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MEXICAN LABOR REGULATIONS

GENERAL CONSIDERATIONS

The labor regulation has its constitutional basis in articles 5 and 123 of the Mexican Constitution.

The 1. Mexican Labor Law (MLL); 2. The Social Security Law (SSL); and 3. The Housing Fund Institution Law, (INFONAVIT) guide the principles of employment in Mexico. The three are compulsory throughout the nation and of Public interest.

The Mexican Labor Law falls under the responsibility of both Federal and Local Authorities, the jurisdiction will depend on the activity of the business.

The Social Security Law and the Housing Fund Institution Law are applied by Public Federal Institutions empowered to levy contributions on employees and employers.

The Mexican Labor Law regulates the conditions in which the labor relation has to exist.

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LEGAL BACKGROUND

1. EMPLOYMENT AGREEMENT/LABOR RELATION.

1.1 LABOR RELATION DEFINITION

The labor relation is the rendering of a personal and subordinated service to another person, in exchange of a salary payment.

In accordance with the MLL, the essential elements for the existence of the labor relation are the following:

1. The employee must render services to another person or juridical entity.
2. The service must be executed in personal manner.
3. The service shall be remunerated.
4. The service shall be in a subordinated manner.

A labor relation is deemed to exist whenever services are rendered, unless otherwise proven.

A labor relation may be established without any need to formalize it in writing. The existence or absence of any document detailing working conditions is determined by Law, to be the responsibility of the employer.

The labor relation is differentiated from other relations by the subordination that deems to exist in the relation. The subordination is understood as the faculty to impose instructions to an employee.

Any employment agreement or labor relation is considered to be for an undetermined period of time, unless agreed otherwise. A labor relation may also be agreed for determined period of time duration or could be entered to last for an specific task or job, for seasonal work or for initial training. Also, undetermined period agreements and those entered for a determined period of time of more than 6 months could include a probation period. In all such cases, a written contract must exist in accordance with the nature of the services to be rendered.

No employment agreement shall oblige a employee to pledge his services for a period greater than one year. The failure on the part of an employee to fulfill a employment agreement also implies civil responsibility. In practice however, such civil responsibility is not enforced.

1.2 TERMINATION / SEVERANCE

The rupture of the labor relationship may be decided unilaterally by either party, but the employer has the obligation to show a "justified" cause. Any breach of contract, disloyal attitude, or dishonesty on the part of the employee is deemed enough cause to terminate the labor relationship.

To terminate this labor relation, the employer shall put in writing the reasons or causes which have led him to take such a decision and this document should be delivered to the employee. The employer shall prove to the satisfaction of the Boards that he has fulfilled this obligation, either by delivering this notice directly to the employee concerned, or through the corresponding Board.

In the event that the employer should fail to prove his case, he must, at the decision of the employee, re-install him at work or pay him a three months' indemnification, and in both cases the unpaid salaries during the trail.

In the case of temporary employees, salaried staff, or domestic employees with less than a year of services, or employees who by dint of their work activities are in direct contact with the employer, the latter has no such obligation to reinstate them, but must pay compensation equivalent to 20 days for every year of service.

Any employer that dismisses an employee without justifiable cause, or because the employee chose to join an association or union, or took part in a legal strike, shall, at the employee's discretion, either be obliged to comply fully with the terms of the existing contract or to compensate the employee with a payment equal to three months' salaries.

Similarly, the employer shall be obliged to compensate the employee with an amount equal to three months' salaries, 20 days of salary for every year worked, and the seniority premium when the employee terminates with cause a labor relation as the result of lack of integrity or mistreatment on the part of the employer. (See **6. TERMINATION**)

2. WORKING CONDITIONS

2.1 WORKING PERIOD

In accordance with articles 60 and 61 of MLL, there are three types of Working Period:

a) Day Working Period: Work performed between 6:00 and 20:00 hours,
b) Night Working Period: Work performed between 20:00 and 6:00 hours,
c) Mixed Working Period: Work containing both day and night working periods, if the period of night work is less than three and a half hours. If it exceeds three an a half hours of the night working period the entire working period shall be considered as night work.

Working period shall mean the time during the employee shall be available at Employer's services for the performance of the work.

The maximum duration of the Working Day is of eight hours (8), unless work is rendered at night, in which case the maximum will be seven hours (7) and seven hours and a half (7.5) in case of a Mixed Working Period.

In other words, the maximum weekly working periods are: 48 hours weekly (Day shift), 45 hours weekly (Mix shift) and 42 hours weekly (Night shift).

In accordance to article 59 of the MLL the Employee and the Employer can agree the working period that better fits their interests, but it shall not exceed the legal maximum.

It is valid for the parties to agree the distribution of the legal maximum working period of 48 hours weekly (or the 42 hours of a Night Working Period or the 45 hours of the Mixed Working Period), into 4 or 5 days, also to agree working periods of 9 hours in 5 days or 12 hours in 4 days, only if the agreed working period does not exceed the maximum limits of 48 hours a week (or the 42 hours of a Night Working Period or the 45 hours of the Mixed Working Period). The Employer and the Employee can also agree working periods by hours or discontinue working periods in accordance with article 59 of the MLL*.

*The possible combinations of an agreed weekly working period, depends on the legal maximum established for the kind of working period (Day, Night or Mix) in which the employee is rendering his services.

2.2 OVERTIME

Overtime is the increase of the normal working period because of extraordinary circumstances.

In relation to the concept of *"Overtime"*, Mario de la Cueva established in his book "Derecho Mexicano de Trabajo"(*Mexican Labor Rights)* the following:

> "The overtime is a prolongation of the working period and, in this order, one exception to the principle of the eight hours of work. In accordance to article 123, section XI of the Mexican Constitution, such prolongation could only be made by extraordinary circumstances".

In accordance with articles 66 and 67 of MLL, the overtime will be paid in 100 percent more of the corresponding salary, but will never exceed three hours per day, or be worked for more than three days in a week.

In case of violation of the above, the MLL establishes in the article 68 that extraordinary hours will be paid in 200 percent more of the corresponding salary, with no detriment of other penalties prescribed in the Law.

Article 994 of the MLL establishes a fine if the above is failed, that could be up to the amount described in section I of said article 994. However, this fine will only be imposed in case that the Labor authorities perform a local or federal working conditions inspection, and resolve that the employer fails to observe the established in article 61 of the MLL.

