



MEXICO

Decent Work Check 2019

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Political Constitution of Mexico 1917, last updated in 2017
2. Federal Labour Law 1970, last amended in 2018
3. Resolución del H. Consejo de Representantes de la Comisión Nacional de los Salarios Mínimos publicada en el Diario Oficial de la Federación el 29 de diciembre de 2014
4. Social Security Act
5. Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace
6. Mexican Official Standard NOM-017-STPS-1993
7. General Regulation for Inspection and Enforcement Sanctions due to Violations of the Labour Legislation
8. Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012
9. Law of Women's Access to a Life Free of Violence 2007
10. Federal Penal Code
11. Federal Law to Prevent and Eliminate Discrimination (FLPED) 2003
12. General Law on Equality between Men and Women 2006
13. National Human Rights Commission Act 1992
14. General Law for Inclusion of Persons with Disabilities 2011
15. National Institute for Women Law 2001
16. Law to Prevent, punish and eradicate crimes relating to trafficking and to protect and assist the victims of these crimes, 2012

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Mexico has ratified the Conventions 95 & 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018
- Resolución del H. Consejo de Representantes de la Comisión Nacional de los Salarios Mínimos publicada en el Diario Oficial de la Federación el 29 de diciembre de 2014

Minimum Wage

The Mexican constitution provides for a minimum wage set for different geographical areas/zones and for different occupations/branches of economic activity. Consequently, there is no single minimum wage in Mexico and minimum wages for occupations are announced every year for different geographical areas/zones. Minimum wages in Mexico is determined per day. National Commission on Minimum Wages, a tripartite institution represented by workers, employers and government, determines minimum wage rates every year.

National Commission may be assisted by advisory committees in order to determine minimum wages for different sectors/occupations and zones. The general minimum wages 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/her children. The occupational minimum wage is set by also taking into consideration the conditions of different economic activities. Minimum wages are fixed for each year and may be revised at any time, if required by the economic circumstances. In order to help set and revise the minimum wage, the National Commission on Minimum Wages conducts various studies to determine the general economic situation of the country, changes in various economic activities, changes in the cost of living, labour market conditions and wage structures.

Compliance with Federal Labour Law including minimum wage provisions is ensured by the labour inspectorate which has the following functions: monitor compliance with labour standards; provide technical information and guidance to workers and employers on the most effective way to comply with labour standards; bring to the notice of authorities any deficiencies and violations of labour standards as observed by them and carry out the studies and gather data as requested by the competent authorities and seek the harmony of relations between workers and employers. Workers can file a complaint with a labour inspector or to Board of Conciliation and Arbitration although under 2017 Constitutional reform, these Boards will be replaced by labour courts or labour tribunals.

Labour Law has provisions on fine and imprisonment for violation of wage standards, depending on the amount or omission.

An employer who pays workers less than the general minimum wage has to pay a fine and face imprisonment term as explained here:

- i. Fine is equal to 50 times the general minimum wage when the difference between the minimum wage and the amount actually paid does not exceed the total of one month's minimum wage. The proposed imprisonment term ranges between six months to three years;
- ii. Fine is up to 100 times the general minimum wage when the difference between the minimum wage and the amount actually paid is between one month and three months' minimum wage. The proposed imprisonment term ranges between six months to three years;
- iii. Fine is up to 200 times the general minimum wage when the difference between the minimum wage and the amount actually paid is equal to more than three months' minimum wage. The proposed imprisonment term ranges between six months to four years.

Fines are doubled in the case of repeat offence.

Sources: §123-A-VI of The Mexican Constitution; §90-97, 540, 560-562 & 570 and 1004 of Federal Labour Law; Resolución del H. Consejo de Representantes de la Comisión Nacional de los Salarios Mínimos publicada en el Diario Oficial de la Federación el 18 de diciembre de 2015

Regular Pay

Wage is the remuneration to be paid by the employer to the employee for the work performed.

In accordance with the Mexican Constitution, wage period can't be longer than 7 days. However, Federal Labour Law clarifies that 7 days wage payment period is for manual laborers and farm workers. The deadline for wage payment, i.e., the wage payment period can't be longer than 7 days for manual workers and 15 days for other types of workers. The law requires that wages may be fixed per unit of time, per unit of work, commission, and lump sum or otherwise. The minimum wages are determined on daily basis. The wages must be paid in legal tender and in cash unless agreed by the employee. Payment of wages must be made at a place where workers usually are employed and payment must be made on a working day and during working hours. The wages provided in an employment contract can't be less than the minimum wage for occupations/region.

Minimum wage is exempted from the attachment, compensation or deductions.

Sources: §123-A-VIII & XXVII of the Mexican Constitution, §82-116 of Federal Labour Law

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Mexico has not ratified Conventions 01 & 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018

Overtime Compensation

Working hours are defined in the law as the time during which the worker is available to the employer to offer their services.

Maximum working hours are 8 hours a day and 48 hours a week for day-time workers, 7 hours per day and 42 hours per week for night-time workers while 7.5 hours a day and 45 hours a week for mixed-shift (day+ night) workers. Workers and employer may determine the length of a working day however they can't exceed the legal maximum.

Working hours can be extended beyond the normal daily and weekly hours due to exceptional and extraordinary circumstances however these extra hours may not exceed 3 hours a day and three times a week, i.e., 9 hours a week. The first 9 hours of overtime are paid at a premium rate of 200% of the normal wage rate. If a worker has to work beyond 9 hours of extra work in a week, employer has to pay 300% of the normal wage rate to the workers.

The daily working hours can be extended to the extent necessary to combat a danger/evil in the case of a catastrophe or imminent danger (loss or imminent risk to the life of a worker or employer, or the very existence of the company). In such a case, overtime (hours and higher compensation) rules do not apply and workers are paid their normal compensation for extra hours of work.

