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FROM LEAVE TO LEGAL OBLIGATIONS: UNDERSTANDING MATERNITY AND PATERNITY RIGHTS IN MEXICO

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Employers doing business in Mexico can help ensure a fair and supportive workplace by understanding certain key regulations. For instance, Mexico's labor laws offer comprehensive protections for employees during pregnancy and for maternity and paternity leave. These regulations are designed to support employees through significant life events while ensuring a fair and balanced workplace. Both employers and employees must understand these rights and obligations to ensure a smooth transition during these critical periods. In our latest Insight, we'll break down the essential legal obligations for employers in Mexico, including who is covered and who qualifies, how the law supports new parents, and how you can avoid hefty fines by ensuring compliance.

Understanding the Essentials

- **Maternity Leave:** Mexican law grants mothers six weeks of paid leave before and six weeks after childbirth. Extensions are possible for health issues or adoption.
- **Adoption Leave:** Mothers receive six weeks of paid leave starting from the adoption date; fathers get five days of paid leave.
- **Breastfeeding Rights:** Mothers are entitled to two 30-minute breaks per workday for breastfeeding or may reduce their workday by one hour if no suitable breastfeeding area is available.

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- **Paternity Leave:** Fathers are entitled to five days of paid leave following the birth or adoption of a child.
- **Employer Obligations:** Employers must provide adequate seating for pregnant and nursing employees and avoid assigning hazardous tasks. Non-compliance can result in fines ranging from \$4,030 to \$201,500 pesos.

Advancements in Gender Equality and Labor Rights

- The journey toward gender equality and the empowerment of women has seen significant milestones since the signing of the United Nations Charter in 1945, which established **the principles of equality and equity**.
- In 1946, the UN created the Commission on the Status of Women (CSW), marking a critical step in **advocating for women's rights on a global scale**.
- A pivotal moment in this ongoing movement occurred in 1995 during the Fourth World Conference on Women in Beijing. The conference culminated in the unanimous adoption of the Beijing Declaration and Platform for Action by 189 countries, which serves as **an international roadmap for achieving gender equality** and ensuring the human rights of women and girls worldwide.
- This declaration calls on governments to **commit to action across twelve strategic areas**, including poverty, education and training, health, violence, armed conflict, economy, decision-making power, institutional mechanisms, human rights, media, environment, and the rights of girls.
- A closer examination of three key areas related to the workplace highlights **the need to eliminate structural barriers** that hinder women from reaching their full potential in society.
- Notably, **the declaration identifies triggers for discrimination and violence**, such as harassment and the lack of institutional support for women's comprehensive engagement in various fields.
- In Mexico, the current Federal Labor Law reflects a **commitment to international gender equality standards** established over 25 years ago. Specific articles within this law serve as a diagnostic tool for assessing the implementation of gender equality initiatives. They also

outline favorable scenarios and ongoing challenges that must be addressed to promote women's rights, particularly during crucial life stages such as maternity.

- As gender equality in the workplace is continued to be advocated, it is essential to build on these foundations and pursue transversal actions that support women's empowerment and protect their rights. This ongoing commitment will ensure that the gains made over the decades are not only preserved but also expanded for future generations.

Understanding Legal Obligations and Rights of Employers in Mexico

International Treaties: The international legal framework concerning the prohibition of discrimination, particularly with a focus on gender equality and the protection of women in the workplace, has undergone considerable evolution through various conventions, treaties, and protocols.

- Central to this framework are **the International Labour Organization (ILO) Conventions**, including No. 103, 111, 156, and 190. Convention No. 103 addresses maternity protection, setting standards for maternity leave and safeguarding the rights of pregnant workers. Convention No. 111 targets employment and occupation discrimination, mandating equal treatment for women and men. Convention No. 156 further advances these protections by ensuring that workers with family responsibilities, a category that disproportionately affects women, are not discriminated against. The most recent addition, Convention No. 190, specifically aims to eliminate violence and harassment in the workplace, recognizing these as forms of gender-based discrimination that hinder equality.
- The **United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)** further complements these ILO conventions by broadly addressing gender-based discrimination in all spheres of life, including employment. CEDAW obliges its signatories to take proactive steps in securing gender equality through legal frameworks and national policies.
- Another key instrument is the **Protocol of San Salvador**, which guarantees women's rights in employment, social security, and maternity protection under a human rights framework specific to the Americas.

- Recently, **Mexico took an important step by ratifying the ILO's Convention 190**, signaling a strong commitment to combating workplace discrimination, violence, and harassment. This ratification marks a significant progression in aligning Mexico's domestic legislation with international standards on gender equality and occupational safety.
- By adopting these conventions, countries like Mexico are reinforcing their legal obligations to **foster safer, more equitable workplaces and to protect vulnerable groups**, especially women, from discrimination and abuse.
- These global legal frameworks not only **promote fairness in employment** but also contribute to broader efforts toward **achieving social justice and gender equality**

Mexican Law: The Mexican Constitution enshrines robust protections against discrimination and specific labor rights for women.