2.3 DAY OFF

In accordance to article 69 of the MLL, the employee should have at least one paid day off for every six days worked. If the salary is agreed on a monthly basis it is understood that the rest days are calculated in the fixed salary.

In case that an employee renders his services on his day off, in accordance to article 73 of the MLL, the service rendered on his day off will be paid with a double salary in addition to his normal base salary.

Ex. Daily Salary = $100
Work in Day Off = $300

2.4 MANDATORY HOLIDAYS

In accordance to article 74 of the MLL, the Mandatory Holidays under the Mexican Labor Law are the following:

January	1st
February	The first Monday of February in commemoration of February 5th (Constitution's Day)
March	The third Monday of March in commemoration of March 21 (Benito Juarez' Birthday)
May	1st (Labor Day)
September	16 (Independence Anniversary)
November	The third Monday of November in commemoration of November 20 (Mexican Revolution Anniversary)
December	1st, when the Executive changes
December	25

And those determined by the Federal and Local Elections Laws in case of elections.

In case that an employee renders his service on a mandatory holiday, in accordance with the article 75 of the MLL, the service rendered on such day will be paid with a double salary in addition to his normal base salary.

Ex. Daily Salary = $100
Work in Mandatory Holiday = $300

2.5 VACATION DAYS / VACATION PREMIUM

The Law provides a vacation period that may vary in relation to seniority or years of service, from 6 days per year after one year of service, to 14 days per year for those employees who have served more than four years. Subsequently, an employee is entitled to two additional days per year for every additional five years of service with no upward limit:

SENIORITY	VACATION DAYS
1st year	6 days
2 years	8 days
3 years	10 days
4 years	12 days
5^{th} to 9^{th}	14 days
10^{th} to 14^{th}	16 days
15^{th} to 19^{th}	18 days
20^{th} to 24^{th}	20 days

*Increases two days every five years

The employee is also entitled to a VACATION PREMIUM equivalent to 25% over the vacation days payment.

The employer is obliged to pay the vacation salary and the vacation premium prior to the vacation period.

2.6 CHRISTMAS BONUS

Every employee is entitled to an equivalent of fifteen days' salary, of a Christmas Bonus (*Aguinaldo)* for a year's work or to a proportional amount if the employee did not rendered his services the full year.

The origin of the Christmas Bonus can be found in the custom of employers, as determined in collective contracts, of giving a sum of money each December to enable employees to celebrate Christmas.

The Christmas Bonus has to be paid before December 20, of every year.

2.7 SALARY

The salary is the remuneration that the employer has to pay to the employee in exchange of his services.

The basic principle of salary is equal pay for equal work, without account for ethnic or national origin, gender, age, disability, social status, health status, religion, immigration status, opinion, sexual orientation or marital status

Salaries should be paid in the legal tender every week or every 15 days as agreed with the employee.

In the event that an employee contracts a debt with his employer, or the employer's associates, family or dependents, the same employee shall alone be held responsible for such debt, and on no account may any member of his family be held liable, and further, repayment of such debts may not be demanded for an amount in excess of one month's salary.

2.8 MINIMUM WAGE.

In relation to the concept of "Minimum wage", the Mexican author, Alberto Trueba Urbina establishes in his book "La Primera Constitución Político-Social del Mundo" *(The first Social-Political Constitution of the World)* the following:

> "The minimum wage that an employee must enjoy, should be sufficient, according to each region's conditions; to satisfy the basic necessities of each employee, his education and his honest pleasures, considering him the head of the family…"

Such minimum wage would be set by the Minimum Wage National Commission, integrated by employees' and employers' representatives and from the government.

The current daily minimum wage is $67.29 pesos in Mexico City (a lower amount may apply in other cities), according to the "Diario Oficial" (Official Gazette).

2.9 SUNDAY PREMIUM

The employees that work on Sunday, will be entitled to a 25% for concept of Sunday Premium of the amount that corresponds to one day of the ordinary salary.

2.10 INTEGRATED SALARY.

In case of Indemnifications and special cases deemed by Law the payment has to be made, calculating the salary and the benefits. That is known as an integrated salary. The integrated salary includes all payments and benefits given to the employee as exchange of his work. **ANNEX II**

3. PROFIT SHARING.

3.1 GENERAL CONSIDERATIONS

Employees shall be entitled to a share of the company's profits, in accordance with the following terms and conditions:

In "Derecho Mexicano del Trabajo", Mario de la Cueva defines Profit Sharing as

> "The constitutional recognition of the labor factor, as one of the integration elements of the economic reality, were their right to participate in the results of the economic process initiates, a right that implicates that the company is not anymore a feud from the Employer, but a participation of two factors certainly different and with opposite interests, but two factors that because they coincide as equally indispensable elements, have the right to share the profits of joint activity"

A National Commission made up by representatives of the employees, employers and the Government, shall be responsible for setting the percentage of profit shares which should be paid to employees. It shall be required to take into account the need to promote the nation's industrial development, a reasonable rate of return capital, and the necessity to reinvest profits. **SEE ANNEX III**

The current profit sharing rate is the 10% of the taxable income in accordance with the terms and conditions set by the Income Tax Law.

Employees shall be entitled to present any appeal they deem fit before the Ministry of Finance and Public Credit (Mexican Tax authority) as provided by law.

The fact that the employees should be entitled to a share in profit does not imply any right to participate in the running or administration of the company.

3.2 PROCEDURE

The Income Tax Law (LISR) establishes that a regular exercise of Income Tax period begins on January first and ends on December 31st of every year.

- The company has to declare and pay the Income Tax (ISR), no longer than three months after the end of the regular exercise, which means on March 30th.
- Ten days after the Income Tax was presented and paid, the employer has to give a copy of the corresponding declaration to the employees, so they can submit to the Ministry of Finance and Public Credit any objections they may deem pertinent.
- If there is any profit to be shared, a Mix Commission has to be integrated with the representatives of the company and the employees, this commission will make a project establishing the amount of each employee who has right to the payment of the profit sharing. Please refer to Point 6 below to learn more about this Commission.
- The corresponding payment has to be done no longer than 60 days after the Income Tax declaration was presented and paid.

