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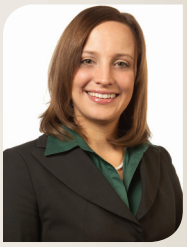

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Mexican Federal Labor Law Reform: Opportunities and Challenges for Employers with Operations in México

On November 29, 2012, departing Mexican President Felipe de Jesús Calderón signed a comprehensive reform of México's Federal Labor Law (FLL), instituting more than 300 changes, effective December 1, 2012. Many of the more significant amendments favor employers and, as a result, could potentially lead to future economic growth in México. These changes have implications for current and future United States employers with operations in México. This Client Alert provides a summary of the foundation of Mexican labor law and notable FLL amendments that are relevant to employers with operations in México.

Background

The Mexican Constitution is the basis for Mexican labor law: it guarantees workers a set of minimum rights and grants the federal government exclusive power to enact labor laws to carry out and expand upon those rights. México's government passed its first labor law in 1931; the law has been amended several times – most significantly in 1970 and, now, in 2012. Additionally, México enacted the federal Social Security and Housing laws (these laws are not covered in this summary). Several government agencies and tripartite commissions implement, oversee and enforce Mexican labor laws. Generally, the constitutional, statutory and regulatory labor laws apply to all workers in the country, including those workers employed in México by United States employers. Failure to comply with Mexican labor laws can result in significant penalties and financial liability for employers.

Major Amendments to the FLL

Wage Payments

The Mexican minimum wage is expressed in pesos per day. The amended FLL formalizes the system for paying employees an hourly rate, directing that employees may not receive less than the equivalent of the daily minimum wage. Employers, therefore, must calculate an employee's hourly rate accordingly. In addition, the amended FLL formally permits employers to issue wage payments by check, direct deposit, transfers or electronic means, with the employee's consent.

Employment Contracts and Temporary Employment

The amended FLL now permits employers to enter into limited duration contracts with employees for seasonal work and for initial training agreements. Initial training agreements must provide a minimum term of three months for general employees and six months for executive employees.

The amended provision is significant because every employee must enter into a written employment agreement with his/her employer setting out the terms and conditions of employment and the duration of employment is presumed indefinite. Prior to the amendment, contracts for a limited duration were only permitted in the following situations: work on a vessel, work on a limited and defined project, or to hire artists and athletes, medical students and substitute workers.

Discrimination

The amended FLL outlaws discrimination based on ethnicity, national origin, age, disability, socioeconomic status, health, religion, immigration status, political opinion, sexual orientation, or marital status.

Outsourcing

As amended, the FLL seeks to regulate the outsourcing of jobs. Previously, employers would outsource employment to avoid paying worker benefits. Now, among other requirements, employers may only hire temporary workers or independent contractors if those individuals will not be performing work similar to the work already performed by other employees of the company. In other words, the outsourced employees must perform work of a specialized character.

Employers may not outsource jobs to subcontractors to avoid labor law obligations. All outsourcing contracts must be in writing, and the employer has an affirmative duty to ensure that the contractor complies with Mexican labor laws. If the employer violates these new requirements, the outsourced workers will be considered employees of the employer, subject to the protections and benefits of full-time employees, such as notice requirements, severance payments, profit-sharing and social security.

Termination and Back Wages

The amended FLL permits employers to terminate employment at any time for "just cause." Under the statute, just cause for termination includes, among other situations, falsifying employment application materials, immoral conduct on the job, insubordination, using drugs or alcohol while at work, or refusing to comply with safety requirements. The FLL amendments add bullying and sexual harassment to this list. Note, however, that an employer must terminate the employee within 30 days of the event justifying the termination.

The amended FLL also requires employers to obtain an advisory opinion from the Joint Commission for Productivity and Training before terminating initial training or probationary employees.

Keep in mind that employers must still provide written notice of termination to each employee prior to termination. If an employee refuses to accept the notice, the employer must provide the written notice to the Conciliation and Arbitration Board. The notice must include the grounds for termination to establish that the employer had just cause for the termination. Regardless of the grounds for termination, certain workers are entitled to severance and bonus payments based on their years of service.

Employees have two months from the date of discharge to challenge their termination. Employees may challenge their termination as a wrongful or constructive discharge. A successful employee may seek reinstatement with back wages or, alternatively, indemnification equal to three months' salary, back wages and any accrued salary and bonuses. The amended FLL limits back wages to one year (plus interest after fifteen months), significantly reducing an employer's liability for a wrongful termination.

Productivity and Training

The FLL amendments created a National Productivity Committee to oversee other agencies and to establish state-based committees. Employers must undergo training and provide training for workers to increase and optimize productivity. The amendments require stakeholders (employers, unions, employees, academia and government) to reach agreements to measure and increase productivity. Finally, the amendments regulate the promotion process and eligibility, giving a worker's skills and productivity greater weight than seniority.

Union Elections and Transparency

The initial proposal to amend the FLL included vast reforms to union democracy and transparency. Mexican unions are powerful entities that have long influenced policy and legislation. Consequently, there is very little union transparency.

Due in part to the unions' political prowess, most of the union reform proposals did not survive the legislative process. For example, President Calderón attempted to pass a measure to permit employees to vote on their own contracts, but the Mexican Congress removed this provision from the bill.

Nonetheless, three notable reforms were passed. First, unions are now required to have labor leader elections by free and secret ballot. Second, unions must provide an accounting of all union finances to the government every six

months, and employees may pursue a cause of action against the union if the union fails to provide the employee an accounting of union finances. Finally, the amended FLL repeals the "closed shop" laws, which required membership in the union.

Conclusion

Keeping in mind the fact that employees may not waive their constitutional labor and employment rights, the FLL amendments have broad implications for employers with operations in México and for employers seeking to establish operations in México. Because the potential financial penalties and liability for non-compliance can be significant, and because this summary is not exhaustive, companies with operations in México should consult with Godfrey & Kahn, S.C.'s Labor, Employment and Immigration Practice Group regarding their obligations under Mexican labor laws.

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