



GUIDE TO GOING GLOBAL EMPLOYMENT

Mexico



Downloaded: 01 May 2024

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

To learn more about DLA Piper's global Employment practice, visit www.dlapiper.com or contact:

Brian Kaplan
Co-Chair, Global Employment practice
brian.kaplan@dlapiper.com

Ute Krudewagen
Co-chair, International Employment practice
ute.krudewagen@dlapiper.com

Pilar Menor
Co-Chair, Global Employment practice
pilar.menor@dlapiper.com

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.

MEXICO



Last modified 30 March 2023

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Mexican Peso (MXN). The official language is Spanish.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot directly engage employees in Mexico without setting up a branch or subsidiary. Proper payroll registrations are required. Social security, tax and union contributions withholdings may apply, depending on the employee's category and income.

PRE-HIRE CHECKS

Required

Immigration compliance.

Permissible

Under Mexican law, there are few restrictions on an employer's right to request substantiating documents and confirm the information provided by the applicant regarding their education, health condition, finances, drug use, family situation and criminal background. Employers have broad flexibility regarding the questions that may be asked during the application process.

Criminal background checks are permissible; however, only the employees in question themselves can request such information from the corresponding authority. Credit checks are not common in Mexico as there is no specific procedure established by law for employers to obtain credit information. Reference and education checks are common and permissible with applicant consent.

IMMIGRATION

A foreign national requires an immigration document (ie, temporary visa) authorizing them to live and work in Mexico. Such visas are valid for 1 year and renewable for up to 4 additional periods, after which time the holder

may apply for a permanent visa. It is the employer that must file a visa application with the Mexican immigration authorities.

HIRING OPTIONS

Employee

Indefinite, fixed-term, training, part-time and seasonal or intermittent. Fixed-term agreements may only be executed under specific circumstances (eg, temporary replacement of an employee on maternity leave).

Independent contractor

Independent contractors may be engaged. Specific rules (ie, judicial criteria) must be followed in order to reduce misclassification exposure.

Agency worker

Agency workers are no longer permitted. A company may hire a specialized services provider only for activities that are different from the core business of the company receiving such services. The specialized service provider must be registered with the registry of specialized services provider maintained by the Ministry of Labor. Otherwise, the company receiving the services could be subject to monetary sanctions.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A written employment agreement must be executed.

Probationary periods

Employees hired pursuant to an indefinite employment agreement or a fixed-term agreement of at least 180 days may be hired subject to a probationary period of up to 30 days, extendable by up to 180 days if the employee is hired as an executive, manager or director or fills an administrative position.

Policies

Depending on the number of employees, written training and productivity policies (ie, policies addressing training and productivity or professional development plans) as well as health and safety policies are mandatory and must be reviewed annually. An internal work policy may be issued in order to cover the general rules to be followed within the company and expected conduct at the workplace.

Third-party approval

Labor board approval of the employment relationship is required if the employee is 15 to 18 years old, or if the employment agreement is executed under Mexican law, but the activities are performed abroad.

LANGUAGE REQUIREMENTS

No statutory requirements. However, Spanish is recommended as Mexican authorities require all employment documents to be in Spanish or translated into Spanish.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

Up to 48 hours a week for workday shifts, 42 hours a week for night shifts and 45 hours a week for mixed shifts. Employees must have at least 1 paid day off every 6 days. It is common business practice for employees to work 48 hours per week distributed among 5 days.

Overtime

An employee may not be required to work more than 3 hours greater than the number of hours in the statutory workday during a given shift, or more than 9 hours in a given week. An employee working overtime on a given day is entitled to double compensation for each hour of overtime. In the event the employee works more than 9 hours overtime in a given week, the employee is entitled to triple the applicable hourly wage for each hour of overtime.

Wages

Minimum wage is established by geographical areas and/or for specific professions or specific professional fields. There are currently two geographical areas for the purposes of determining minimum wage. The minimum wage in 2023 for 43 counties in the Northern Border is MXN312.41 per day. The general minimum wage for the rest of the country is MXN207.44 per day. Minimum wage is set up every year by the National Commission of Minimum Wages. Before the new administration took office in 2018, the minimum generally increased annually in accordance with the National Consumer Price Index (INPC).

Vacation

An employee who has worked for more than 1 year is entitled to at least 12 days of paid vacation. The number of mandatory vacation days increases by 2 working days for each following year until it reaches 20 vacation days.

Thereafter, the vacation period increases by 2 days for every 5 years of service.

Sick leave & pay

If an employee cannot work due to illness or an accident, they must obtain a medical authorization from the Mexican Social Security Institute (IMSS) in order to receive pay for the days on which the employee could not attend work.

Maternity/parental leave & pay

Women have the right to 6 weeks of paid leave prior to the birth of a child and 6 weeks following the birth of a child. Women may allocate up to 4 of the 6 weeks of the pre-birth leave to the post-birth leave period. If a child is born with disabilities or requires medical attention, the post-birth paid leave may be extended by up to 2 additional weeks.

