What Multi-National Employers Need to Know About Mexican Labor and Employment Law

Insights
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Multi-national companies located in the United States employ a substantial number of employees in Mexico, a country with whom the United States has significant trade relations. Mexico shares a border with the United States and Americans regularly visit Mexico. However, the employment and labor laws in Mexico are much different than those in the United States, with laws that provide, in numerous ways, greater employment, compensation, separation and data privacy rights for employees working in Mexico. This article will focus on many of the employment laws of Mexico which multi-national employers interested in hiring employees in Mexico should understand to best comply with the law and leverage their business opportunities in that country.

Overview of Mexican Employment and Labor Law. Mexican employment and labor law is governed primarily by the Mexican Federal Labor Law, which has been in effect since 1970, as well as Mexico's 1917 Constitution. Some of the important rules of Mexican employment and labor law are as follows:

- **Presumption of Permanent Employment**. An employee who works at least for a month for an employer is presumed to be a permanent employee. For the first month of employment, if a contract is prepared describing the temporary nature of an employee's work, the employer may terminate the contract within the month without cause, as described below. After that month, an employee only may be separated for cause without the employer owing severance. This presumption is in contrast with the United States, which, with the exception of Montana and Puerto Rico, allow at-will employment under which employers may discharge employees at any time and for any reason, or no reason, as long as there is no breach of contract or violation of statute or public policy.
- **Required Hours of Work, Compensation, Overtime, Vacation, and Holidays**
  - **Work week**. Employers may not allow employees to work for more than eight hours in the daytime; seven hours for night work; and seven-and-a-half hours for a shift that is both day and night. Employees are provided at least one rest day, which employers are urged to provide on Sundays. Employees who work on Sundays are provided a bonus equal to 25% of their regular daily pay. Even if the employee does not work on Sundays, however, he or she is paid regular pay for Sundays. Therefore, even though employees in Mexico are not required to work more than a 48-hour week, they are paid for seven days, or 56 hours.

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- **Required Paid Vacation**. Employees who work for an employer are entitled to the following paid vacation, in addition to a 25% vacation premium:
  - six days of paid vacation after one year of work;
  - an additional two days annually every added year of service until the end of the employee's fourth year with the employer; and
  - two days of paid vacation every additional five years of work.
- **Holidays**. There are at least seven required paid holidays annually (January 1, February 5, March 21, May 1, September 16, November 20 and December 25), with the possibility of several others, which may be the subject of negotiating with unions or individual employees. Some of the possible holidays not legally mandated, such as Mother's Day and December 24, typically are those in which significant numbers of employees do not come to work, which in turn causes employers to plan accordingly. Since it is legal for employees to trade holidays, many multi-national employers will provide paid holiday countries with their own national holidays and allow Mexican employees and the foreign national employees to trade their holidays
- **Christmas Bonus**. Employers must pay employees at least fifteen days' salary before December 20 of each year, based on the number of days worked that year by the employee. For example, an employee who has worked eight months is entitled to ten days of Christmas Bonus.
- **Special Bonuses**. Employees who work in areas that have high employment rates will be entitled to bonuses based on factors such as work habits (punctuality) and company productivity.
- **Required Revised Salaries**. Employees' salaries are to be revised every year; collective bargaining agreements are required to be changed every two years.
- **Company Profits**. After their first year of operations, Mexican employers are required to pay approximately 10% of their net annual income among all employees.
- **Overtime.** Employees are required to work up to, but no more than three hours a day, nine hours a week, of overtime, with overtime being paid at a rate of double salary. Since employees can choose whether or not to work overtime beyond nine hours, they could have a cause of action, including the penalty for employers to pay triple time for the hours beyond nine hours.

- **Discharge, other Employment Actions and Severance**
  - **Discharge only for cause**. Mexico does not recognize employment-at-will employment, and requires severance for employees separated without cause. The Federal Labor Law, however, sets forth numerous reasons for which an employee can be separated without the employer being responsible for paying severance, including: fraud by an employee regarding his skills; bad conduct by an employee pertaining to his or her co-workers; revealing trade secrets; failing to report four days within a 30-day period; acting in a disobedient manner; insulting an

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employer without being provoked to do so; theft; coming to work under the influence of alcohol or drugs; except for drugs taken with a medical prescription; violent acts; and inappropriate language.

- **Justified suspension by either the employee or employer.** The law allows either the employee or employer to suspend work under many circumstances, including: a temporary incapacity of the employee due to illness or injury that is not considered a work-related risk; an employee's arrest; the temporary imprisonment of an employee who is later absolved; or when the employee does not have work-related licenses or certificates.
- **Severance payments.** Employees are entitled to receive severance based on three months of salary in addition to twenty days of salary for each year of service, with a lesser amount paid for the proportion of the year worked by the employee, as well as a proportional Christmas bonus and vacation. Employees are also entitled to a "seniority premium" of twelve days for every year of service up to a maximum of twice the amount of the minimum salary in Mexico.

- **Causes of Actions by Employees under Mexican Law.** Employees discharged in Mexico may bring lawsuits against former employers for wrongful discharge; the burden of proof is on the employer to show that the discharge was legal. Both Mexican and non-Mexican employees can bring actions under Mexican employment law, which can be costly to employers in Mexico.
- **Data Privacy Laws.** In July 2010, Mexico's data privacy law, the Federal Law on the Protection of Personal Data Held by Private Parties ("Personal Data Law"), similar to many that have been enacted globally, became effective. This law governs private industry in Mexico, including U.S. and other companies that operate or advertise in Mexico. The Personal Data Law requires consent or legal obligation for the collecting, processing, using, and disclosing personally identifiable information, and is similar to laws enacted in Canada, the European Union, and in other regions of the world. One obligation is that companies who handle personal data must so inform those individuals, who have the right to access, correct, and object to such processing or disclosure. The Personal Data Law also requires organizations to notify individuals of any violation of this law affecting the person, and also prohibits data transfers both inside and outside Mexico except in accordance with the provisions of the law. Some of the data covered under this law includes information about a person's race; ethnicity; health; philosophical, political, and religious beliefs; sexual preference and membership in a union.
- **Recommendation**. Multi-national employers interested in hiring or placing employees in Mexico should ensure they consult with attorneys knowledgeable about their requirements under Mexican employment and labor law, and that they take steps to both understand and comply with all aspects of applicable statutes.

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