

NATIONAL LABOR RELATIONS ACT **vs.** MEXICAN LABOR LEGISLATION POST-USMCA

A COMPARATIVE ANALYSIS

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EXECUTIVE SUMMARY

In 2019, Mexico implemented its landmark labor reform to change the country's "protection union" labor regime, allowing more independence and transparency of union organizing. The modifications corresponded to the government's commitments to the United States-Mexico-Canada Agreement (USMCA) Article 23 and Annex 23-A and to the execution and ratification of Convention 98 of the International Labor Organization regarding the Right to Organize and Collective Bargaining. Notably, the U.S. has not ratified the Convention due to a "direct conflict" to its national labor law – the National Labor Relations Act.

After May 31, all of Mexico's pre-reform collective bargaining agreements were either legitimized or cancelled. The future for Mexico will look like America to some extent – unions will have to recruit members, win battles for recognition, and negotiate contracts successfully. However, significant distinctions exist.

To help HR Policy Global members understand the differences between the two national labor laws and ensure compliance, Roger King, Senior Legal Counsel, HRP; Dante Trevedan, International Partner of Norton Rose Fulbright; and Carlos R. Martin del Campo C., Partner, Baker McKenzie, have put together a comparative analysis of the laws' key components, including origin of authority, regulatory structure, judicial oversight, employee rights, election procedures, campaigns, certification, strikes, negotiations and bargaining, ULP, union financial reporting, replacement of strike workers, and transition periods.

The information does not, and is not intended to, constitute legal advice; instead, it is for general informational purposes only. Please reach out to HR Policy Global for any questions.

ABOUT THE AUTHORS



G. ROGER KING

Senior Labor and Employment Counsel, HR Policy Association

Roger King is a highly regarded labor relations attorney, whose career spans more than 40 years. Roger recently retired as a partner with Jones Day law firm. He now serves as Senior Labor and Employment counsel for the Association.

Roger specializes in labor and employment, healthcare, collective bargaining, contract administration and representation campaigns. Roger represented the winning side as co-counsel in the landmark U.S. Supreme Court case known as Noel Canning, which successfully challenged President Obama's authority to make recess appointments to the National Labor Relations Board. ([full bio](#))



DANTE G. TREVEDAN

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Dante G. Trevedan focuses his practice on project finance and government procurement, particularly in the energy sector where he has successfully assisted bidders in the bidding processes called by Mexico's National Hydrocarbons Commission. His practice also includes advising on high-risk, anti-corruption labor law advice, investigation and litigation as well as mergers and acquisitions. ([full bio](#))



CARLOS R. MARTIN del CAMPO C.

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Carlos Martin del Campo is a partner in Baker McKenzie. He joined the Firm in June of 2002. He currently heads the Employment & Compensation practice for the Tijuana and Guadalajara offices.

He is an active member of the National Chamber of the Manufacturing Industry (INDEX) where he acts as Vice-President. Carlos has also been the President of the Labor & Employment Committee for the Human Resources Association in Tijuana (ARHITAC). ([full bio](#))

COMPARATIVE ANALYSIS

ORIGIN OF AUTHORITY

U.S. LABOR LAW – NLRA

- The Wagner Act, the Taft-Hartley Act, and the National Labor Relations Act as amended

MEXICAN LABOR LEGISLATION

- Mexican Constitution, constitutional reform (2017); ratification of convention 98 of the International Labor Organization (2018); approval of USMCA treaty including Annex 23 (2018); and legislation enacted by the Mexican Legislature—Federal Labor Law of Mexico (FLL)(2019)

REGULATORY STRUCTURE

U.S. LABOR LAW – NLRA

- Central Federal Authority (Federal Preemption)—National Labor Relations Board with five members and a general counsel all nominated by the President and confirmed by the U.S. Senate
- Regional offices/regional directors
- Regional offices receive petitions for union elections and investigate unfair labor practice charges filed by employees, employers, and unions
- Administrative law judges appointed by the NLRB hold hearings on unfair labor practice complaints
- Right to appeal by any aggrieved party from an ALJ decision to the National Labor Relations Board

MEXICAN LABOR LEGISLATION

- Federal Center for Conciliation and Labor Registry (FCCLR)(Centro Federal de Conciliación y Registro Laboral or “CFCRL”)—headed by a General Director selected by a governing board made up of heads of various government ministries
- Local conciliation offices and labor inspectors
- Conciliation offices receive and resolve charges and complaints, and oversee union elections— generally a 45-day period for conciliation process to function
- Oversee elections and publishes certified collective bargaining
- FCCLR oversees elections and publishes certified collective bargaining agreements in a national registry

