

Alert | Labor & Employment



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2019 Mexican Federal Labor Law Amendment

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On May 1, 2019, Mexico's Federal Official Gazette published a decree setting forth major amendments to Mexico's Federal Labor Law (FLL) (Decree). The Decree follows and articulates the February 2017 amendment to the Federal Constitution that, among other things, (i) confirmed union freedom and confidential voting by union members, (ii) set forth the creation of labor courts to replace the conciliation and arbitration boards as the entities in charge of labor and employment dispute resolution, and (iii) provided for the creation of an autonomous entity to rule collective labor issues.

The Decree's major focus is on new provisions to rule collective rights, emphasizing the following:

- a prohibition on employers directly or indirectly getting involved with, interfering, or meddling in union matters;
- democracy within unions, setting forth confidential employee voting at every stage of union life, from formation to execution and revisions of Collective Bargaining Agreements (CBA); and
- transparency in union-related matters, from the union's finances and administration to employers' obligation to inform all employees of the existence of CBAs.

Likewise, the Decree sets forth a new structure to manage union life and labor disputes by replacing the federal and local conciliation and arbitration boards (which currently oversee all labor and employment disputes and administer union obligations and CBAs) with labor tribunals that will form part of the

judicial branch. In addition, it provides for local “Conciliation Centers” and a “Federal Center for Conciliation and Labor Registry” to serve as pre-trial mandatory venues that seek settlement of employee-related disputes prior to allowing parties to enter into full-fledged litigation with the labor tribunals – for which new procedural rules are also included in the Decree.

Following are the most relevant issues on collective matters included in the Decree.

A New Government Entity in Charge of Collective Matters

The Decree provides for a “Federal Center for Conciliation and Labor Registry” (FCCLR – *Centro Federal de Conciliación y Registro Laboral*), which will (i) act as a mandatory mediator in collective disputes (except in the case of disputes between unions pertaining to entitlement to a CBA, where no pre-conciliation is required and which are to be directly solved by the labor tribunals through the Special Collective Trial), (ii) serve as registry of unions and of CBAs – federal- and local-activity related, (iii) oversee employee voting pertaining to CBAs, and (iv) issue representativeness certificates, which will be used by unions as essential documents to file claims requesting execution of a CBA.

The FCCLR will be a decentralized public entity. It will have a chairman and a board comprising the heads of the ministries of Labor and of Tax, the heads of the National Institute of Statistics, Geography and Informatics, the National Institute of Transparency, Information Access and Personal Data Protection, and the National Institute of Elections.

Transparency

- Confidential, direct, and free voting of individual union members and employees is required for most union activities and on all issues relating to collective bargaining.
- Union leadership must provide a full account of union assets under management to its members.
- Employers are required to inform employees of the existence of any CBA and to deliver to each of them a copy of such CBA.

Prohibition on Employer Meddling in Union Matters

The FLL already included a provision prohibiting employers from intervening in union life. The Decree reinforces this restriction by:

- expressly forbidding employers from carrying out any actions to control the union to which its employees belong; and
- prohibiting “meddling actions,” which include any actions or measures taken by employers with the intent of promoting the formation of workers organizations controlled by such employers, or employers supporting any worker’s organization with the purpose of controlling them.

Union Formation

The Decree states that workers are free to organize themselves in any way they see fit, and are not required to select any of the union classifications set forth in the FLL.

New rules are included for the organization of unions and union confederations, among these:

- unions and union confederations must now register with the FCCLR only (previously the FLL provided for registration to be made with the conciliation and arbitration boards – federal or local – or with the Ministry of Work);
- to be registered, unions must include the names of their members – not only the number of members, as previous law mandated;
- union bylaws (required to be filed for registration with the FCCLR) must now include the union rules for carrying out annual salary revisions and the bi-annual full CBA revision. These rules must be agreed by the majority of the workers covered by such CBA through their personal, free, and confidential vote; and
- union leadership must have a set, finite duration.

The Decree also sets forth the following:

- in cases where a union extorts an employer by requesting payments in cash or in kind to withdraw a strike petition or to refrain from filing or continuing with a challenge for entitlement of a CBA, such actions may be the basis for a petition of cancellation of the union’s registration with the FCCLR; and
- unions cannot participate in schemes seeking avoidance of contributions or fulfillment of employer obligations, nor can they assume the role of employers so that real employers evade their obligations.

Collective Bargaining

The Decree provides new rules for first-time CBAs and for the annual CBA salary revision and bi-annual full CBA revision.

a) Representativeness Certificate

Among these new rules, the most important is the creation of a “Representativeness Certificate” to be issued by the FCCLR to evidence that a union represents the workers of an employer and has their vote to either (i) claim execution of a CBA from an employer or (ii) revise such CBA (annual salary or bi-annual full CBA revision). The Representativeness Certificate is now a requirement for a union to file a claim to a CBA, which is a major difference from current FLL provisions on the subject. Previous FLL provisions provided that any union could file a claim for a CBA with respect to an employer, and verification of such union’s representing the employer workers would only take place after the company refused to enter into a CBA and to strike – this was the basis for proliferation of “white unions” and “protection CBAs.”

A Representativeness Certificate will be needed for a union to claim the execution of an initial CBA:

- All CBAs, subject to local or federal venue, must be registered with the FCCLR. The registration of a CBA requires the prior filing of the relevant union’s Representativeness Certificate and the executed CBA, among other items. Currently, the FLL provides for CBAs relating to companies with federal venue business activities to be registered with the federal conciliation and arbitration boards, and CBAs relating to companies with local venue activities to be registered with local conciliation and arbitration boards.
- The relevant union must first request from the FCCLR the issuance of a Representativeness Certificate. Such request must have attached to it a list containing the name, the national identification number (CURP), date of hiring, and signature of employees backing such union. The employees must represent at least 30% of the personnel of the employer that will be governed by the CBA.