4. COLLECTIVE RIGHTS

4.1 UNIONS

MLL defines a Union as the employees or employers association, constituted for the study, improvement and defense of their respective interests.

Both employees and employers have the right to join forces in order to defend their interests and may form Unions, professional associations, etc. (Sec. XVI Art. 123 Const.)

The MLL defines minimum requirements for the establishment of Unions. The Government shall give these Unions recognition once simple proof has been provided indicating that these requirements have been met.

4.2 EMPLOYEES UNIONS

CONFIDENTIAL EMPLOYEES / NON-CONFIDENTIAL EMPLOYEES.

MLL classifies an employee as a "confidential employee" only when the nature of his duties permits so. Upper management, and general inspection, supervision and vigilance duties are deemed to be of a confidential nature.

Mario de la Cueva, defines the confidential employees as “the ones that are in an immediate and direct contact with the employer, the ones who know the employer’s problems and preoccupations, the ones who know the daily secrets of the company and listen the personal employer’s conversations”

Although the MLL permits unionization of confidential employees; they may not unionize with the "non-confidential" employees. However, "confidential employees" may benefit from the labor conditions agreed with "non-confidential" employees in a Collective Bargaining Agreement unless otherwise agreed.

In case that a Collective Bargaining Agreement exists and it has been agreed that the benefits and labor conditions of the unionized employees will not be extensible to the confidential employees, the company has the right to decide whether the salary increases or benefits will be or not given to the confidential employees.

Also the law does not specify a fixed number of employees’ membership in an already existing union. Nevertheless, it is generally understood that 3 or more employees have the right to join an existing Union.

Membership or formation of a Union by a given group of employees gives them the right, by means of the Union, to demand that the employer enters into or signs a Collective Bargaining Agreement with said Union.

CLASSIFICATION

The MLL classifies the employees' Unions into five categories: Guild Unions; Company Unions; Industrial Unions; National Industrial Unions and Various Trade Unions.

A) Guild Unions.

Guild Unions are integrated by employees of a given profession, trade or specialization from one or various companies whose employees get organized into one single Union.

This type of union is common in transportation companies, where one such organization exists for pilots, another for air host/hostesses and a third one for ground staff from many different companies.

As a result of their specialization, these Unions are identified as carrying out a specific function within industrial branches.

B) Company Unions.

Company Unions are integrated by employees that render their services for a determined Company.

MLL grants the right to any group of employees to form or join a Union. If 20 employees, render their services in a given company, they can form a Company Union.

Only the personnel working for a specific company may belong to that Company's Union.

C) Industrial Unions.

Industry Unions are integrated by employees that render their services in two or more companies of the same industrial branch.

These Unions normally achieve greater penetration and have more strength and presence, since they are very versatile and generally cover an entire industrial sector.

D) National Industrial Unions.

National Industrial Unions are integrated by employees that render their services in one ore more companies of the same industrial branch, but that are located in two or more Federal Entities.

E) Various Trade Unions.

Various Trade Unions are integrated by employees of different professions. These Unions can only be constituted when in the applicable Municipal Entity, the number of employees of a same profession is less than 20.

FEDERATIONS AND CONFEDERATIONS

Any of the specific type of Unions listed above may, in turn, be affiliated with Federations covering a large number of organizations, whether under a regional, industrial or national basis.

Federations may be grouped into confederations. The latter are the organizations which really wield power concerning Unions and Federations.

4.3 COLLECTIVE BARGAINING AGREEMENTS

The Collective Bargaining Agreement is the document in which the unionized employees working conditions are established.

The employer shall celebrate a Collective Bargaining Agreement for the unionized employees at Union's request.

The employer has the obligation to enter into a Collective Bargaining Agreement only with the Union to which the employees are affiliated.

Typically, the first act of a Union is to demand from the employer the execution of a Collective Bargaining Agreement. For these purposes any Union has the right to initiate a strike procedure in which if its demands are not fulfilled, the Union will enter into strike.

4. 4 STRIKE

The law recognizes employees' and employers' right to strike.

The right to strike imposes certain conditions on the Unions in order for a Union to legally take strike action.

- The procedure starts when the claimant Union presents its petitions plead with strike call to the Board, the strike call has to be presented at least 6 days prior to the intention to strike, and 10 days notification in the case of public services. The purpose of the strike action shall be notified in addition to the concrete demands presented to the employer.

- The Board agrees date for the conciliation hearing and has a period of 48 hours to notify and deliver the petition plead to the Company.

- The Company has 48 hours after the petition plead has been notified to answer it by written.

- In the conciliation hearing, the Board calls the parties for them to try to conciliate their positions. If there is no conciliation between the parties, they can solicit to the Board for an other date in order to continue negotiating the claims established on the petition plead, and to design the emergency personnel in case of strike.

- If the parties were not able to reach an agreement during the pre-strike period, the Companies activities are suspended because of the strike, and the employer, under the 72 hours after the suspension of activities, can request to the Board to declare the strike non-existence. The strike could be declared non-existent if the Union did not fulfill the requirements established on the

MLL for this effect. In this case, the Board will analyze the evidence exhibited by the parties and will resolve about the existence or non-existence of the strike.

Strikes shall be deemed legal when their object is to (i) reach an equilibrium between the different factors of production, balancing the right to work with that capital; (ii) achieve the execution of a Collective Bargaining Agreement with the employer and the review of it, at the end of it's legal effects; (iii) demand the compliance with a previously executed Collective Bargaining Agreement; (iv) demand compliance with the legal provisions regarding the profit sharing; (v) support a strike initiated for the above-mentioned reasons; (vi) demand a review of the latter, whether regarding to salary-related or contractual matters.

A strike shall be considered illegal only when the majority of the strikers carry out acts of violence against persons or property, or in the event of war, when they belong to businesses and services that depend on the Government.

5. SOCIAL SECURITY.

5.1 GENERAL CONSIDERATIONS

The Social Security Law is mandatory for all employers and employees.

During the course of the employment relationship, an employer in Mexico is required to withhold from the employee's salary an amount made up of social security contributions to the Mexican Institute of Social Security (IMSS), which regulates five basic categories:

- Industrial hazards,
- Illness and Maternity;
- Disability and Survivors' benefits;
- Retirement, advanced age and old age;
- Child Care and Social Welfare Benefits and Housing.