In a recent court judgement, the Second Chamber of Supreme Court has concluded that to calculate overtime pay, minutes exceeding the regular working hours must be counted cumulatively for a week and a worker be paid in full hour units. For example, if a worker works 140 minutes overtime over the course of a week (some days 20 minutes, other days 40 and some days no overtime at all), the worker is paid overtime rate for the full hour units only, ie, 2 hours only and the extra 20 minutes are not paid.

Sources: §123-A-XI of the Mexican Constitution, §58-68 of Federal Labour Law; Decision (No. 107/2018) by the Second Chamber of the Supreme Court

Night Work Compensation

Work performed between 20:00 hours and 06:00 hours is considered night work. Those working at night have to work only 7 hours to be eligible for full wages. In Mexico, night workers are not paid a premium rate for working at night rather their work hours are reduced from 8 hours to 7 hours.

Sources: §123 of Political Constitution of Mexico, §60 & 61 of Federal Labour Law

Compensatory Holidays / Rest Days

There is no provision of compensatory rest day when a worker has to perform work on a weekly rest day or a public holiday.

Weekend / Public Holiday Work Compensation

The Federal Labour Law provides for granting extra pay to workers for working on weekly rest days and Public Holidays.

If an employee works on the weekly rest day/Sunday, he/she is paid 125% of the basic hourly wage for each hour worked during the period.

If a worker works on a public holiday, he/she is paid at least 200% of the normal wage.

Sources: §71 & 73 of Federal Labour Law

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Mexico has ratified the Conventions 14 & 106 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Federal Labour Law 1970, last amended in 2018

Paid Vacation / Annual Leave

The Federal Labour law provides annual leave to its workers depending on the length of service/seniority. Workers are entitled to annual leave as follows:

- 6 working days when the length of service is one year;
- For the next 3 years, annual leave is increased by two days for every year of service so that when a worker completes 4 years of service, length of annual leave is 12 calendar days;
- On completion of every 5 years of service, worker is eligible for two extra days of annual leave.

It can be concluded that a worker with 5 years of service in Mexico is eligible for 14 working days of annual leave. Annual leave can't be replaced with remuneration for these days and they can avail at least 6 days of continues leave. Workers are required to be given the annual leave within six months on the completion of reference year of work. Labour law does not set the minimum qualifying period for annual leave and says that if the employment relationship ends before year is completed, employee is entitled to wages in proportion to the length of service. Annual leave is fully paid and workers are paid a special bonus of 25% for the holiday period in addition to the usual pay for the period.

Workers have the right to take annual leave within 6 months of the reference year of work. An employer has to issue yearly record for each worker stating his length of service, period of leave entitlement (based on length of service) and dates on which leave is to be taken. Splitting of annual leave is allowed and workers have the right to enjoy continuously at least 6 days of annual leave. Compensation in lieu of annual leave is not allowed except in the case of termination of service before enjoyment of annual leave.

Sources: §76-81 of Federal Labour Law

Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). The Public Holidays are generally seven (7) in numbers. Public Holidays in Mexico fall in two categories. Dias Feriados obligatorios (compulsory holidays) and Dias Feriados otorgados usualmente (commonly granted) holidays.

Commonly granted holidays include Battle of Puebla Day, Mother's day and Lady of Guadalupe Day.

The mandatory holidays are January 01; First Monday in February to commemorate Constitutional Holiday; Third Monday in March to commemorate Benito Juarez Day; May 01; September 16; Third Monday to commemorate Revolution Day; December 01 every six years; December 25; and local and federal election days.

Sources: §74 of Federal Labour Law

Weekly Rest Days

Weekly rest period is provided under the Federal Labour Law. Every worker is entitled to enjoy a weekly rest of 24 hours. The weekly rest day is Sunday. In jobs requiring continuous work, employer and worker may agree on some other day as the weekly rest day. A worker cannot be required to work for more than six consecutive days without a day's rest.

Federal Labour Law provides for a daily rest break of 30 minutes for adult workers. Young and adolescent workers, on the other hand, are entitled to a rest break of at least one hour between two work periods on the same day. Domestic workers are also entitled to enjoy enough breaks in a working day to take meals and rest at night.

Daily rest period on completion of working day is not clearly provided in the Federal Labour Law.

Sources: §63, 69-71, 177, 333 of Federal Labour Law

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Mexico has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018

Written Employment Particulars

Federal Labour Law states that Individual employment contract, whatever its form or name, is that by virtue of which a person is obliged to work in a subordinate position against the payment of a salary.

A contract of employment may be executed for a fixed term, indefinite term, specific task, specific season, initial training and probation/ trial period. In the absence of express terms, the contract of employment is construed as the indefinite term contract. An agreement or settlement must be in writing. Working conditions must be in writing if there are no applicable collective agreements. Worker has to be given a copy of written employment particulars. Employment contract must be concluded in Spanish however it does not preclude parties from having a copy in another language provided that in the case of conflict, the Spanish version prevails.

The employment particulars include following information: Name, nationality, age, sex, marital status, Unique Key Population Register, Federal Tax and address of the worker and the employer; duration of contract (fixed term, seasonal, initial training/apprenticeship and indefinite term contract) and whether the contract is subject to a probationary period; the service or services to be provided, which have to be determined as accurately as possible; the place or places where the work has to be performed; daily working hours; the form and amount of salary; the date and place of payment of wages; training; and other conditions, such as days-off, holidays and other terms agreed upon between the employee and the employer.

The lack of the written statement does not deprive the employee of rights arising out of labour standards and the services provided. The employer is charged for lack of fulfilling the formality.