- Within three days after receiving the Representativeness Certificate request, the FCCLR will publish on its website a notice on the Representativeness Certificate request, place such notice at the relevant work center where the CBA will apply, and ask the employer to publish/set the notice inside such work center so any other union may adhere to such request.
- Any union wishing to adhere to the request filed by another union to be issued with a Representativeness Certificate for the same employer may do so by filing its own request within 10 days after the publication of the notice mentioned above, the union having to also attach to its request the signed list of employees evidencing it represents at least 30% of the personnel of the employer that will be governed by the CBA. The employees listed in this document may be the same as those appearing in the other union's list.
- If only one union requested the Representativeness Certificate, then the FCCLR will need to verify, with the authorities it deems appropriate, the authenticity of the employees appearing and signing the employee list attached to such union's request, and that those employees represent at least 30% of the target company's employees to be covered by the relevant CBA. Once confirmed, the FCCLR will issue the Representativeness Certificate to such union.
- If more than one union requests the Representativeness Certificate, then the certificate will be given to the union that obtains the majority of the vote, provided employees voting represent at least 30% of the employees of the relevant employer that will be governed by the CBA. To do this, the following rules will apply:
 - The FCCLR will confirm that each union represents at least 30% of the employees that will be governed by the CBA.
 - The FCCLR will prepare a list of the employees who work at the employer and will be voting, by requesting information from any relevant authorities it deems has pertinent information on the subject. The list will include employees who have been dismissed by the target employer within the three months before or after the date in which the union filed its request (employees who resigned their jobs are not to be included), but will not include any members of management ("*empleados de confianza*"). The Decree expressly forbids employers from intervening in the formation of the list.
 - Once the employee list is formed, the FCCLR will call a vote by all employees on the list, specifying the date, time, and place for voting. The call must be issued within 10 to 15 days before the voting date. The call notice will be placed at the target company's headquarters and published in the FCCLR website.
 - The voting will take place at a location to be decided by the FCCLR and be administered/overseen by the FCCLR. Workers will vote in a personal and confidential manner, using ballots furnished by the FCCLR.
- Although the Decree does not expressly say this, it may be implied that if unions requesting the Representativeness Certificate do not represent at least 30% of the employees of the target company that would be represented by a CBA, no Representativeness Certificate will be issued, and theoretically, the employer could remain union-free.
- The Representativeness Certificate will be valid for six months. As such, it may be implied that if a union does not execute a CBA after six months from issuing the Representativeness Certificate, the union would need to request a new one and the procedure will commence again.

b) Initial Collective Bargaining Agreement

The Decree requires the employees be subject to the initial CBA and must agree on its content through an affirmative majority vote. Such voting must take place once the union that obtained the Representativeness Certificate has negotiated the CBA with the employer. The following rules must be followed:

- At least 10 days before voting, the union must notify the FCCLR that it will submit the terms of the CBA to the vote of the employees; this notice must contain the date, time, and place where the voting will occur, and attach a copy of the CBA draft.
- At least 10 days but no more than 15 days before voting, the union must issue a call for the vote, specifying date, time, and place. *No language is included in the Decree as to how employees should be notified of the call or required characteristics of the voting location. The union's only responsibility is to ensure that the place is easily accessible to all employees.*
- The union must make available to employees, in a "timely" manner, the proposed CBA. *No further text is set forth in the Decree as to how or when this needs to take place.*
- The union must publish its results at the working center within two days of voting. It has three days after voting to communicate the results to the FCCLR, which will publish them on its website.
- The union does not have to show the FCCLR the voting slips but needs to maintain them for at least five years in case confirmation of the voting results is needed.
- The employer cannot participate in the foregoing process.

If the majority of the employees voted in favor of the CBA contents, the union may file the CBA and request its registration. If, however, the employees did not approve the CBA, the union may either (i) renegotiate the CBA's provisions with the employer, or, incredibly, (ii) **initiate a strike and suspend all work at the work center of the employer.**

Should the employer refuse to enter into a CBA with the union that received the Representativeness Certificate, the union may commence a strike. In such case, the validity of the Representativeness Certificate will be extended throughout the duration of the strike.

c) CBA Renewal

For the bi-annual full CBA revision, the Decree sets forth that the union must have the revised CBA voted on by the employees of the company, under the same voting rules as the initial CBA. As with the initial CBA, the voting minutes must be maintained by the union for five years for evidence in case of litigation.

The Decree in its Transitory Article establishes that all CBAs existing at the time the Decree comes into effect must be fully revised at least once within the four years following May 2, 2019.

d) New Special Collective Proceedings

The Decree provides that new Special Collective Proceedings will apply to, among others, the case where a union challenges another union with a CBA in place with an employer for entitlement to the CBA. The pre-conciliation procedure with the FCCLR would not apply in this instance.

The trial will be conducted before a labor tribunal. With one union challenging another union, such proceedings will be decided exclusively by employee voting.

The labor tribunal will request from the Mexican Social Security Institute, the Tax Ministry, the Workers Housing Institute, the employer, and the FCCLR information relating to the employees who will vote on the issue, and it will administer the voting process. The union that secures more votes will be given the right to maintain or execute the CBA with the employer.

FCCLR and Labor Tribunals

The Decree provides that the FCCLR should commence operations no later than two years from the effective date of the decree, May 2, 2019, and the Labor Tribunals should commence operations no later than three years from that date.

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