The employer has to comply monthly with the payments of the corresponding fee for each category. Some of them are paid only by the employee, such as: industrial hazards, retirement housing and child care. The other categories are paid by the employer and employee: illness and maternity, disability and survivor's benefits and advanced age and seniority. In this case the employer will discount from the employee's salary the corresponding fee.

5.2 INDUSTRIAL HAZARDS

Industrial hazards are defined by the Social Security Law (SSL) as "the accidents and illnesses to which employees are exposed in their working activity or because of it"

The responsibility for risk insurance against hazards in the work place relies on the employer, and is based on premiums which are calculated in accordance with a company's accident record during the previous year, and its industrial activity.

The benefits in kind that an employee that suffer an industrial hazard is entitled to a (i) medical assistance, (ii) hospitalization, (iii) medical curing materials, (iv) prosthesis and orthopedic devices.

This insurance guarantees the employees payment of 100% of his wage in the event of accidents or illnesses suffered by consequence of the work. This benefit will be paid for 52 weeks; in case that the disability continues, the employee is entitled to a pension provided by the IMSS.

The employer is obliged to pay a premium based on the employee's salary and in accordance with the relevant business activity and the annual company's accidents record.

5.3 ILLNESS AND MATERNITY.

5.3.1. ILLNESS.

This branch covers all non professional illnesses, meaning all general illnesses that are not related or consequence of work.

The benefits in kind are the same ones mentioned above (medical assistance, hospitalization, medical curing materials, prosthesis and orthopedic devices).

This branch provides the employee with payments equal to 60% of his salary (subsidy) during the period of disability, paid directly by the Mexican Social Security Institute (IMSS). This payment begins at the fourth day of the illness and will be paid the following 52 weeks; in case that the disability continues the payment could be extended for 26 more weeks.

In order to be entitled to receive the subsidy, the employee should have covered at least four weekly fees before the illness.

The fees are paid by the employer and by the employee as follows:

For the benefits in kind, the employer will pay 17.80% of one minimum wage, and if the daily salary of the employee exceeds three minimum wages, the fees will be the above mentioned plus 3.55% of one minimum wage.

If the daily salary of the employee exceeds three minimum wages, the employee fees will be 2% of the difference between his daily salary and three minimum wages.

There will be no employee fee if his daily salary is under 3 minimum wages.

For the economic benefits the employer fee is 0.70% and the employee fee will be 0.25% of the employee's daily wage.

Also, for the medical expenses of the pensioned, the employer will pay 1.025% and employees 0.375% of the corresponding daily salary.

5.3.2 MATERNITY

A working mother is entitled to receive an amount equal to 100% of her salary for the period of six weeks before confinement, and six weeks after the birth of her child, and is entitled to paid medical and surgical treatment. The Employee has the possibility to transfer 4 of the 6 weeks before confinement to the post birth period if the legal requirements are met for those effects.

In order to be entitled to the rights consisting of the corresponding payment mentioned above, it is necessary to fulfill the followings requirements:

1. The employee must have complied with at least 30% of the weekly fees recognized by the IMSS, in the 12 months prior to the date of the corresponding payment.
2. IMSS must have certified the pregnancy and the probable date of birth.
3. The employee may not execute any work with payment during the 42 days period before and after the birth.

5.4 DISABILITY AND SURVIVORS' BENEFITS.

According to the Social Security Law (SSL), disability takes place when the employee can not provide by his own work 50% or more of his last year salary because of a non Industrial hazard accident or illness.

The employer fee is 1.75% of the employee's wage, and the employee fee is the 0.625% of his salary.

The survivors' benefits protect the employee's beneficiaries in case of the employee's death. Those benefits consist basically on pensions given to the widower, orphanage and ascendants and the right to continue with the medical assistance.

5.5 RETIREMENT, ADVANCED AGE AND SENIORITY.

5.5.1 ADVANCED AGE AND SENIORITY

There is advanced age when the employee is deprived of remunerated job after he reaches the age of sixty years.

There is seniority when the employee is deprived of a remunerated job after he reaches the age of sixty five years.

In both cases the employees have the right to receive a pension and medical services. The pension will proceed if the employee has 1,250 weekly contribution fees (24 years).

The difference between the advanced age and seniority consists in the percentage of the pension. In the advanced age the employee will receive 80% of the pension, while in seniority the pension will be of 100%.

The employer fee is 3.150% of the employee's wage, and the employee fee is the 1.125% of his salary.

5.5.2 RETIREMENT

This is provided by the recently established Retirement Savings Plan and is administered in conjunction with the Workers' Housing Fund (INFONAVIT).

The retirement savings plan is administrated by an account at the Retirement Fund Administrator (AFORE) chosen by the employee, in which the employer has to make the corresponding payments.

This account is integrated as follows:

	Employer fee	Employee fee
Retirement	2% of salary	
Advanced age and Seniority	3.150% of salary	1.125% of salary
Housing	5% of salary	
Voluntary contributions	optional	optional
Complementary retirement contributions	optional	optional

The employee may withdraw an established amount of money from this fund upon retirement at his 60 or 65 years and when he has become unemployed.

5.6 CHILD CARE AND SOCIAL WELFARE BENEFITS.

A fund has been created for the establishment and upkeep of nurseries provided for working mothers and widowed or divorced fathers that have the legal child custody.

The employer is obliged to pay 1% into this fund.

5.7 HOUSING.

Any company engaged in farming, industry, mining or any other activity is required by law to provide workers with comfortable and hygienic accommodation. This obligation shall be fulfilled through a national housing fund into which deposits are made on behalf of workers, and a finance scheme shall be established to allow the granting of low interest loans for the purchase of such housing.

Currently the employer is responsible for contributing 5% of the employee's salaries and benefits to a common housing fund that will administer such resources. These resources are handled within the Retirement Savings scheme through an employee's bank account into which the employer should make deposits every two months, supplying the employee with an appropriate bank statement.

6. MANDATORY LABOR COMMISSIONS

According to MLL, companies must establish some mix commissions in order to take decisions in their corresponding matters. The term "mix" refers to the participation of representatives of employers and of employees.

6.1 SECURITY AND HYGIENE COMMISSION

Articles 509 and 510 of MLL establish that in every company this commission shall be created as deemed necessary, composed by an equal number of employees' and employers' representatives. Its object is to investigate the causes of accidents and illnesses, propose measures to prevent them and seek its compliance.