Sources: §20, 24-26, 33-35 of Federal Labour Law

Fixed Term Contracts

A contract of employment may be executed for a fixed term, indefinite term, specific task, specific season, initial training and probation/ trial period. In the absence of express terms, the contract of employment is construed as the indefinite term contract. A contract of a specified duration may be made only in case where the nature of the work to be done so requires; or when the contract is to provide a temporary substitute for another employee; and in the other cases provided for in this Act.

If the work is still unfinished for which the fixed term contract was concluded, the employment relationship may continue for as long as this circumstances allow.

The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in Mexico in Spanish, please refer to: <https://misalarario.org>

Fixed term contract workers have the same rights and obligations as indefinite term workers indefinitely, in proportion to the time worked in each period.

Sources: §35-39 of Federal Labour Law

Probation Period

Probationary/trial period is fixed as 30 days for fixed term contracts (longer than six months in duration) and indefinite term contracts. The trial period may be extended up to one hundred eighty days/ six months only in the case of workers for management positions, managerial and other persons exercising management or administrative functions in the company or establishment or performing specialized technical or professional work. Trial period is similarly applicable to indefinite term contracts and project/task specific contracts where the length exceeds six months.

During the trial period, the employee will enjoy the wages, social security guarantee and performance of the category or post held. If the employee does not satisfy the skills requirements, the employer may terminate the employment relationship at the end of the trial period without any legal responsibility, after considering the opinion of Joint Commission for Training and Productivity.

Sources: §39-A of Federal Labour Law

Notice Requirement

According to the Federal Labour Law, there is a distinction between dismissal and termination.

Dismissal can only be justified by reasons related to the worker's conduct. Economic reasons and, worker's incapacity are considered to be grounds for termination in addition to other grounds such as force majeure, death of the worker, termination of the work.

The causes for dismissal are the following: use of false documentation to secure employment; dishonest or violent behaviour on job or against co-workers; threatening or abusing employer or his/her family except in self-defence; intentional damaging of property; causing serious damage to employer property by negligence; threatening the workplace safety; failure to follow workplace safety instructions; immoral behaviour at workplace or harassing any person at workplace; more than three unjustified absences in a 30-day period; reporting to work under influence of alcohol or other non-prescription drugs. Employee may appeal against the dismissal in the Board of Conciliation and Arbitration (Labour Court or Tribunal after Constitutional Reform of 2017) where employer has to prove that dismissal was justified. If employer is unable to prove the case, employee must be reinstated in the previous job or a constitutional indemnity equivalent three months' full salary including all benefits. Worker also has

the right to get back salaries from the date of dismissal to the date of case decision (award) by the Board.

Collective redundancy occurs when a company either permanently ceases to operate or closes a department or specific area of business due to definitive reduction of work. Following are the grounds for collective redundancy: force majeure not attributable to the employer; inability to operate at a profit; exhaustion of mineral resources in an extractive industry; permanent exhaustion of minerals in a mine; and bankruptcy resulting in permanent closure of company or reduction in its operations. In all cases except for force majeure and permanent exhaustion of minerals in a mine, the prior approval from the Board of Conciliation and Arbitration is required.

Federal Labour Law provides for three different types of severance of an employment relationship. These are temporary suspension, dismissal and termination.

The employer may dismiss a worker after serving a written notice which should clearly mention the reasons leading to dismissal of the worker. No statutory minimum notice period is provided under the law. If the worker refuses to receive such notice, the employer may inform the Board of Conciliation and Arbitration. If an employer does not observe the written notice, such dismissal is unjustified.

In June 2018, a Federal Law regarding Special Declaration of Absence for Missing Persons was enacted which, among others, sets the rights of the missing persons. Under the law, a special declaration of absence is issued specifying the employment information of the missing person. This protects the social security benefits of the missing worker's dependents. The missing person is considered on unpaid leave of absence while missing. Employers are prohibited to terminate the services of missing persons for whom the special declaration has been issued. Employers are required to reinstate the missing persons back into their original position once they safely return.

Sources: §42-47, 53, 132-XXIX, 133-XVI, 141 & 434 of Federal Labour Law; Source: Federal Law on Special Declaration of Absence for Missing Persons (06-22-2018)

Severance Pay

For individual just cause dismissal, no severance pay is provided. If employer is not able to provide the just cause for dismissal, he has to pay the worker full severance plus back pay. For indefinite term contracts, severance pay is three (3) months integrated salary plus twenty (20) days of integrated salary for every year of service. For fixed term contracts, severance pay is, in addition to three (3) months integrated salary;

- i. wages for half the length of total employment period if the fixed term contracts was for a period of less than one year; and
- ii. six month' wages for the first year of service plus 20 days wages for each additional year of service if the fixed term contract was for a period of more than one year.

If employment contract is terminated due to economic reasons, as stated in art. 434 of Federal Labour Law, the worker is entitled to three (3) months' integrated salary plus seniority award of 12 days wages per year of service. A worker with one year of service would thus be eligible for 126 days of wages.

Sources: §48-50, 434 & 436 of Federal Labour Law

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Mexico has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Federal Labour Law 1970, last amended in 2018

Paternity Leave

Workers are entitled to five working days of paid paternity leave on the birth of a child or in the case of adoption of an infant.

Source: §132.XXVII.Bis of Federal Labour Law

Parental Leave

There is no provision in the law on paid or unpaid parental leave.

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Mexico has not ratified both Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018
- Social Security Act

Free Medical Care

In the case of pregnancy, Social Security Institute provides women with obstetric care during pre-natal, confinement and post-natal periods.