COMPARATIVE ANALYSIS

JUDICIAL OVERSIGHT

U.S. LABOR LAW – NLRA

- Any adversely impacted party by an NLRB decision has the right to appeal such decision to a federal circuit court of appeal either in the circuit where it does business, where the dispute arose, or with the D.C. Circuit Court of appeals
- Federal rules of civil and appellate procedure govern how labor disputes are adjudicated
- Limited appellate option to the U.S. Supreme Court from federal circuit courts of appeals

MEXICAN LABOR LEGISLATION

- Federal labor courts established with broad judicial oversight—courts of the federal judicial power and state court
- Right to appeal conciliation officer determinations or failure of conciliation and other labor disputes to a newly created independent federal judicial branch—labor courts
- Rulings issued by the labor courts subject to amparo (Federal constitutional control appeal) proceedings
- Extensive procedures and requirements for the newly created labor courts

EMPLOYEE RIGHTS

U.S. LABOR LAW – NLRA

- Very broad rights to engage in protected concerted activity, including the right to organize and the right to engage in collective bargaining set forth in Section 7 of the NLRA
- Contains the right of individuals to refrain from union representation

MEXICAN LABOR LEGISLATION

- Numerous broad statements of employee rights including right of freedom of association (including strict employer intervention prohibition), right to select by secret ballot union representation, right to approve collective bargaining agreements and obtain copies of same, and right to hold unions accountable to employees

COMPARATIVE ANALYSIS

ELECTION PROCEDURE

U.S. LABOR LAW – NLRA

- Voting/bargaining units comprised of employees that share a “community of interests”
- Potential for multiple units at one employer site
- Potential for multi-site units
- Sector-wide bargaining units generally not available although multi-employer/union units do exist in certain areas of the country
- To begin the election process, 30% or more of employees in an appropriate unit must sign union authorization cards—a “showing of interest”—electronic signature permitted
- Supervisors, managers, and confidential employees generally excluded from bargaining units
- Majority vote of workers present and voting required for a union to obtain certification—no absentee voting permitted
- Employees, unions, and employers can file objections to elections and also file unfair labor practice charges if any party engages in threats, coercion, or interference of employee, union, and employer rights under the NLRA.
- Decertification or removal of unions by majority vote of bargaining unit members permitted

MEXICAN LABOR LEGISLATION

- Potential for sector-wide and/or area-specific units
- Supervisory/managerial exclusion—no apparent corresponding Mexican law, except employers prohibited from controlling labor organizations
- 30% of workers present and voting required for union certification—potential for 2 or more unions representing the same employees
- “The workers and the employers without any distinction and without previous authorization, have the right to establish the organizations they deem appropriate”
- Decertification could be an option by majority worker vote
- Employee Unions must be made up of at least 20 members
- In the case of a strike, a union’s certification of representation is valid for six months from the date on which it was issued
- “Exercise of personal, free, and secret votes”
- Five Procedural Rules (Article 371):
 1. Call for election issued with signature of the persons empowered to do so, specifying date, time, place
 2. Call for election must be published in union premises and in the places with the greatest number of members in the workplace – minimum 10 days’ notice
 3. Election must take place where safety and secrecy are guaranteed
 4. A complete and updated list of members of the union with the right to vote must be published and made known among membership at least three days before the election
 5. A procedure must be established to ensure the identification of members who have the right to vote
- Failure to comply with any of the rules renders an election invalid.

COMPARATIVE ANALYSIS

ELECTION CAMPAIGNING

U.S. LABOR LAW - NLRA

- Union, employees, and employers can all campaign—rival unions are permitted to intervene in certification and decertification elections.

MEXICAN LABOR LEGISLATION

- Law in Mexico is still being developed – prevailing thought is employers have no or little campaign communication rights with voting union employees – employer should not interfere employees’ union activities.

CERTIFICATION OF ELECTION RESULTS

U.S. LABOR LAW - NLRA

- If a union prevails, it has generally one year to negotiate an initial collective bargaining agreement —rival union raiding and decertification elections can be prevented for up to three years if the collective bargaining agreement is in effect for such term.

MEXICAN LABOR LEGISLATION

- A union’s certification of representation is valid for six months from the date on which it was issued.

SELECTION OF UNION OFFICIALS

U.S. LABOR LAW - NLRA

- Not covered by NLRA—the Labor-Management Reporting and Disclosure Act govern certain limited union internal affairs.

MEXICAN LABOR LEGISLATION

- Union officers must be elected by majority vote of covered workers with oversight from FCCLR and conciliation offices.

RIGHT TO STRIKE AND ENGAGE IN PROTECTED CONCERTED ACTIVITY

U.S. LABOR LAW - NLRA

- Right to strike protected and broad definition of protected concerted activity.
- No strike clauses permitted in collective bargaining agreements.

