and secret ballot votes.
- Ensure that all existing CBAs be revised at least once during the four years after the legislation goes into effect.

REFORMS TO MEXICO'S LABOUR JUSTICE SYSTEM

February 2017 Constitutional Reform (Articles 107 and 123):

On freedom of association and collective bargaining, the 2017 Constitutional reform requires that:

- Union representation elections, election of union leaders, and votes on union requests for bargaining rights must be personal, free, universal and secret;
- Union representativity must be a condition of the signing, filing and registration of a first Collective Bargaining Agreement (CBA); and
- The union must demonstrate that it represents workers at a workplace if it has filed a strike notice to oblige the employer to negotiate a first collective bargaining agreement.

May 2019 Revisions to Federal Labour Law to Implement 2017 Constitutional Reform:

- Conciliation and Arbitration Boards were replaced by a Public, Decentralized Institution of the Federal Government, called the Federal Centre for Conciliation and Labour Registration (CFCRL), which is headquartered in Mexico City with regional offices. The CFCRL is responsible for registering new unions and collective bargaining agreements, and those unions have to provide evidence to the CFCRL that they have the support of at least 30% of the workers in a bargaining unit in order to receive a Certificate of Representativity and register a first CBA.
- Workers without distinction have the right to constitute organizations as they see fit, without previous authorization, or to affiliate with them. Interference by employers or their representatives in the formation, functioning or administration of a worker organization is prohibited, including those acts or measures that tend to encourage the constitution of workers' organizations dominated by an employer or employer association or that provide support, in any form, to worker organizations with the intent of subjecting them to their control. No one can be obligated to form or be part of a union. Elections for union leaders by their members must be by personal, free, direct and by secret ballot vote.
- Workers have the right to vote by secret ballot on an initial collective bargaining agreement after it is negotiated, as well as revisions to the CBA, before they are registered. The union must provide workers a printed or electronic copy of the negotiated CBA prior to the vote.
- Within 15 days after a CBA or a revision to the CBA is deposited with the CFCRL, the employer must provide each worker a printed copy of the CBA or revision to the CBA, receipt of which must be confirmed in writing by each worker.
- All registered collective bargaining agreements had to be submitted to a one-time legitimation vote by all eligible workers within four years after the reformed Federal Labour Law came into effect (May 2023). If workers voted against the existing CBA or the union failed to hold the vote, the CBA was terminated. However, termination of the CBA did not eliminate the rights and benefits contained in that CBA that went beyond what is required by law. As well, the union or another union has the option to enter into negotiations with the employer for a new CBA, but the union must first obtain a certificate of representativity from the CFCRL, the CBA must be approved by the majority of the workers in a personal, free, direct and secret ballot vote, and the process must be validated by the CFCRL.

General Guidance for Union Democracy Procedures (*Lineamientos Generales para los Procedimientos de Democracia Sindical*), August 17, 2022:

- The registration authority, the CFCRL, will act under conditions of legality, certainty, impartiality, and efficiency.
- Every procedure will include official notice, preparation, vote, and validation phases.
- The Guidance guarantees a free, personal, direct, and secret ballot vote in every procedure.
- The union is responsible for giving notice of and overseeing the vote, except in cases where more than one union is seeking a Certificate of Representativity, or in a recount of votes in the election of union representatives.
- The employer must provide the necessary facilities for the vote to take place.
- The location designated for the vote must be accessible to workers and meet the conditions for them to cast their vote in a personal, free, secret, direct, peaceful, agile, and secure manner without being coerced.
- The employer must not intervene in the consultation process in any manner.
- The labour authority may verify compliance with the requirements established in the Guidance while a consultation is carried out.



OTHER RELEVANT LEGISLATIVE REFORMS

June 2011 Constitutional Reform:

Elevates human rights protections established in international treaties ratified by Mexico, including those related to labour rights, to the constitutional level, thereby providing greater assurances to workers and stronger obligations to employers on the right of workers to freedom of association and collective bargaining.

2012 Federal Labour Law Reforms:

- Outlawed the practice of having an exclusion clause for dismissal in the CBA, which required the employer to dismiss any worker expelled from the union;
- Required the Conciliation and Arbitration Boards (juntas), which have since been replaced by the CFCRL and its regional bodies, to publish information on unions' bylaws and CBAs they had registered;
- Gave workers the right to request access to union financial accounts; and
- Required employers to post and disseminate CBAs in the workplace.

General Law on Transparency and Access to Public Information, Article 78 (May 2015): Reinforced the Federal Labour Law reforms by requiring the labour authorities to publish union registration information, including membership rolls and affiliation to trade union centrals, as well as union bylaws and CBAs.

STPS Labour Inspection Protocol (February 2016): Prioritized enforcement of the new requirement that employers post and disseminate CBAs in the workplace and established inspection procedures for inspectors to assess compliance.

Federal Labour Law Reform on Holidays (Dec 2022): Increased the number of days a worker has a right to take as holidays.

General Law to Prevent, Punish and Eradicate Crimes Regarding Human Trafficking and for the Protection and Assistance to Victims of these Crimes (June 2024): Establishes that excessive working hours beyond the legal working hours in the Federal Labour Law are a Crime of Labour Exploitation, with jail time as punishment.

STPS Labour Inspection Protocol with Gender Perspective (March 2024): Strengthens the Labour Inspection Protocol with rules, interview questions, and procedures for inspectors to perform the inspections with a gender perspective.