Sources: §94 of Social Security Act

No Harmful Work

In accordance with the Political Constitution of Mexico, pregnant women shall not perform work that requires considerable effort and presents significant danger to their health in relation to their pregnancy. If a woman's or her child's health is endangered during pregnancy or nursing period, she may not be allowed to carry out dangerous or unhealthy work. Pregnant women may also not be allowed to work after 10 p.m. or overtime work. Dangerous or unhealthy work means work which, by its nature, by the physical, chemical or biological conditions of the environment in which it is performed or by the composition of the raw material used, is liable to affect the life and physical and mental wellbeing of a pregnant woman or of the fetus.

Sources: §123-A-V of Political Constitution of Mexico, §166-167 of Federal Labour Law

Maternity Leave

Female workers are entitled to 84 days (12 weeks) of fully paid maternity leave and any extension, if it is impossible for the woman to return to work on account of her pregnancy or confinement. To avail maternity leaves, worker must provide medical certificate from certified physician of a Social Security institute. Medical certificate must contain the name and professional license number of the person who issued, date and medical condition of the worker.

If the child was born with some disability or needs hospital care, leave may be extended by two weeks. If a pregnant worker can't work due to pregnancy or child birth, she is entitled to fifty percent of her salary for a period not exceeding sixty days.

Women are also entitled to six weeks of leave with pay in case of adoption of a child from the day they receive the child.

Sources: §123-A-V of Political Constitution of Mexico, §170 of Federal Labour Law

Income

Maternity leave of 84 days/12 weeks is a fully paid leave. It is funded through Social Security which is financed by the worker, employer and state contributions. In order to avail cash benefits, a worker must have contributed for at least 30 weeks during the 12 months preceding the date when payment is due to begin. In the case of extended leave due to pregnancy or child birth related problems, workers are entitled to 50% of her salary for a period not exceeding sixty (60) days.

Sources: §170 (5) of Federal Labour Law

Protection from Dismissals

According to the Political Constitution of Mexico, a pregnant woman retains her employment during maternity leave.

Federal Labour Law states that a women worker can't be dismissed during the period of her pregnancy. It is considered an unfair labour practice on the part of employer to fire a worker, directly or indirectly coerce her to resign for being pregnant, change in the marital status or due to having minor children under her care.

Sources: §123-A-V of Political Constitution of Mexico, §133 (15) of Federal Labour Law

Right to Return to Same Position

Right to return is guaranteed under the Constitution and Federal Labour Law and a woman worker is entitled to return to her previous position after availing her maternity leave and even extended leave provided that she returns within a year of date of her giving birth to a child.

Sources: §123-A-V of Political Constitution of Mexico, §170 (6) of Federal Labour Law

Breastfeeding

The Political Constitution of Mexico and Federal Labour Law requires employers to provide two nursing breaks, each of 30-minute duration, for new mothers to breastfeed their child(ren) until a child is six (06) months old. The employer is also required to provide an adequate and hygienic place for women workers to breastfeed their children. If such place is not available at the employer's premises, working hours of an employee may be reduced by one hour.

Sources: §123-A-V of Political Constitution of Mexico, §170 (6) of Federal Labour Law

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Mexico has ratified Convention 155 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Federal Labour Law 1970, last amended in 2018
- Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace
- Mexican Official Standard NOM-017-STPS-1993
- General Regulation for Inspection and Enforcement Sanctions due to Violations of the Labour Legislation

Employer Cares

An employer is responsible for health and safety and risk prevention at work as required elsewhere in the Federal Labour Law. Employer is required to install and operate the factories, workshops, offices, and other places of work in accordance with the provisions of the rules and standards for safety & health in order to prevent accidents and illnesses. They must also take preventive and corrective measures as determined by the labour authority.

Employers are obligated to make available all necessary medicine and material to provide timely and effective first aid. Employer is required to disseminate information (through wall charts in prominent places) the provisions on occupational safety and health as provided under different rules & standards and different occupational hazards and dangers to which workers are exposed to.

For mine workers, Federal Labour Law provides that workers may refuse to provide services as long as they are not given proper training and skills to enable them to identify the risks they are exposed to, means to avoid exposure to such risks and do their work in safety and if they are not provided personal protective equipment or not trained in its use. Employer obligations are clearly outlined in Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace.

Sources: §132 (16-18), 475BIS & 343-D of the Federal Labour Law, §5 of the Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace; §6 of the Mexican Official Standard NOM-018-STPS-2015, of 17 September

Free Protection

Employers are required to provide personal protective equipment to the workers in order to avoid the occurrence of workplace hazards. In accordance with the Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace, employer is under obligation to provide personal protective equipment to occupationally exposed employees as well ensure that workers are trained in its used and they properly use it. Mexican Official Standard NOM-017-STPS-1993 requires an employer to provide different types of personal protective equipment like goggles, ear plugs, gloves, masks, safety shoes, etc, to the workers to ensure their safety.

In accordance with a 2008 Standards on Personal Protective Equipment, employers are required to provide workers with the equipment to mitigate worker's exposure to risk agents. Employers are required to train workers in the use of personal protective equipment, its maintenance and cleaning and ensure that workers use the equipment as required under the Standard.

Workers are also required to use the equipment as provided by the employer and in accordance with the training. They are further required to inform the employer when the equipment no longer protects or where the maintenance is required and if it needs to be replaced.

Sources: §343-C-IV of the Federal Labour Law, §5.10 Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace, Mexican Official Standard NOM-017-STPS-1993; Mexican Official Standards NOM-017-STPS-2008, on Personal Protective Equipment-Selection, Use and Management in the Work Centres

Training

Employers are required to ensure that workers have been provided such information, instructions and training on the risks and dangers they are exposed to in the course of their duties. Law also requires that workers are informed about the various regulations and standards on health and safety and their applicability to different occupational hazards. Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace requires the employer to provide training especially to occupationally exposed personnel every 12 months on safety and health among other issues like radiation safety.

