Considerations on the New Legitimization Model of Collective Bargaining Agreements.

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The Federal Labor Law reform published on May 1, 2019 in the Mexican Federal Official Gazette establishes, among several topics, new considerations concerning the entering, revision and registration of collective bargaining agreements ("CBA").

The purpose of the new legitimization process is, among others, to prove that workers acknowledge and support the content of the CBA coming from the previous labor system, specifically those currently submitted before the Conciliation and Arbitration Boards. For the completion of such procedure, the authorities established a term of four years, with a deadline ending on May 2, 2023.

The legitimization of the CBA is carried out before the Federal Labor Conciliation and Registration Center ("FLCRC"), which was created based on the legal reform following the disappearance of the Conciliation and Arbitration Boards.

In order to file a "call for a strike for the execution of a CBA", the union filing the call for a strike must prove that it has the support of at least 30% of the workforce of the company. If there is more than one labor union in the company with a CBA, the labor union with majority representation of the workers will be the one to carry out the negotiations of the employees' working conditions, that is to say, said labor union will be the only one entitled to manage and request the revision of the standing CBA at the workplace.

For new agreements, once the union has the certificate of representativeness, the labor union must consult with the employees on the content of the CBA through the voting procedure established by law, before submitting it to the FLCRC authorities. For this purpose, the labor union will issue a call for the consultation and the employer must provide all employees with a printed copy of the CBA at least three business days prior to the voting date. The content of the CBA must be approved by the majority of the workers covered by it so the Ministry of Labor and Social Welfare can be able to validate it.

All CBA must be legitimized within four years after the reform becomes effective, otherwise they will be considered as terminated. If the legitimization process is not carried out before the term established in the law, or if the workers vote against it, the CBA will be considered as terminated. In these cases, the benefits and conditions contemplated in the agreement will be retained in favor of the workers. In turn, the workers may organize themselves to seek, if they wish, a new labor union to represent them. Additionally, it is important to note that labor union dues will not be mandatory for employees; therefore, if they do not agree to pay them, they will not be deducted.

It should be noted that companies doing business within Mexico, the United States and Canada are not only subject to their respective national legal provisions, but also need to comply with the agreements assumed in the T-MEC regarding collective bargaining and freedom of association. Among them is the adoption of the Rapid Response Labor Mechanism, through which trading partners can demand each other labor law compliance and, if they don't comply, they have the possibility of issuing trade sanctions, which can range from imposing tariffs to blocking imports. Although the labor union oversees enforcing the CBA, such sanctions are aimed directly to the companies.

The so called "Administrative" CBA's.

In the case of companies in which there is an "administrative" CBA, given the real absence of labor union life, the company could decide not to carry out the process of updating and complying with the reform, even if it would be advisable to continue with such agreement at the latest until May 2023, which is the date on which it will become mandatory for all CBA to be legitimized, thus, the company will be waiting for the authority to automatically terminate such CBA.

During the time that the "administrative" CBA is maintained, the payment of the annual revisions could be preserved with the labor union without actually being presented before the Labor Authority, with the objective of maintaining a good relationship with the labor union still holding the CBA. This will also help to demonstrate the existence of the CBA in the event of a review by the Ministry of Labor and Social Welfare during this transition period.

In addition, and in those same cases of companies that maintain an "administrative" CBA that are ultimately terminated, the companies should consider the preparation of a document in which each of the workers express their desire to not be incorporated into any labor union, based on the provisions of Section I of Article 358 of the Federal Labor Law, which establishes as a guarantee that no one can be forced to be part or not of a labor union, federation or confederation.

It is important to identify these changes that will be generated in the following months to be able to take measures and continue with an adequate labor union practice in the human resources within the company.

The effects of the reform are still in the process of implementation and to date, these issues have not been analyzed and resolved by any labor or judicial authority. We will be monitoring the implementation of the reform to examine and, if necessary, discuss with our clients any modifications or adjustments to the content of this memorandum as time allows for the labor courts to express themselves in some form on these matters.

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