- **Article 1 prohibits discrimination based on various grounds** including ethnic or national origin, gender, age, disabilities, social status, health conditions, religion, opinions, sexual preferences, marital status, or any other factor that undermines human dignity and infringes on individuals' rights and freedoms.
- In parallel, **Article 123, Section V, mandates the protection of pregnant women** by ensuring they are not subjected to heavy or hazardous work that could jeopardize their health or that of their unborn child. It stipulates that women must be granted an obligatory six-week rest period before and after childbirth, during which they are entitled to receive their full salary and retain their job along with any accrued employment benefits.
- Furthermore, **the Constitution provides that, during the lactation period, women are entitled to two additional breaks** of half an hour each day to nurse their infants. These provisions underscore Mexico's commitment to safeguarding both the health and economic security of working women, thereby supporting their full participation in the workforce while respecting their reproductive rights.

Parental Leave Essentials in Mexico

Maternity Leave

- **Overview:** Article 170 of the Federal Labor Law (FLL) entitles mothers to six weeks of paid maternity leave before childbirth and six weeks after. This time allows mothers to prepare for childbirth and recover afterward. Payments during this period are covered by the Social Security Institute (SSI), relieving employers from paying salaries.
- **Flexibility in Maternity Leave:** Mexican law allows mothers to transfer up to four weeks of their prenatal leave to the postnatal period upon request. This option can help those dealing with complications or those who prefer more rest after childbirth. Mothers can also extend their leave up to eight weeks post-birth if the child is born with a disability or requires significant care. Additionally, if health issues prevent the mother from working, leave can be extended up to 60 days at 50% salary.
- **Adoption Leave:** Adoptive mothers are entitled to six weeks of paid leave from the adoption date, while fathers receive five days of paid leave. This ensures that both parents can bond with their child during the crucial initial period.
- **Breastfeeding Rights:** Mothers are entitled to two 30-minute breaks per day to breastfeed or express milk for up to six months after birth. If no suitable space for breastfeeding is available, the workday may be reduced by one hour.

Paternal Leave

- **Fathers receive five days of paid leave** following the birth or adoption of a child, allowing them to support their partners and bond with their newborn.

Employer Responsibilities

- Employers must **provide seating** for pregnant and nursing employees and **avoid assigning hazardous tasks** that could affect their health. Failure to comply with these obligations can lead to significant fines, highlighting the importance of adhering to these protections.

Safe Motherhood and Maternal Health

- Safe motherhood, health care for mothers, and the survival of newborns are essential to life and critical to women's work environments and productivity.

- Maternity protection is a labor right enshrined in universal human rights treaties, leading to the enactment of maternity protection laws in many countries, including Mexico.
- A review of various databases (Scopus, Redalyc, Scielo, Web of Science) shows that in the last twenty years, Mexico has improved maternity laws, granting longer postnatal rest periods. However, these advances may not always be enough to support women's growth in both their professional and maternal roles.

Maternity Protection in Mexican Law

In Mexico, maternity rights are regulated by the Constitution, labor laws, social security laws, and the Federal Labor Law (FLL):

- Pregnant women receive certain protections, such as paid maternity leave, to minimize risks associated with work.
- Article 4 of the Constitution guarantees all people the right to health care, yet, in practice, this right is not always equally accessible to everyone.
- Additionally, the General Health Law prioritizes maternal-infant health and breastfeeding promotion, while the FLL protects pregnant workers, ensuring that their salary, benefits, and rights remain intact during pregnancy and post-childbirth.

Key protections include:

- Equality of rights with men
- Maternity protection
- Prohibition of hazardous or unhealthy working conditions
- Protection against employment discrimination
- Restrictions on physically demanding tasks for pregnant employees
- Prohibition of industrial night work and overtime during pregnancy

What's Next?

While maternity legislation has undergone modifications, there is still room for improvement:

- Important areas for consideration include promoting gender equality in employment, supporting women's professional development, and ensuring accessible childcare within or near workplaces to enhance mothers' productivity.
- Additionally, removing certain conditions, like mandatory prenatal visits to receive maternity benefits, would uphold the rights of patients, ensuring all mothers receive fair treatment regardless of the health system they access.

Understanding maternity and paternity rights, including employer obligations and protections, is essential to fostering a supportive and equitable workplace.

Conclusion

For more information, reach out to your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Employee Leaves and Accommodations Practice Group](#). [Fisher Phillips Mexico](#) is at your service to assist you with any questions related to this topic, as well as with any matter in labor law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to have the most up-to-date information sent directly to your inbox.