



News

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July 2020



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USMCA

AND LABOR IMPLICATIONS IN MEXICO

On July 1, 2020, the agreement entered into effect that will govern the operation of maquiladoras over the next years of the USMCA. This new agreement includes, in Chapter 23, particularly challenging guidelines regarding labor matters that allow for workers' rights to be guaranteed, mainly in matters of collective association, among others.

This new agreement between the countries of North America also includes a mechanism for dispute settlement to handle conflicts arising in labor matters. This is found in Chapter 31 and its annexes, which has the purpose of providing an immediate response to a Denial of Rights. During the process of this mechanism, companies will have the opportunity to remedy the violation in question.

One important aspect to highlight is that the aforementioned mechanism allows one of the parties (USA or Canada) to request the remediation of a Denial of Rights at a Covered Facility (a facility in Mexico's priority sector that produces goods or provides services commercialized between the parties, or which competes with the other party's goods or services). Consequently, breach of the agreement will have repercussions for these facilities in Mexico.

There is a path included in this mechanism focusing on remediation and the resolution of complaints, which includes the establishment of panels if a satisfactory agreement cannot be reached between the parties.

SCOPE IN LABOR MATTERS AND DISPUTE SETTLEMENT

CHAPTER 23

With the goal of reaffirming the commitments made by the parties as part of the ILO's declaration from 1998 regarding the fundamental principles and rights at work (for which Mexico has ratified 8 agreements), this chapter now includes Labor matters:

Agreements 89 and 98: Freedom of association and the effective recognition of the right to collective bargaining.

Agreements 29 and 105: The elimination of all forms of forced or compulsory labor.

Agreements 100 and 111: The elimination of discrimination in respect of employment and occupation.

Agreements 138 and 182: The effective abolition of child labor and the immediate prohibition of its worst forms.



Let's review what this Chapter tells us:

LABOR

Statement of Shared Commitments

1. The Parties affirm their obligations as members of the ILO and its Declarations, including those stated in the ILO Declaration on Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization (2008).

2. The parties also recognize the goal of trading only in goods produced in compliance with this Chapter.

General Provisions

- a) The right to choose **to join a union or not**.
- b) The abolishment of agreements commonly known as "Protection Contracts" signed without workers' consent.

- I. The creation of an independent entity to register collective bargaining agreements (Federal Center for Conciliation and Labor Registry), the main purpose of which is to verify the majority of initial collective bargaining agreements.
- c) The establishment of an effective, transparent and independent justice system for labor matters through:
 - I. Autonomous entities for labor conciliation.
 - II. The transfer of functions from the executive branch to the judicial branch through the establishment of labor courts.
- d) Guaranteeing effective collective bargaining, in which collective agreements and their revisions are approved by the majority of workers (personal, free, **direct** and secret vote) with supporting documentation and inspections.
- e) Guaranteeing conditions to protect against forced labor, as well as violence against children, immigrants and discrimination.

CHAPTER 31

For provisions regarding dispute settlement between the parties, in general terms, the parties agreed to keep most of the provisions previously regulating Chapter 20 of NAFTA. These allowed a party to present a claim against another party when it considered that there was a breach of the commitments contained in the agreement. Just like NAFTA, the mechanism for dispute settlement establishes either Party's right to request a panel (made up of five members) to analyze and resolve the controversy. The main addition to this chapter is the inclusion of the **Rapid Response Labor Mechanism**.

This mechanism was improved through the inclusion of new provisions. A significant advantage of this compared to NAFTA is that it can be used to deal with disputes arising in labor and environmental matters, granting a higher degree of certainty in the performance of the commitments made by the three countries in the USMCA.

Let's review what this Chapter tells us:

DISPUTE SETTLEMENT

Cooperation

The Parties shall at all times endeavor to agree on the interpretation and application of this Agreement, and shall make every attempt, through cooperation and consultations, to arrive at a resolution.

