

## PRINCIPLES OF MEXICAN LABOR LAW

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**Purpose.** This paper provides an overview of the Mexican Labor Law “in the book.” It will not describe the law “in practice.” It will not evaluate its fairness or efficiency.

**Data.** Mexico has an estimated population of 108 million.<sup>1</sup> The Mexican Labor Ministry reports 14,076,279 workers, comprising 12,309,464 permanent workers and 1,766,815 temporary workers (this includes 1,567,486 urban workers and 125,123 agricultural workers).<sup>2</sup> <sup>3</sup>The Mexican general minimum wage is 55.77 Mexican pesos (approximately \$4.31 USD per day).<sup>4</sup> The ILO Mexican office reports that Mexico was the most affected country by the global financial crisis in the Latin-American region and that Mexico will face a very slow recovery.<sup>5</sup>

**Background.** Labor Law is a product of the Mexican Revolution of 1910. Before, labor agreements were governed by civil -and not labor- law (this means that contracting parties were equals), strikes were banned, male workers had 16-hour shifts, female workers had 12-hour shifts and no minimum wages were in place. In fact, the Mexican Revolution was intended to overthrow Porfirio Díaz, who had remained in office as President for over 30 years. “However, the Revolution soon broadened into a many-faceted struggle which dragged on for years and attracted many men of high ideals and strong positions, especially regarding land and labor reforms.”<sup>6</sup>

**Sources of law.** 1) Article 123 of the 1917 Mexican Constitution sets minimum employment standards for the workplace.<sup>7</sup> It is said to be the first constitutional recognition of labor rights in world history. 2) Mexico is a party to numerous international treaties, including 67 International Labor Organization Conventions.<sup>8</sup> 3) Mexican Federal Labor Law implements the constitutional provisions of Article 123. Thus, labor law is federal law.<sup>9</sup> 4) Federal Courts, including the Supreme Court, interpret and affect labor law. 5) Federal regulations and labor agencies procedures may implement specific issues.

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<sup>1</sup><http://www.conapo.gob.mx/>

<sup>2</sup>January 2010. <http://www.stps.gob.mx>

<sup>3</sup>For further details see <http://www.stps.gob.mx/DGIET/web/ENOETRIM/nal.xls>

<sup>4</sup>January 2010. <http://www.stps.gob.mx>

<sup>5</sup><http://www.oit.org.mx>

<sup>6</sup>[http://zedillo.presidencia.gob.mx/welcome/PAGES/culture/note\\_5feb.html](http://zedillo.presidencia.gob.mx/welcome/PAGES/culture/note_5feb.html)

<sup>7</sup>For an English translation of the Mexican Constitution see:

[http://www.scjn.gob.mx/SiteCollectionDocuments/PortalSCJN/RecJur/BibliotecaDigitalSCJN/PublicacionesSuprema Corte/Political\\_constitucion\\_of\\_the\\_united\\_mexican\\_states\\_2008.pdf](http://www.scjn.gob.mx/SiteCollectionDocuments/PortalSCJN/RecJur/BibliotecaDigitalSCJN/PublicacionesSuprema Corte/Political_constitucion_of_the_united_mexican_states_2008.pdf) (Use it as a mere reference, since the Mexican Constitution is amended several times per year) (Last amendment: August 28, 2009).

<sup>8</sup>No. 8, 9, 11, 12, 13, 14, 16, 17, 19, 21, 22, 26, 27, 29, 30, 42, 43, 45, 49, 52, 53, 55, 56, 58, 80, 87, 90, 95, 96, 99, 100, 102, 105, 106, 108, 110, 111, 112, 115, 116, 118, 120, 123, 124, 131, 134, 135, 140, 141, 142, 14, 150, 152, 153, 155, 159, 160, 161, 163, 164, 166, 167, 169, 170, 172, 173 and 182. <http://www.sre.gob.mx/tratados/>

<sup>9</sup>For an English translation of the Mexican Federal Labor Law see: <http://www.natlaw.com/trans/tnstlb5a.htm> (Use it as a mere reference: it may have been amended) (Last amendment: January 17, 2006).

The basic principles of Mexican labor law are:

**Freedom to choose an occupation.** No person may be prevented from engaging in the profession, business or work of his/her choice, provided it is lawful (Art. 5).

**Right to work.** Every person has the right to have a “dignified and socially useful” job (Art. 123).

**Prohibition of forced labor.** No one can be forced to render personal services without proper payment or without his/her full consent (Art. 5). A labor contract may only oblige to render the service agreed upon, during the term set forth by law, which may not exceed one year to the detriment of the worker, and in no case may it embrace the waiver, loss or restriction of any civil or political right (Art. 5). Non-compliance by the worker may make him/her liable for civil damages, but it may not allow coercion against him/her (Art. 5).