MEXICAN LABOR LEGISLATION

- Right to strike permitted subject to certain procedures and guidelines including pre-strike conciliation and union filing motion to strike evidencing employee representation.

COMPARATIVE ANALYSIS

CONTENT OF COLLECTIVE BARGAINING AGREEMENTS AND BARGAINING REQUIREMENTS

U.S. LABOR LAW – NLRA

- Generally left to the parties, although employers and unions are required by the NLRA to bargain over “mandatory subjects”, which generally include issues relating to terms and conditions of employment—the parties cannot be required to bargain, however, over permissive subjects of negotiation and illegal subjects
- Closed shop agreements permitted except in right-to-work states
- Collective bargaining agreements are not filed with the NLRB and are not public documents unless otherwise placed in the public domain by the parties—employer attempts to obtain private collective bargaining agreements regarding competitors can be the basis of a violation of U.S. antitrust laws
- Broad management rights clauses are often included in collective bargaining agreements—these provisions provide broad management discretion on how an employer can run their business

MEXICAN LABOR LEGISLATION

- Closed shop agreements not permitted
- CBAs must be in writing and employees covered by the agreement have a right to a copy of the labor contract
- CBAs must be reviewed at least once during a four-year period following their commencement
- CBA is terminated if not properly reviewed during such four-year period
- CBAs not ratified by 05/01/23 are now considered terminated.
- The FCCLR shall maintain a public registry of all CBAs

COMPARATIVE ANALYSIS

UNFAIR LABOR PRACTICES AND ELECTION OBJECTIONS

U.S. LABOR LAW - NLRA

- Regional directors of the NLRB investigate and attempt to resolve election objections—appeals from regional director decisions can be filed with the NLRB
- NLRB Office of General Counsel representatives investigate and attempt to resolve unfair labor practice charges and, if necessary, issue complaints with such complaints initially heard by ALJ's with the right of appeal to the NLRB

MEXICAN LABOR LEGISLATION

- Unions cannot “obligate by coercion or by any other means, to join or withdraw from the union or group to which they belong, or to vote for a certain candidacy, as well as any act or omission that violates their right to decide who should represent them in collective bargaining”
- Employers cannot “perform any act tending to exercise control over the union to which their workers belong”
- Workers and companies “shall have the right to bring before the Court the individual and collective actions that derive from the breach of obligations imposed in [the Act]”
- “Actions or measures tending to encourage the constitution of organizations of workers dominated by an employer or an organization of employers, or to support workers’ organizations in any way in order to place them under their control are considered acts of interference”
- Unions cannot participate in invasion schemes of contributions or breach in employer operations with respect to workers
- Unions cannot perform acts of violence against their members, the employers, their representatives, their property, or against third parties

COMPARATIVE ANALYSIS

UNION FINANCIAL REPORTING

U.S. LABOR LAW – NLRA

- Not covered by the NLRA, but unions must comply with certain reporting requirements contained in the Labor Management Reporting Disclosure Act (LMRDA) which is enforced by the U.S. Department of Labor

MEXICAN LABOR LEGISLATION

- Directors of unions are required to submit meeting minutes every six months and a complete and detailed account of the unions administration expenses and employees represented by the union have a right to request information from the union and from the FCCLR regarding the administration of union assets

TRANSITION PERIODS

U.S. LABOR LAW – NLRA

- Not applicable

MEXICAN LABOR LEGISLATION

- The FCCLR has recently begun operations
- The federal labor courts have recently started operations
- On May 1, 2023, all labor agreements covered by the FCCLR were submitted to a national registry
- CBAs not validated (*legitimados*) prior to May 1, 2023 were deemed automatically terminated

REPLACEMENT OF STRIKING WORKERS

U.S. LABOR LAW – NLRA

- Employers can either temporarily or permanently replace strikers if they strike is a “economic” strike
- Employers are prohibited from permanently replacing strikers in unfair labor practice strikes

MEXICAN LABOR LEGISLATION

- In most instances, employers cannot hire strike replacements either on a temporary or permanent basis
- Potential exceptions for critical public service employers
- Employers have the authority to hire replacements to maintain the physical security of the plant, its operations and the “conservation of the workplace”

EXPERT INSIGHTS



WENCHAO DONG

Director, Global Affairs
HR Policy Association

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The future of Mexico’s new unions will seek to recruit members and negotiate with companies and employers. Employers can no longer rely on a Protection Contract to prevent organizing. **This is not the time to do nothing.”**

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Newly union-free companies who want to stay that way will have to clean house. **At the top of their to-do lists will be the issues proven to gain the most traction for unions with workers** – profit share, gender equality, and wages and hours. Think now about U.S. approaches to workplace fairness that have not been at the top of Mexico’s agenda.”



ALAN WILD

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