In case of adoption, female employees are entitled to 6 weeks of paid leave following placement of the child.

A male employee is given 5 business days of paid paternity leave when his spouse gives birth or when he adopts a child.

Other leave/time off work

Employees with children aged up to 16 years old who have been diagnosed with cancer are entitled to an unpaid leave of absence for medical care where there is a need for critical treatment or hospitalization. The leave amounts to a period of 1 to 28 days and may be extended as necessary for a period of 3 years up to 364 days of leave of absence. Employees must submit the Leave Certificate issued by the IMSS.

DISCRIMINATION & HARASSMENT

Employers may not discriminate against employees or job candidates on the basis of age, ethnic origin, race, sex, citizenship, disabilities, health conditions, religion, opinions, sexual orientation, marital status or any other criteria.

WHISTLEBLOWING

N/A.

BENEFITS & PENSIONS

The Social Security Law regulates employer, employee and government participation in certain federal social benefit programs through the Mexican Institute for Social Security (*Instituto Mexicano del Seguro Social* or IMSS). Registration of an employee with the IMSS relieves the employer from the following risks and obligations:

- Work-injury-related risks
- Health and maternity insurance

DATA PRIVACY

To process personal data, data controllers must provide a privacy notice to the affected employees prior to the collection and processing of such personal data. In the case of data transfers, the privacy notice must contain the name of the transferee or the person to whom the information is transferred. All transfers of personal data to domestic or foreign third parties must be pre-approved by the data subject (ie, the employee).

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Employment transfers may be implemented via an employer substitution letter. Employment transfer through substitution of employer is only effective if the assets related to the business are also transferred. Transferred employees are entitled to receive at least the same benefits and perform their work subject to the same terms and conditions as before the transfer. The employer who has been substituted will be jointly responsible with the new employer for a period of 6 months.

EMPLOYEE REPRESENTATION

Trade unions are prevalent in certain sectors, such as the sugar, railway, automotive and mining industries as well as the public sector, especially the education and energy industries. A union may be formed by at least 20 employees in a certain workplace; however, employees who are affiliated with an existing union may request, through that union, to sign a collective bargaining agreement with their employer, provided they represent at least 30 percent of the employees at the workplace.

There are no works councils or other employee representatives.

TERMINATION

Grounds

An employer may rescind an employment relationship without incurring any liability if any of the justified causes established by law are given, which are mostly based on misconduct. Technically, the employer cannot terminate employment without cause, except in specific cases established in the labor law. In practice, however, exposure in an unlawful termination lawsuit is mostly limited to statutory termination payments, so most terminations may be implemented either through employee resignations (with all statutory payouts, including severance), or through a mutual termination agreement (also with all statutory payouts, including severance).

Employees subject to termination laws

All employees.

Restricted or prohibited terminations

If the employment relationship is suspended (eg, when an employee is on maternity leave).

Third-party approval for termination/termination documents

No third-party approval is required, but it is common for employees to sign a resignation letter or a waiver and release letter in front of the labor authorities.

Mass layoff rules

No mass layoff rules.

Notice

No notice period.

Statutory right to pay in lieu of notice or garden leave

Not applicable under Mexican law.

Severance

Integrated salary of 90 days (ie, the last annual average of the employee's income), plus 20 days' integrated salary for each year of services rendered, a seniority premium equal to 12 days' wages for each year of services rendered (subject to a limitation up to twice the minimum wage) and accrued benefits.

POST-TERMINATION RESTRAINTS

Non-competes

Post-termination non-compete clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

Customer non-solicits

Post-termination customer non-solicit clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

Employee non-solicits

Post-termination employee non-solicit clauses or agreements are not enforceable. However, such provisions are typically included in employment agreements because they can have a deterrent effect and may create a sense of moral obligation on the part of an employee.

WAIVERS

Enforceable; however, employees cannot waive their right to receive mandatory benefits or rights.

REMEDIES

Discrimination

No specific sanctions are in place.

Unfair dismissal

The employer must pay the severance payment plus the claimant's unpaid wages from the day they were unfairly dismissed until 1 year thereafter, plus a monthly increase of 2 percent of the claimant's total amount awarded as well as any proven unpaid benefit (eg, overtime, bonuses and commissions), plus 20 days' integrated salary for

each year of service rendered (this amount is only applicable in case the employee demands their reinstatement and the employer rejects it).

Failure to inform & consult

Not applicable under Mexican law.

CRIMINAL SANCTIONS

Employees may be subject to criminal sanctions if they do not honor their non-disclosure agreement.

Employers may be subject to criminal sanctions if they pay to their employees less than the minimum wage or employ children under 15 years old.

KEY CONTACTS



María Eugenia Ríos Espinosa

Partner

DLA Piper Mexico

maria.rios@dlapiper.com

T: +52 55 5261 1805

[View bio](#)

Disclaimer

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication.

This may qualify as 'Lawyer Advertising' requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2022 DLA Piper. All rights reserved.