Sources: §153(A-X) of Federal Labour Law, §5(8) of the Mexican Official Standard NOM-012-STPS-1999 on Safety conditions and hygiene in the workplace; §6(7) & 11 of the Mexican Official Standard NOM-018-STPS-2015, of 17 September

Labour Inspection System

The labour inspection system is provided both under Federal Labour Law and General Regulation for Inspection and Enforcement Sanctions due to Violations of the Labour Legislation. Although Mexico has not ratified C081, its inspection regime seems closer to the provision of this convention.

The Labour Inspectorate monitors compliance with labor standards; provides technical information and advice to workers and employers about the most effective way to meet the standards of work; and informs the authorities about deficiencies and violations of labor standards observed in companies and establishments.

Sources: §540-550 Federal Labour Law; General Regulation for Inspection and Enforcement Sanctions due to Violations of the Labour Legislation

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08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Mexico has ratified the Convention 102 only.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Social Security Law
- Federal Labour Law 1970, last amended in 2018
- Ley de Seguro Social, 1995 - implemented in 1997 and last modified in 2012

Income

Sick Leave Benefits are provided by the IMSS (Mexican Social Security Institute) to every insured worker with at least four weeks of contributions immediately before the incapacity began; for casual workers, at least six weeks of contributions in the last four months before the onset of the incapacity or sickness.

If the insured worker had at least eight continuous weeks of contributions prior to leave, medical benefit's coverage is extended for up to eight weeks after covered employment ceases.

Sick employees are paid 60% of their integrated salary (total salary + benefits) from the fourth day of illness by the IMSS (Mexican Social Security Institute). The sickness benefit is usually paid for the period of 52 weeks however it can be extended to 78 weeks.

Employment contract of an employee is temporarily suspended if an employee is ill due to a non-work related cause. During the period of sickness, employee is not obliged to render services and the employer is not obliged to pay him/her a salary.

Sources: §42.I&II of Federal Labour Law, §96-98 of Social Security Law and IMSS website

Medical Care

Medical benefits are available to the insured workers (including dependents). These include general, maternity, dental, and specialist care; surgery; hospitalization or care in a convalescent home; medicine; laboratory services; and dental care from the beginning of disease for a period of 52 weeks. If illness continues, treatment may be extended by 52 weeks in consultation with doctor.

Medical services are normally provided directly to patients through the health facilities of the Social Security Institute; the Institute reimburses the costs of services when it cannot provide them directly.

Sources: §91-93 of Social Security Law

Job Security

Employment of a worker is secure during the term of his/her unpaid sick leave. Contract of employment is suspended for the time fixed under the Social Security Law up to a maximum of 52 weeks (or in extreme cases up to 78 weeks). IMSS (Mexican Social Security Institute) also fixes maximum period for curing of a disease. The employee must return to work within a day after the cause of contract suspension has ended.

Sources: Art. 43-45 of Federal Labour Law

Disability / Work Injury Benefit

Work injuries may be classified on the basis of their consequences as those resulting in: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

There is no minimum qualifying period and injuries on the way to and from workplace are covered.

In the case of permanent total incapacity/disability (decrease in permanent working capacity of 100), 70% of the insured's earnings in the last year before the disability began is paid.

In the case of permanent partial incapacity (decrease in permanent working capacity of more than 50%), the disabled worker will receive a monthly amount depending on the degree of disability at a percentage of full pension. If the assessed degree of disability is 26% to 50%, a percentage of the full pension is paid according to the assessed degree of disability or a lump sum of 5 years of pension is paid. In the event of disability lower than 25%, a lump sum of 5 years of pension is provided.

In the case of temporary disability, from the first day up to one year (52 weeks), the worker receives monthly payments equal to the monthly income until certification of permanent disability.

In the case of fatal injury, 40% of the deceased's permanent disability pension is paid to a widow(er) or partner. In case of remarriage or cohabitation with new partner, the pension ceases and a lump sum of three years pension is paid. 20% of the deceased's pension is paid for each orphan younger than age 16 (age 25 if a student, no limit if disabled), 30% for a full orphan. If there is no widow(er) or orphan, 20% of the deceased's pension is paid to each eligible mother or father. As a funeral grant, a lump sum of two months of the legal minimum wage in Mexico City is paid.

Sources: §58 & 64, Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012; ISSA Country Profile 2017

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Mexico has ratified Convention 102 only.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Federal Labour Law
- Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012

Pension Rights

For full pension, a worker must have attained 65 years of age with at least 1250 weeks of contributions. In case the insured worker has reached the required number of years but not the weeks of contributions, he/she may withdraw the balance of his individual account or continue to contribute to cover the weeks needed to get pension. The amount of old age pension is determined by various factors, although the basis is the guaranteed pension, which corresponds to a minimum wage updated annually according to the National Index of Consumer Prices.

There is also provision for social insurance pension which is paid to workers aged 65 years and above with at least 500 weeks of contributions. Employment must cease to qualify for this pension.

There is the option of severance early pension, which can be provided when the worker has reached 60 years of age and 1250 weeks of contribution but doesn't have a job.

It is also possible to have an early pension when the worker is less than 60 years old, has reached 1250 weeks of contribution and doesn't have a job. In this case, pension is provided only if the calculated amount is not less than 30% of the guaranteed pension (minimum wage).

Monthly minimum guaranteed pension is paid in case the calculated pension is less than the guaranteed pension at the age of 65 with at least 1,250 weeks of contributions.