One Commission shall be created for each work place. If there are less than 15 employees in a work place, the Commission shall have one employee and one representative of the employer. If there are more than 15 employees, the Commission shall be integrated as well by a coordinator, a secretary and spokesperson agreed by the employer and employees.

The people within this Commission shall have the knowledge or experience in terms of security, hygiene and working conditions.

The employer has the obligation to have all documents of this Commission at the time of any inspection. There is an official Mexican standard which points the guidelines of this inspection (it is important to mention that there are several other obligations regarding the fulfillment of the Security and Hygiene obligations).

6.2 TRAINING AND PRODUCTIVITY COMMISSION

Article 132 section XV of MLL establishes as an obligation of the employer to provide training to their employees.

Companies with more than 50 employees must create this Commission. They are integrated by an equal number of employees' and employers' representatives in terms of articles 153-E and 153-F of MLL.

This Commission shall be in charge of the following:

- Monitor, operate and improve the programs for training and productivity
- Propose the necessary changes in the machinery, the equipment, work organization and in labor relationships in order to increase the current level of performance
- Solve the objections submitted by the employees regarding the distribution of the productivity benefits
- Advice about the period of time of modalities of initial training and testing in labor relationships for new employees
- Develop training and productivity plans

Training is referred to provide to the employee elements in order to get a higher job position.

Productivity is referred to update knowledge and skills of employees in their position.

6.3 PROFIT SHARING COMMISSION

Article 123-A section IX of Mexican Constitution establishes the right of the employees to receive profit sharing. To learn more details about Profit Sharing, please refer to Point 3 above.

Article 125 section I of MLL determines general considerations about the integration of the Commission: "it shall be integrated by an equal number of employees' and employers' representatives in order to develop a project to determines the participation of each employee in the profit sharing of the company".

According to the Ministry of Labor and Social Welfare, this Commission shall be created within 10 days after the date in which the employer delivered a copy of the annual declaration to the employees; profit sharing shall be paid within 60 days after the same date.

Some attributions of this Commission are:

- To elaborate the project of individual profit sharing
- To communicate their resolutions to the staff
- To locate the project in a visible place in the company's premises

6.4 SENIORITY COMMISSION

According to the second paragraph of article 158 of MLL, "A labor commission integrated by representatives of employers and employees will formulate the general chart of seniority". The elaboration of such chart is the main purpose of this commission.

Both permanent and temporary employees have the right of having determined their seniority. To fulfill this obligation, a Commission shall be created with an equal number of employees' and employers' representatives.

Among its activities are the following:

- Determine criteria in terms of seniority
- Investigate employees' seniority
- Solve the received objections

6.5 INTERNAL BY-LAWS ELABORATION COMMISSION

As established in article 422 of MLL, the internal work policies are a set of mandatory regulations for employees and employers regarding the labor activities in a company.
In terms of article 424 section I of MLL, the creation of Internal Work Policies shall be in charge of a labor commission integrated by representatives of the employers and employees.

This Commission shall take into account the needs and working conditions observed in the company in order to examine and discuss a project.

Once the policies are established, they must be submitted before the corresponding Conciliation and Arbitration Board within 8 days after they are signed.

This Commission is only mandatory if a By-Law exists.

7. TERMINATION

There are four possible scenarios that lead to a termination of the labor relation which are the followings:

A. Voluntary resignation;
B. Termination of the labor relation with cause by the employer for those reasons listed in Article 47 of the Law;
C. Termination without cause; or
D. Termination of the labor relation with cause by the employee for those reasons listed in Article 51 of the Law (e.g., reduction of salary or misleading the employee regarding the conditions of employment).

In all of the preceding cases, the employee is entitled to receive a termination payment from the employer, commonly referred to as the "*finiquito*". The finiquito is composed of the following:

1. Unpaid salary;
2. Christmas Bonus;
3. Accrued vacation days not taken by the employee;
4. Vacation Premium;
5. Any other benefit that has accrued in favor of the employee and not been paid.

Under the Law, the minimum (i) Christmas Bonus is 15 days of salary per year; and (ii) vacation premium is 25% of a day's salary in addition to the regular salary paid for each day of accrued vacation. Furthermore, it is typical for an employee to start with six days vacation and to be granted more vacation days as his/her seniority increases. Depending on the circumstances that lead to the termination of the employment relationship, the employee may be entitled to additional amounts beyond the payment of the "finiquito", as described below.

A. Voluntary Resignation by the employee or mutual termination agreement.

If the employee voluntarily resigns (i.e., without undue pressure from the employer), he is entitled to (i) the payment of the finiquito and (ii) a seniority premium equivalent to 12 days salary per year worked if the employee has 15 or more years of seniority with the employer.

> * Whenever an employee is entitled to receive same, the seniority premium is paid at a maximum rate of twice the minimum wage (currently the minimum wage is $67.29 pesos in Mexico City, but a lower amount may apply in other cities). In other words, notwithstanding the employee's salary level, the seniority premium is only paid at twice the minimum daily wage.

B. Termination of the labor relation with cause by the employer.

If the employee is terminated with cause (e.g., the employee steals from the employer), he is only entitled to receive (i) the finiquito and (ii) the seniority premium.

C. Termination without cause.

If the employee is terminated without cause, the employee is entitled to (i) the finiquito; and a Severance Payment of: (ii) ninety (90) days worth of salary; (iii) 20 days salary per year worked; and (iv) the seniority premium for each year worked.

The 90 days worth salary and the 20 days per year worked are calculated on an Integrated Salary base.

D. Termination of the labor relation with cause by the Employee.

If the employee terminates with cause the employment relationship for those reasons outlined in Article 51 of the Law, is entitled to the same benefits as those outlined in Item C above.

Action	Salary	Vacations	Vacation Premium	Christmas Bonus	Three Months Indemnization	20 Days Per Year	12 Days Per Year
Voluntary resignation by the employee	X	X	X	X			*
Permanent Physical or mental inability	X	X	X	X			*
Dead of the employee	X	X	X	X			X
Termination with cause by the Employer	X	X	X	X			X
Termination without cause	X	X	X	X	X	X	X
Termination with cause by the Employee	X	X	X	X	X	X	X

*Only when they had worked more than 15 years

8. RESOLUTION OF DISPUTES

Any differences arising between capital and labor shall be subject to the final decision of the Conciliation and Arbitration Boards comprising an equal number of representatives of employees and employers and one Government representative.