**Working hours.** The maximum duration of work is 8 hours a day (7 night work hours) (Art. 123-A-I and II).

**Overtime pay.** When, due to extraordinary circumstances, working hours must be extended, the salary must be paid at double the normal rate. Overtime may never exceed 3 hours per day, or 3 consecutive days (Art. 123-A-XI).

**Rest days.** For every 6 working days, a worker is entitled to at least one day of rest (Art. 123-A-IV).

**Equal pay for equal work.** Equal wages shall be paid for equal work, regardless of sex or nationality (Art. 123-A-VII).

**Minimum wages.** The Minimum Wage Commission sets the minimum daily wage. It may be a) general or b) occupational. The former may differ from region to region; the latter is applicable to specific sectors of an industry or commercial activity, or to certain occupations (Art. 123-A-VI).

**Wage deductions.** No one may be deprived from the product of his/her work (Art. 5). The minimum wage shall be exempt from set-off or discount (Art. 123-A-VIII). Wages must be paid in Mexican pesos (e.g. cannot be paid in goods or tokens) (Art. 123-A-X). Claims of workers for wages earned within the last year, and for compensation, have priority over any other claims (Art- 123-A-XXIII).

The following contract clauses are null and void:

- Those providing a term of more than one week for payment of daily wages;
- Those providing as the place to pay wages a place of recreation, a bar or a store;
- Those that imply the duty to purchase consumer goods in specific stores or places;
- Those permitting deduction of wages by way of fines;
- Those constituting a waiver by the worker of indemnifications to which he/she is entitled due to labor accidents or illness, damages for breach of contract or for being dismissed (Art. 123-A-XXVII).

**Profit-sharing.** Workers are entitled to participate in the profits of enterprises. A National Committee -composed of representatives of workers, employers, and the

government- fixes the percentage of profits to be distributed. The basis to be taken is the taxable income, according to the provisions of the income tax laws. This right does not imply the power to intervene in the management (Art. 123-A-IX).

**Protection in the event of unjustified dismissal.** An employer who unjustifiably dismisses a worker (e.g. because he/she has joined a union, or for taking part in a lawful strike) shall be required, at the election of the worker, either to perform the contract (i.e. reinstatement) or to indemnify him/her to the amount of three months' full salary (including premiums, bonuses, commissions and any fringe benefits). The employer shall also indemnify a worker with three months' wages, if the worker leaves his/her job due to employer's lack of good faith or mistreatment (Art. 123-A-XXII).

**On-the-job safety and health.** The Constitution protects workers' safety in the workplace (Art. 123-A-XIV and XV).

**Social security.** Workers are entitled to social security (Art. 123-A-XXIX).

**Protection of young people at work.** It is prohibited to employ minors under 14. Minors under 16 may have a maximum work shift of 6 hours (Art. 123-A-III). Unhealthy or hazardous work, nightshifts in industrial enterprises, as well as work after 10 pm is prohibited for minors under 16 (Art. 123-A-II). Young persons under 16 may not work overtime (Art. 123-A-XI).

**Maternity protection.** Pregnant women have the right to rest for 6 weeks before childbirth and 6 weeks thereafter, while receiving their full wages. They may keep their job and the rights acquired there from. They have the right to have 2 daily half-hour rest periods for nursing their infants (Art. 123-A-V).

**Freedom of assembly and of association.** The right to peacefully associate or to assemble for any lawful purpose may not be restricted (Art. 9). Both employers and workers have the right to organize for the defense of their best interests, by forming unions or professional associations (Art. 123-A-XVI).

**Strikes.** The Constitution guarantees the workers' right to strike. It declares that legislation must recognize strikes and lockouts as rights of workers and employers (Art. 123-A-XVII). Strikes are legal if their objective is to attain a balance of workers' and employers' rights. It is mandatory for workers to give notice in advance to the Board of Conciliation and Arbitration. Strikes are illegal when the majority of strikers engage in acts of violence against persons or property (Art. 123-A-XVIII).

**Dispute resolution.** The Constitution organizes a system of state and federal Conciliation and Arbitration Boards –composed of representatives of workers, employers and the government - to resolve individual and collective labor disputes (Art. 123-A-XX and XXXI). If an employer refuses to submit his/her differences to arbitration or to accept a decision rendered by the Board, the labor contract shall be terminated and he/she shall indemnify the worker with three months' wages. If workers make the refusal, the labor contract shall be terminated (Art. 123-A-XXI).