Old age pension is increased of 15% if the pensioner has a partner, 10% for each child under age 16 (25 if student or disabled), 10% for each financially dependent parent (only if the pensioner has no wife or children), 15% as an employee's supplement, only payable if there is no other supplement.

Sources: §138, 154-164 Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012; ISSA Country Profile 2017

Dependents' / Survivors' Benefit

Survivor's benefit is provided to the survivors if the insured worker was a pensioner or had at least 150 weeks of contributions by the time of death and the death must not be the result of an occupational injury. A funeral grant is provided with at least 12 weeks of contributions in the last nine months.

Eligible survivors are a widow(er) or cohabiting partner with children; a widow(er) without children who was married to the deceased for at least six months, if

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the deceased was younger than age 55 at the date of marriage; at least 12 months if the deceased was aged 55 or older at the date of marriage or if the deceased was a pensioner. Other eligible survivors are a cohabiting partner without children who lived with the deceased for at least five years; children up to age 16 (25 years for students, no age limit for disabled); and parents if there are no other eligible survivors. All eligible survivors must have been dependent on the deceased.

The amount paid to the widow or to permanently and totally disabled widower is 50% of the projected or actual old age pension. 20% is given to each eligible child, 30% if a full orphan. If there is no eligible partner or child, then a benefit of 20% is paid to each parent. All survivor benefits combined must not exceed 100% of the reference payment or the deceased's pension.

Funeral grant is paid as a lump sum of twice the legal monthly minimum wage in Mexico City. Benefits may be payable abroad; if leaving Mexico permanently, the pensioner may request a lump sum of two years of pension.

Source: §127-137, Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012; ISSA Country Profile 2017

Unemployment Benefits

Law does not provide for unemployment benefit from government. Federal Labour Law provides for severance/redundancy pay equal to a lump sum of three months of pay plus 20 days of pay for each year of service, if employment contract is terminated due to economic reasons.

In case of unemployment, worker is allowed to partially withdraw money from his/her Retirement Subaccount (Subcuenta de Retiro).

Unemployed persons with at least five years of contributions may withdraw an amount equal to 90 days of their average earnings in the last 250 weeks of contributions or 11% of the individual account balance, whichever is lower.

Unemployed persons with three to five years of contributions and at least 12 bi-monthly contributions to the Social Security Institute may withdraw an amount equal to 30 days of their covered earnings used to calculate contributions, up to 10 times the legal monthly minimum wage in Mexico City.

One withdrawal is permitted every five years.

When the insured persons return to work, the amount withdrawn during unemployment may be replaced and the number of contribution weeks recuperated.

Sources: §191, Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012, §436 of Federal Labour Law

Invalidity Benefits

Disability pension is paid for permanent total disability (loss of at least 50-74% of normal earnings capacity) and it requires 250 weeks of contribution (150 weeks, if disability is more than 75%). The monthly benefit is 35% of the insured's average adjusted earnings in the last 250 weeks of contributions.

Dependent's supplement @ 15% of the insured worker's pension is paid for a wife or partner and 10% is paid for each child younger than 16 years (25 years for students, no age limit for disabled). If there is no wife, partner, or child, 10% is paid for each dependent parent.

Constant attendance allowance is paid up to 20% of the insured's pension. In case the monthly benefit is less than the minimum pension set by law, the government makes up the difference.

Sources: §119 – 126, Ley de Seguro Social, 1995 – implemented in 1997 and last modified in 2012; ISSA Country Profile 2017

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Mexico has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018
- Law of Women's Access to a Life Free of Violence 2007
- Federal Penal Code
- Federal Law to Prevent and Eliminate Discrimination (FLPED) 2003
- General Law on Equality between Men and Women 2006
- National Human Rights Commission Act 1992
- General Law for Inclusion of Persons with Disabilities 2011
- National Institute for Women Law 2001

Equal Pay

In accordance with the Mexican Constitution, equal wages shall be paid for equal work regardless of sex or nationality. The Federal Labour Law also requires that equal work done under similar working conditions, time and place should lead to equal pay. Federal Labour Law also supports the principle of equal pay for equal work without any discrimination on the grounds of sex, age or nationality.

Sources: §123-A-VII of the Mexican Constitution, §3 & 5 of Federal Labour Law

Sexual Harassment

Harassment and sexual harassment are defined for the first time in Federal Labour Law through 2012 amendments. Harassment is the use of power in a relationship of subordination by the aggressor against the victim through use of verbal or physical aggression. Sexual harassment is a form of violence when, although there may not be a relationship of subordination, there is an abusive use of power which leads to the victim's risk and inability to defend herself/himself, irrespective of the fact that this conduct may be carried out one or several times.

Employers are prohibited from engaging in harassment/sexual harassment against any person in workplace or allow or tolerate acts of harassment in the workplace. Workers are also prohibited from sexually harassing any person in the workplace or engage in immoral acts. An employer who engages in any discriminatory treatment in workplace or perform or allow/tolerate acts of sexual harassment may be fined from 250 to 5,000 times the minimum wage. An employee may be terminated for committing any immoral act or engaging in harassment/sexual harassment against any person in the workplace. Similarly, an employee may lawfully terminate contract of employment if he/she is subjected to harassment/sexual harassment at the workplace. A penalty consisting of a fine equaling up to 40 days wages, may be imposed against a person who, on an on-going basis, sexually harasses another person of either sex, taking advantage of his/her hierarchical position derived from their employment, educational, domestic or any other kind of relationship which implies subordination. Sexual harassment will only be sanctioned when it causes damage to the victim. If harassment is committed by a public servant, he or she will be dismissed from office.

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Sexual Harassment is considered a type of violence against women and is dealt under the Law of Women's Access to a Life Free of Violence 2007.