The Board settles disputes both individually and collectively, including employee's dismissal, payment of employee's salaries or benefits, strike actions involving unions and employers, or internal disputes within the unions themselves concerning title to or administration of a Collective Work Contract. In addition, these Boards have certain administrative powers, such as union inscription at the local level, or the registration of Collective Bargaining Agreements.

The Boards are constituted by three parties: an employee's representative, an employer's representative, and a Government representative. The first two are elected to these positions by employers and employees for a six year term. Government representatives at such Boards are known as Presidents and may be appointed or dismissed from their post at any time by the Government. At the Federal level, such posts are filled by nominees of the President of the Republic and are considered equal to a Minister's position in the Supreme Court of Justice. At the States level, the President to the Board is appointed by the State's Governor.

8.1 DESCRIPTION OF THE LABOR PROCESS.

1. The labor action starts with the filing of the lawsuit before the labor authorities.
2. The authorities admit the lawsuit with a decree, which sets the date for the hearing and orders that the defendant be summoned to the hearing to file its defense and to offer proofs.
3. The defendant is summoned to trial.
4. The hearing is commonly named the "conciliation, demand, exceptions and proof hearing", because of the content of three stages: the conciliation stage where the parties may discuss a conciliatory arrangement to settle the conflict; if it is not possible to reach an agreement, they will continue with the next stage in which the complaint is ratified and any exceptions are filed, and then with the stage in which evidence is offered and admitted.
5. If a conciliatory arrangement is reached, the lawsuit is terminated.
6. Otherwise, the hearing continues, to the stage at which the lawsuit and any exceptions are filed, the plaintiff may ratify or else modify their complaint.
7. If the plaintiff modifies the complaint, the hearing is adjourned until the defendant has the time to respond to such modification, and a new date is set to resume the hearing.
8. If the plaintiff ratifies the complaint, the hearing is resumed at the same stage and the defendant gives answers to the lawsuit.
9. In case there is any action to be filed against the plaintiff this is the stage to present it.
10. Upon such action by the defendant being filed, the hearing is adjourned at the plaintiff request until he has the time to produce their answers to the counterclaim, at which time a new date is set to resume the hearing in the same stage.
11. During the continuation of the hearing, the parties will provide their answers to the defendant action and to the main lawsuit.
12. In the next stage of the hearing evidence is offered and admitted, at which the parties will offer evidence regarding the defendant's exceptions and the plaintiff's main complaint.
13. At the end of such stage, the Conciliation and Arbitration Board may issue in the same date a resolution to admit the evidence or else review it in more detail for some weeks and then pronounce about the admittance of proofs presented.
14. In the decree mentioned in paragraph 13, the Board reviews the parties' evidence and may either admit or reject the evidence, and set the date to produce or present the same.

15. All documentary evidence will be produced at a hearing, except for the plaintiff deposition, the defendant and any other testimony, deposition, recognition or ratification of documents. In this case the Board will state a specific date for the hearing in which proofs shall be submitted.
16. Upon the production of all the evidence, the Board will issue a decree ordering the closing of the trial and that the file be submitted to draw up the resolution draft (namely, the judgment settling the lawsuit).
17. Said decision may acquit or find guilty or else both acquit and find guilty the parties to this lawsuit. This will be determined on the basis of the statements made by the parties and specifically based on the assessment of the evidence produced by the parties that either proves or not proves their actions, claims and exceptions.
18. Based on the decision handed down, it could be filed an appeal for constitutional protection (Amparo) before the Federal Judicial Judges who will review the award handed down by the Board and will issue a final decision in connection with the lawsuit.

9. SOCIAL AND EMPLOYMENT TAXES

During the course of the employment relation, an employer in Mexico are required to withhold from the employee's salary an amount made up of (i) Income Tax and (ii) social security contributions. Furthermore, the employer is required to contribute the following on behalf of the employee:

1. Employer component of social security fees paid to the IMSS;
2. Payments to the INFONAVIT for an employee housing fund;
3. Payments to the SAR in order to maintain a mandatory retirement account for the employee;
4. 3% payroll tax that varies in amount depending on the locality.

10. SUBCONTRACTOR WORK REGIME

Mexican Labor Law regulates the subcontractor work regime (outsourcing) and establishes that these contracts should be in writing and the contractor will be required to ensure the financial solvency of the subcontractor and that he fulfills his obligations on Security and Hygiene (Article 15-BY 15-C).

This figure is defined as the one by which an employer called subcontractor performs works or provide services using employees that depend on them, in favor of a contractor, individual or corporation, who defines the tasks to be carried out by the subcontractor and supervises the subcontractor in the development of the services or the execution of the contracted work (Article 15-A) and shall comply with the following conditions:

a) Cannot cover all of the activities, same or similar, taking place in the workplace.

b) Must be justified by their specialized nature.

c) Cannot imply having the same or similar tasks that are already being done by the rest of the employees at the service of the contractor.

The failure to comply with these conditions will imply for the contractor to be considered employer for all the MLL's purposes, including all the obligations on social security and a fine may be imposed. (This matter will be fully analyzed in a separate document)

MEXICAN LABOR REGULATIONS
GENERAL CONSIDERATIONS

LEGAL BACKGROUND

ANNEX I

THE MEXICAN CONSTITUTION
ARTICLES 5 AND 123 (A)

"Article 5. No person shall be prevented from performing the profession, industrial work, or trade that suits him the best, being such activity licit. The enforcing of such freedom can only be forbidden by a judicial resolution, when the rights of a third party are attacked, or by governmental resolution pronounced under Law whenever the society's rights are offended. No one can be deprived for his legal salary product of his work, except by judicial resolution.

The law shall determine in each state those professions that will need an academic degree for its exercise, the conditions that must be fulfilled to obtain such certificate and the authorities that will issue them.

No one can be compelled to render personal services without a fair remuneration and without his full consent, except labor imposed by a judicial authority as a penalty, under the provisions of clauses I and II of Article 123.

According to the law, public services will be mandatory works when: military service and jury service, as well as the municipal councilman and the elected offices, either directly or indirectly. Electoral works and censual databases shall be mandatory and free of charge, except of those which according to this Constitution and the law should be performed by professionals. The professional social services shall be mandatory and remunerated under the terms of law.