Rapid Response Labor Mechanism in the event of controversy

1. Objective: To guarantee the remediation of a denial of rights at a Covered Facility.

- a) Denial of Rights: on collective matters (**freedom of association and collective bargaining**)
- b) Priority Sectors: Services, manufacturing, aerospace, automotive, cosmetics, baked goods, steel, aluminum, glass, pottery, plastics, forgings and cement

2. Panel

- a) The panel shall comprise five members with expertise in international law, international trade, etc., and be independent of the parties.

CHAPTER 31



3. Mechanism

- a) It begins on the grounds of a **good faith basis belief** by the complainant Party.
- b) The complainant Party requests that the respondent party be investigated.
- c) If the respondent Party wishes to investigate, then the panel applies.
- d) If the respondent Party investigates, it has 45 days to deliver the results of the investigation.
- e) If the respondent Party determines that there has been no denial of rights, then the complainant Party may then accept this or request the verification and determination of penalties from the **panel**.
- f) If the respondent party determines that there has been a denial of rights, the parties may agree within 10 days on a course of remediation, with the complainant Party being prevented from imposing penalties.
- g) If after the agreed upon date has passed, and there has not been sufficient remedy, then the **panel** applies.
- h) The panel shall suspend the imposition of remedies
- i) Penalties:
 - I. Suspension of preferential tariff treatment
 - II. Sanctions on affected merchandise
 - III. Only if there has been a determination on two prior occasions shall the denial of entry of goods been imposed.
- j) If a party abuses this mechanism, they shall be prevented from using it for 2 years.

CHALLENGES OF THE USMCA FOR THE MAQUILA INDUSTRY IN MEXICO

The right of workers to choose their union, decide not to be represented, and have the ability to freely choose their leaders, must be respected, and agreements commonly known as “Protection Contracts” made without workers’ knowledge, participation or approval must be eliminated. Unions must work in favor of their members and seek for workers to join, and companies must be able to adapt and work with all unions in pursuit of business continuity.

Companies must oversee compliance with agreements reached through the approval of the majority of workers, maintain close communication with the union and workers, take actions to improve the personnel’s quality of life, and have this reflected in improved productivity, quality and business results. They must also develop the necessary leadership and negotiation skills with personnel, consequently avoiding avoid dissent among workers, bad deals, violations of their rights that lead to strikes, and work stoppages or controversies, arising from breach of agreements.

With workers having the mechanisms to enforce their labor rights, companies that are able to work with their employees, unions and executives towards a common good will succeed in improving both their business results and workers’ quality of life.

American Industries® acknowledges the efforts laid out in the new USMCA texts and applicable laws, efforts which are the reflection of a more conscious and human society that seeks to find a balance between the factors involved in economic development.



American Industries®

Our Human Resources committee, which is made up of experts in the field in their respective regions, are already prepared, designing and implementing actions focused on always being in full compliance with regulations, thereby ensuring the proper operations for our clients in Mexico.

Rodrigo Romo
Querétaro

José Fuentes
Juárez

Berenice Beltran
Monterrey

Yesica Ramírez
Real Estate

Juan Carlos Chávez
Guanajuato

Héctor Morales
Guadalajara

Mexico COVID-19 STATS

In times of COVID-19, companies are adapting their operations to meet regulatory demands and implementing practices that allow them to ensure the health and safety of workers, while at the same time guaranteeing business continuity.

To date in Mexico, operations have been resuming gradually, with greater oversight in compliance with COVID-19 health measures. We are monitoring the operational guidelines issued weekly based on the risk stoplight in each locality.



**CONFIRMED
CASES**

408,449

**NEGATIVE
CASES**

455,087

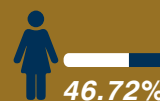
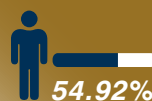
**SUSPICIOUS
CASES**

89,978

**DECEASED
CASES**

45,361

MEN / WOMEN





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