The law also requires the federal and state governments to:

- (i) Establish public policies that guarantee the right of women to live free of violence in their relations and / or teaching;
- (ii) Strengthen the criminal and civil context to ensure punishment for those who harass others;
- (iii) Promote and spread in society that sexual harassment and sexual harassment are crimes, and
- (iv) Provide free psychological & specialist care as well as legal aid to a victim of harassment or sexual harassment.

Sources: §3-bis, 47-VIII, 51-II, 133-XII&XIII, 135-XI & 994-VI of Federal Labour Law, §13-15 of the Law of Women's Access to a Life Free of Violence 2007, §259-Bis of Federal Penal Code

Non-Discrimination

In accordance with the Constitution, women and men are equal before the law and all discrimination motivated by ethnic or national origin, gender, age, handicaps/disability, social condition, health, religion, opinions, preferences, marital status, or any other discrimination that violates human dignity and has the objective of restricting or diminishing the rights and liberties of persons is prohibited.

Federal Labour Law also prohibits discrimination among workers on the grounds of ethnic or national origin, gender, age, disability, social status, health status, religion, immigration status, opinion, sexual orientation, marital status or any other ground that is against human dignity. Law requires that employers “treat employees with due consideration and without mistreatment by word or deed”, while Law prohibits employers from “refusing employment (to an applicant) based on ethnic or national origin, gender, age, disability, social status, health status, religion, opinion, sexual orientation, marital status or any other discriminatory criteria. Finally, the law provides that “women have the same rights and obligations as men. Other relevant laws are Federal Law to Prevent and Eliminate Discrimination (FLPED) 2003, General Law on Equality between Men and Women 2006, National Human Rights Commission Act 1992, General Law for Inclusion of Persons with Disabilities 2011 and National Institute for Women Law 2001.

Sources: §01 & 04 of The Mexican Constitution; §3, 132-VI, 133(I) & 164 of Federal Labour Law, Federal Law to Prevent and Eliminate Discrimination (FLPED) 2003, General Law on Equality between Men and Women 2006, National Human Rights Commission Act 1992, General Law for Inclusion of Persons with Disabilities 2011 and National Institute for Women Law 2001.

Equal Choice of Profession

Women can work in the same industries as men as no restrictive provisions could be located in the laws.

In accordance with the Constitution, "no person may be prevented from engaging in the profession, industrial or commercial pursuit, or occupation of his or her choice, so long as it is lawful. The exercise of this liberty may only be forbidden by a judicial determination when the rights of a third party are infringed or by a government resolution, issued in the manner provided by law, when the rights of society are undermined. No one may be deprived of the fruits of his or her labour except by judicial resolution".

Sources: §1 (Chapter 1 of First Title) of Mexican Constitution

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Mexico has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018

Minimum Age for Employment

Mexican labour law provides that it is unlawful to employ children under the age of 15 years. Children between the ages of 15 and 16 may work under certain circumstances (with the permission of their parents or guardians and in their absence with the approval of Conciliation and Arbitration Board-CAB or Labour Inspectorate). They should have completed their compulsory education, except in cases approved by the CAB. The maximum working day for children between 15 and 16 years of age is six working hours. If a child under 15 years of age is working out of family enterprise and is detected by Labour Authorities as such, he/she is ordered to cease the work immediately. An employer who violates the minimum age provision may be fined 250-5,000 times the minimum wage and an imprisonment for a term of one to four years.

Sources: §3, 31, 123-A-III of the Mexican Constitution, §5, 22, 23, 173-180, 988, 995 of Federal Labour Law, last amended in 2015

Minimum Age for Hazardous Work

The minimum age for hazardous work is set as 18 years. The use of children under 18 years in overtime, night work, Sundays and compulsory rest days is prohibited. For work involving hazardous waste, work in confined or noisy places, welding/cutting, construction, mining, underground and underwater work, night work after 10 p.m., agriculture, forestry and fishing, work involving loads heavier than 7 kilograms etc, the minimum age is 18 years. The workers under 18 years are allowed annual leave of at least 18 working days. Employers who have at their service workers under 18 years are obliged to: require workers to exhibit medical certificates proving they are fit for work; keep track of special inspection, indicating the date of birth, age, type of work, hours, wages and other general working conditions; distribute the work so that the necessary time to fulfil their school curricula; provide training and guidance; and provide the labour authorities requesting reports.

The compulsory education age in Mexico is 18 years.

Sources: §3, 31, and 123-A-II of the Mexican Constitution, §3,5, 22, 23, 173-180 of Federal Labour Law, last amended in 2015

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Mexico has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018
- Law to Prevent, punish and eradicate crimes relating to trafficking and to protect and assist the victims of these crimes, 2012

Prohibition on Forced and Compulsory Labour

Forced Labour and slavery is prohibited under the Constitution and no worker (whether local or foreign) can be subjected to inhuman treatment. Forced Labour is also prohibited under a new law and the perpetrator of this crime may be punished with an imprisonment term ranging from 10-20 years along with 5,000 to 50,000 times the daily wage of the person who committed this offense.

Sources: §01 of the Mexican Constitution; §21-24 of the Law to Prevent, punish and eradicate crimes relating to trafficking and to protect and assist the victims of these crimes, 2012

Freedom to Change Jobs and Right to Quit

There is no provision in the law about notice however if a worker decides to terminate the employment for certain just causes (listed in art. 51 of the Federal Labour Law), they may give 30 days' notice and leave before completion of 30 days without any liability. Workers leaving for just cause are eligible for severance payment as provided under the labour law.