The State cannot permit the execution of any contract, pact, or agreement under the object of the restriction, loss or irrevocable sacrifice of liberty for anyone on any reason whatsoever.

Likewise no person can legally agree to be banished, exiled or to resign temporary or permanent, from the exercise of a given profession or industrial work or trade.

Employment Agreement shall only oblige employees to do the agreed service for the time established by the law, and may never exceed one year on detriment of the employee, and in no case may embrace any loss, harm or renounce of political or civil rights.

An employee's breach of the respective Employment Agreement shall only produce his civil liable for damages, but in no case shall it imply coercion against his person."

"Article 123. Every person has the right to a dignified and socially useful work; in order to enforce such right employment creation and social labor organization will be promoted under the law.

The Congress, without contravening the following principles, shall enact labor laws, wich will regulate:

A. Between employees, employers, domestic workers, craftsmen and in a general way, in every work contract:

I. The maximum duration of the working day shall be eight hours.

II. The maximum duration of night work shall not exceed seven hours. Dangerous an unhealthy works shall be forbidden as well as any industrial night work performed by any individual under sixteen years old. The same prohibition shall be applied to night work performed by such individuals after ten o'clock;

III. The use of labor of minors under fourteen years of age is prohibited. Persons above that age and under sixteen shall have a maximum work day of six hours.

IV. For every six days of work an employee must have at least one day of rest.

V. Pregnant women shall not perform physical labor that requires excessive occupations, material effort, and will enjoy of a rest of six weeks before the approximately birthday and six weeks after the birth, they shall necessarily enjoy the benefit of rest and shall receive their full salaries and retain their employment and the rights acquired under their Employment Agreement. During the nursing period they shall have two special rest periods each day, of a half hour each, for nursing their infants.

VI. The minimum wage to be received by an employee shall be either general or professional. The first one shall be paid in the specified geographical zones; the latter shall be applicable to specified branches of industry or commerce or to specialized work.

The general minimum wage must be sufficient to satisfy the normal material, social, and cultural needs of the head of a family and to provide for the compulsory education of his children. The occupational minimum wage shall be fixed by also taking into consideration the conditions of different industrial and commercial activities.

Minimum wage shall be established by a national commission integrated by employees, employers and government representatives, this commission shall be aided by many auxiliary commissions as necessary in order to improve its performance.

VII. Equal salaries shall be paid for equal work, regardless of sex or nationality.

VIII. The minimum wage shall be exempt from attachment, compensation, or deduction.

IX. Employees shall be entitled to a participation in the profits of companies, regulated in conformity with the following rules:

a) A national committee, composed of representatives of employees, employers, and the Government, shall fix the percentage of profits to be distributed among employees.

b) The national committee shall undertake research and make necessary and appropriate studies in order to become acquainted with the general conditions of the national economy. It shall also take into consideration the need to promote the industrial development of the country; the reasonable return that should be obtained by capital, and the necessary reinvestment of capital.

c) The committee may revise the fixed percentage whenever new studies and research so justify.

d) The law may exempt newly established companies from the obligation of sharing profits for a specified and limited number of years for exploration work and other activities so justified by their nature or peculiar conditions.

e) To determine the amount of the profits of each company, the basis to be taken is the taxable income according to the provisions of the Income Tax law. Employees may submit to the appropriate office of the Secretariat of Finance and Public Credit any objections they may deem pertinent, in accordance with procedure indicated in the law.

f) The right of employees to participate in profits does not imply the power to intervene in the direction or administration of an enterprise.

X. Salaries must necessarily be paid in money of legal tender and cannot be paid in goods, promissory notes, or any other token intended as a substitute for money.

XI. Whenever, due to extraordinary circumstances, the regular working hours of a day must be increased, one hundred percent shall be added to the amount for normal hours of work as remuneration for the overtime. Overtime work may never exceed three hours a day nor three times consecutively. Persons under sixteen years of age may not be admitted to this kind of labor.

XII. According to federal law, every corporation shall be obligated to provide its employees with comfortable and healthy accommodation. Such obligation shall be accomplished

by applying the financial contributions made by the corporations to a national housing fund in order to constitute a financing system to grant cheap and sufficient credit to buy such houses.

It is considered a social utility the expedition of a law to create a public organism integrated by representatives of the Federal Government, employers and employees, to administrate the sources of the national housing fund. This law will regulate the procedures for the employees to obtain the propriety of the aforementioned accommodation.

The corporations mentioned at the beginning of first paragraph of this clause, also must establish schools, hospitals, and any other services necessary to the community.

In addition, in these same work centers, when the population exceeds 200 inhabitants, a tract of land of not less than five thousand square meters must be reserved for the establishment of public markets, the erection of buildings destined for municipal services, and recreation centers.

Establishments for the sale of intoxicating liquors and houses of gambling are prohibited in all work centers.

XIII. The corporations shall be obligated to provide their employees with training to improve their working skills. Federal law shall determine the systems, methods and procedures under which the corporations will comply with such obligation.

XIV. Employers shall be responsible for labor accidents and for industrial diseases of employees, suffered because of or in the performance of their work or occupation; therefore, employers shall pay the corresponding indemnification whether death or only temporary or permanent incapacity to work has resulted, in accordance with what the law prescribes. This responsibility shall exist even if the employer contracts for the work through an intermediary.

XV. An employer shall be required to observe, in the installation of his establishments, the legal regulations on hygiene and health, and to adopt adequate measures for the prevention of accidents in the use of machines, instruments, and materials of labor, as well as to organize the same in such a way as to ensure the greatest possible guarantee for the health and safety of employees as is compatible with the nature of the work, under the penalties established by law in this respect.

XVI. Both employers and employees shall have the right to organize for the defense of their respective interests, by forming unions, professional associations, etc.

XVII. The laws shall recognize strikes and lockouts as rights of employees and employers.

XVIII. Strikes shall be legal when they have as their purpose the attaining of equilibrium among the various factors of production, by harmonizing the rights of labor with those of capital. In public services it shall be obligatory for employees to give notice ten days in advance to the Arbitration and Conciliation Board as to the date agreed upon for the suspension of work. Strikes shall be considered illegal only when the majority of strikers engage in acts of violence against persons or property, or in the event of war, when the employees belong to establishments or services of the Government.

XIX. Lockout shall be legal only when an excess of production makes it necessary to suspend work to maintain prices at a level with costs, and with prior approval of the Arbitration and Conciliation Board.

XX. Differences or disputes between capital and labor shall be subject to the decisions of an Arbitration and Conciliation Board, formed by an equal number of representatives of workmen and employers, and with one from the Government.

XXI. If an employer refuses to submit his differences to arbitration or to accept the decision rendered by the Board, the Employment Agreement shall be considered terminated and he shall be obliged to indemnify the employee to the amount of three months' salaries and shall incur any liability resulting from the dispute. This provision shall not be applicable in the case of actions covered in the following section. If employees make the refusal, the Employment Agreement shall be considered terminated.

XXII. An employer who dismisses an employee without justifiable cause or because he has entered an association or union, or for having taken part in a lawful strike, shall be required, at the election of the employee, either to fulfill the contract or to indemnify him to the amount of three months' salaries. The law shall specify those cases in which the employer may be exempted from the obligation of fulfilling the contract by payment of an indemnity. He shall also have the obligation to indemnify a employee to the amount of three months' salaries, if the employee leaves his employment due to lack of honesty on the part of the employer or because of ill treatment from him, either to himself or to his wife, parents, children, or brothers and sisters. An employer may not relieve himself of this responsibility when the ill treatment is attributable to his subordinates or members of his family acting with his consent or tolerance.

XXIII. Credits in favor of employees for salaries or salary earned within the last year, and for indemnity compensation, shall have priority over all other obligations in the event of receivership or bankruptcy.

XXIV. An employee alone shall be responsible for debts contracted by himself and payable to his employer, his associates, members of his family, or dependents, and in no case and for no purpose may payment be exacted from members of the employee's family, nor are these debts demandable for an amount exceeding the salaries of the employee for one month.

XXV. Services of employment placement for employees shall be gratuitous, whether a municipal office performs such service, labor exchange, or any other official or private institution.

In providing job opportunities the employment demand shall be taken in account, and in equal conditions will be preferred those who represent the only source of family income.

XXVI. Every Employment Agreement made between a Mexican and a foreign employer must be notarized by a competent municipal authority and countersigned by the consul of the nation to which the employee intends to go, because, in addition to the ordinary stipulations, it shall be clearly specified that the expenses of repatriation shall be borne by the contracting employer.

XXVII. The following conditions shall be considered null and void and not binding on the contracting parties, even if expressed in the contract:

a) Those that stipulate a day's work that is inhuman because it is obviously excessive, considering the kind of work;
b) Those that fix salaries that are not remunerative, in the judgment of Arbitration and Conciliation Boards;
c) Those stipulating a period of more than one week before payment of a day's salaries;
d) Those indicating as the place of payment of salaries a place of recreation, an inn, café, tavern, bar, or store, except for the payment of employees of such establishments;
e) Those that include the direct or indirect obligation of acquiring consumer goods in specified stores or places;
f) Those that permit the retention of salaries as a fine;
g) Those that constitute a waiver by the employee of indemnification to which he is entitled due to labor accidents or industrial hazards, damages occasioned by the no fulfillment of the contract, or by being discharged;
h) All other stipulations that imply waiver of any right designed to favor the employee in the laws of protection and assistance for workmen;

XXVIII. The laws shall determine what property constitutes the family patrimony, property that shall be inalienable, not subject to encumbrances of attachment, and that shall be transmissible by inheritance with simplification of the formalities of succession.

XXIX. Enactment of a social security law shall be considered of public interest and it shall include insurance against disability, on life, against involuntary work stoppage, against sickness and accidents, and other kind of insurance directed to protect the employees' welfare, rural employees, employees without a contract and other social sectors and their families.

XXX. Likewise, cooperative societies established for the construction of low-cost and hygienic houses to be purchased on installments by employees, shall be considered of social utility;

XXXI. Enforcement of the labor laws belongs to the authorities of the States, in their respective jurisdictions, but it is the exclusive jurisdiction of the federal authorities in matters relating to:

a) Industrial and services:
   1. Textile,
   2. Electrical,
   3. Motion picture,
   4. Rubber,
   5. Sugar,
   6. Mining,
   7. Metallurgical, and steel industries, including the exploitation of basic minerals, their processing and melting, as well as the production of iron and steel in all their forms and alloys and rolled products,
   8. Hydrocarbons,
   9. Petrochemical,
   10. Cement,
   11. Quicklime
   12. Railroads,
   13. Chemical industry, including the pharmaceutical one
   14. Cellulose and paper production;
   15. Vegetal oil;
   16. Food processing, including the production of packed canned or contained food or the food produced to be sold in such ways;
   17. Beverage industries including the production of either bottled or canned beverages and those beverages produced to be sold in such ways;
   18. Railway;
   19. Timber and wood industry, including sawmills and the production of laminated and conglomerated wood;
   20. Glass industry exclusively related to the production of laminated glass, flat glass, carved glass or glass containers;
   21. Tobacco industry including both tobacco growing and industrialization;
   22. Banking

b) Companies
   1. Companies that are administered directly or in decentralized form by the federal Government;
   2. Companies that operate by virtue of a federal contract or concession, and connected industries;
   3. Companies that carry on work in federal zones and territorial waters;

Federal authorities shall also apply labor law to resolve all controversies between two different States as well as those involving any collective bargain which is mandatory within two or more States; obligations of the employers on safety and health measures to be applied at working places; in executing such power, federal authorities will be helped by Local authorities when state jurisdiction is involved, according to the law.

B…

ANNEX II

MEXICAN LABOR LAW.
ARTICLE 84
SALARY INTEGRATION

"The salary is integrated with the payments made to the employee in cash for daily quotes, gratifications, perceptions, housing, premiums, commissions, species benefits and any other amount or benefit that is granted to the employee for their work."

ANNEX III

HISTORICAL RESOLUTIONS OF THE NATIONAL COMMISSION FOR PROFIT SHARING PERCENTAGE

Resolutions	**Publishing Date**	**Percentage and basis of Participation**
First	13/XII/1963	20%
Second	14/X/1974	8%
Third	4/III/1985	10%
Fourth	26/XII/1996	10%