Sources: §50 & 51 of Federal Labour Law

Inhumane Working Conditions

Maximum working hours are 8 hours a day and 48 hours a week for day workers for day-time workers, 7 hours per day and 42 hours per week for night-time workers while 7.5 hours a day and 45 hours a week for mixed-shift (day+ night) workers. Working hours can be extended beyond the normal daily and weekly hours; however these hours may not exceed 3 hours a day and three times a week, i.e., 9 hours a week.

Sources: §123-A-XI of the Mexican Constitution, §60-66 of Federal Labour Law

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Mexico has ratified Convention 87 only.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Political Constitution of Mexico 1917, last updated in 2017
- Federal Labour Law 1970, last amended in 2018

Freedom to Join and Form a Union

Union is an association of workers or employers set-up to study, improve and defend their interests. Constitution and labour law provide for freedom of association and allow workers and employer to join and form unions as well as professional associations. Workers are allowed to join unions without prior authorization. Similarly, no one can be forced to join or not join a union.

The unions must register with the Ministry of Labour and Social Security in competition cases and the federal Conciliation and Arbitration in the local competition; and observe the principles of legality, transparency, accuracy, generosity, directness, fairness and respect for freedom, autonomy, equity and democracy junction. The administration must not subject unions to dissolution, suspension or cancellation of registration, by administrative means.

Unions are prohibited from interference in religious matters, and exercising in trade for profit. The unions are dissolved by a vote of two-thirds of the members belonging to them, and on expiry of the term fixed in the trade union statutes.

Sources: §123-A-XVI of the Mexican Constitution, §354-385 of Federal Labour Law

Freedom of Collective Bargaining

Right to collective bargaining is regulated under the Federal Labour Law and unions and employers can reach agreement on various working conditions.

Collective Bargaining Agreement is an agreement between one or more trade unions and one or more employers, or one or more unions of employers, in order to establish the conditions under which the work must be paid in one or more companies or establishments.

The collective bargaining agreement is written in triplicate, a copy for each of the parties and one is deposited in the Conciliation and Arbitration Board or the Federal or Local Board of Conciliation, que after noting the date and time of submission of the document send it to the Federal or Local Board of Conciliation and Arbitration.

The Contract is effective from the date and time of submission of the document, unless the parties have agreed on a different date.

The collective bargaining agreement ends by mutual consent; on completion of the work, and other cases provided by the law.

A Decree was published on February 24 amending different paragraphs of Articles 107 and 123 of the Mexican Political Constitution. The Decree has set a timeframe of one year in which the federal and state labour legislation must comply with the Decree. The Constitutional reform has introduced significant changes to the structure and operation of Labour Courts in Mexico. Below are the main changes:

The Conciliation and Arbitration Boards (Commissions), with the mandate to hear and resolve employment related controversies, are replaced with specialized labour courts or labour tribunals which will form part of the judiciary. The proposed labour courts/tribunals will not carry out conciliation rather the conciliation will be administered by the Conciliation Centres. An independent decentralized entity will be created both at the state and federal level for conciliation purposes. This decentralized agency will also be in charge of registering all the collective agreements applicable within the Republic, registering trade unions or other unionized organizations in the country and participating in and solving all administrative labour matters. Prior to commencing strike action seeking a collective agreement, a union is required to prove that it represents majority of workers in a company. The Constitutional reform further provides for personal, free and secret ballot voting for the election of leaders and conclusion of collective agreement as well as in the event of trade union conflicts.

However, the above changes will be applicable only once the necessary changes in the Federal Labour Law have been made within one year from 25 February 2017.

The Council for Dialogue with the Productive Sector was established in 2001 under a Presidential Decree. It is a permanent tripartite consultative and coordination body. The Council is composed of ten representatives each from worker, employer and government sectors. The members are appointed for a term of two years. The purpose of the Council is to elaborate, update and implement the National Development Plan and Programs in the labour sector, analyse problems affecting the labour sector and propose solutions to those problems, promote an environment conducive to dialogue and social peace, propose measures to raise the real wages of workers and generate jobs, suggest actions to increase the worker productivity and enterprise competitiveness, etc. The Council meets every two months.

Sources: §107 and 123 of the Mexican Constitution; §386-403 of Federal Labour Law; Decree Relating to Employment Justice Through Which Different Paragraphs of Articles 107 and 122 of the Political Constitution of the United Mexican States are Amended and Modified

Right to Strike

A strike is a temporary suspension of work carried out by a union of workers. Right to strike is provided under the constitution and regulated under article 440-471 of the Federal Labour Law.

A strike is legal when they have their purpose to achieve a balance among the various factors of production, by harmonizing the rights of labour with those of capital. In public services, it is obligatory for workers to give notice to the Board of Conciliation and Arbitration (Junta de Conciliación y Arbitraje) ten days before the agreed upon date for the suspension of work. Strikes are considered illegal (ilícitas) only when the majority of the strikers engage in acts of violence against persons or property, or in the event of war, when the workers are employed by establishments or services in which the government relies. Under the Constitutional Reform of 2017, the workers are required to notify Labour Courts before strike action as Board of Conciliation and Arbitration are dissolved. However, these provisions will be applicable only once the necessary changes in the Federal Labour Law have been made within one year from 25 February 2017.

Workers on strike must continue to provide service if employed in ships, aircraft, trains, buses and other vehicles that are in route, must continue to their point of destination; and in hospitals, nursing homes, clinics and like establishments continue the care of patients at the time of suspending the work until they can be transferred to another facility.

Sources: §123-A-XVI-XVIII of the Mexican Constitution, §440-471 of Federal Labour Law



DECENT WORK QUESTIONNAIRE

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Check

Decent Work Check Mexico is a product of WageIndicator.org and
www.misalarario.org



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





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- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

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Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Mexico scored 41 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.