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I. Basics of Mexico Labor Law[1]

1.1. - Sources of Law

- Mexico's Constitution of 1917

Article 123 of Mexico's Constitution, entitled "Labor and Social Security," expressly recognizes and protects employees' basic inalienable rights including, but not limited to: vacation, overtime entitlement, job stability, maximum work shift, maternity rights, social security rights, salary protection, profit-sharing entitlement, severance payment in case of unfair dismissal, freedom of association (the right to unionize), and collective bargaining rights, including the right to strike.

- Federal Labor Law of 1970

The Federal Labor Law ("FLL") is the primary employment law in Mexico and applies to all employees rendering services in Mexico, regardless of the employee's or employer's nationality, where the salary is paid or where the agreement is executed. The FLL establishes the minimum benefits to which employees are entitled, as well as employees' and employers' rights and obligations. This law further sets forth the procedural provisions for labor litigation and regulates labor authorities and their responsibilities.

- The Social Security Law of 1997

The Social Security Law ("SSL") regulates all matters related not only to the Mexican Institute of Social Security but also to employees' and employers' rights and obligations regarding mandatory social security. The SSL establishes that this regime is mandatory for all employees (whether permanent or temporary, full time or part time) regardless of how the relationship originates or the form of the employer's legal organization or business, even when the employer, by law, may be exempt from the payment of taxes or duties.

- The National Workers' Housing Fund Institute's Law of 1972

The National Workers' Housing Fund Law (the "INFONAVIT Law") requires employers to contribute an amount equal to 5% of the employee's daily earnings to the INFONAVIT to finance the construction of low-cost housing units.

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[1] The purpose of this document is to provide an abridged summary of some of the complex employment laws in Mexico, in order to assist employers in identifying potential obligations. This document is not an exhaustive list of the laws affecting the employer-employee relationship in Mexico nor does it provide a complete account of an employer's duties under the statutes. This information is not a substitute for experienced legal counsel and does not provide legal advice or attempts to address the numerous factual variations which inevitably arise regarding a specific issue.

1.2. - Employment Stability Principle

Mexico does not recognize the at-will employment doctrine. Rather, Mexico's labor law follows an employment stability principle that seeks to achieve balance and social justice in the employer-employee relationship. The employment stability principle favors the employee, assuring and protecting the permanency and continuity in the employment relationship, unless there is a cause of termination. Causes of termination are limited and established by the same FLL.

1.3. - Employment Agreements

The FLL establishes different types of employment agreements:

- Probationary and training periods

For employment relationships for *an indefinite term* or that is expected to last more than 180 days, employers are allowed to establish a probationary period to verify that the employee meets the requirements and has the knowledge needed to perform the job.

The probationary period may be for a term of up to 30 days, generally, or extended to up to 180 days for employees in managerial, technical or professional positions.

- Initial training period

For positions that require initial training, the employment agreement can be set for a term of up to three months, generally, or up to 180 days for managerial, technical or professional positions.

- Indefinite Period

As mentioned above, due to the principle of "employment stability", unless a contract specifies otherwise, it is deemed to be for an indefinite term, i.e., open-ended.

- Fixed Term

A fixed-term contract is enforceable only:

- If a fixed term is required by the nature of the work; or
- For a temporary replacement of an absent employee.

- Specific-task

A contract to carry out a specific task or project is enforceable only if required by the nature of the work to be performed.

If, at the scheduled end date of a *fixed-term or specific-task contract*, the work has not been completed, the employment relationship must continue as long as the work remains to be done.

1.4. - Employer–Employee Committees

Although the statute does not require employers to inform or consult with employees, employers are required to create joint committees, consisting of an equal number of employer and employee representatives, to deal with a range of matters. The required committees are:

- The "internal labor regulations " committee, which draws up these rules and files them with the relevant Conciliation and Arbitration Board;
- The safety and hygiene committee;
- The training and productivity committee;
- The profit-sharing committee, which calculates the share of the company's profits to which each employee is entitled for each fiscal year, under the statutory profit-sharing scheme; and
- The seniority committee, which draws up a general table indicating each employee's length of service, by position, occupation or job, and displays it at the workplace.

There are no statutory rules on how the employee representatives should be selected for these committees. In practice, the relevant trade union is the de facto employee representative in companies covered by a collective bargaining agreement, whereas employees elect their own representatives in companies not covered by a collective bargaining agreement.

1.5. – Unions

Workers' freedom of association is recognized and guaranteed by the Constitution and various employment legislations. Accordingly, workers have the right to organize for the defense of their interests by forming or joining a trade union.

Coercing employees to join or not join a trade union is illegal and employees generally are entitled to join any union of their choosing. Likewise, employers are prohibited from coercing employees into joining or leaving unions and from interfering in internal union affairs.

Prior to December 1, 2012, legislation allowed collective agreements to include a closed-shop clause, providing that employers may hire only members of the trade union that is a party to the agreement, and allowing the employer to dismiss an employee who resigns from or is expelled from that union. Such clause was repealed by recent legislation. Further, employees in a position of trust and confidence - such as managers - cannot join the same unions as other employees. A minimum of 20 workers can set up a trade union. All unions must be registered with the public labor authorities. Union organizations can, by law, take the form of:

- Craft unions, consisting of workers in the same occupation, trade or craft;
- Company unions, consisting of employees in the same company;
- Industrial unions, consisting of employees of two or more companies in the same sector;
- National industrial unions, consisting of employees of one or more companies in the same sector, established in two or more states of Mexico; and
- General unions, consisting of employees in various occupations.

Unions can form federations and confederations, which must also be registered with the authorities.

An employer whose employees are members of a trade union is required to sign a collective agreement with that union, if so requested by the union, for purposes of trade union recognition. Failure of the employer to do so is a legitimate reason for strike action. Only unions that have a collective agreement with an employer have representation rights in the organization concerned.

Recognized unions have various entitlements, such as the right to information from the employer about vacancies and newly created posts, union membership contributions deducted from employees' pay, and paid time off for representatives for some union-related activities.

Unions also represent employees in negotiations of collective redundancies, investigations conducted by the employer, disciplinary actions against union members, among other areas.

1.6. - Collective Bargaining Agreements

Collective agreements are defined by law as agreements reached between one or more trade unions and one or more employers (or employer organizations) with the aim of establishing work conditions in one or more undertakings or establishments.

An employer whose employees are members of a trade union is obliged to sign a collective agreement with that union, if so requested by the union. Failure by the employer to do so is a legitimate reason for the employees to strike. If more than one union has members working for the same employer, the agreement generally must be entered into between the union that has the most members among the employees, although there are some circumstances, for example with craft unions, in which separate agreements may be formed.

Collective agreements must be in writing and will be effective on the date on which a copy of the agreement is filed with the relevant Conciliation and Arbitration Board, unless the parties have agreed to a different date of commencement. At a minimum, collective agreements must include:

- Names and addresses of the contracting parties;
- Undertakings and establishments covered by the agreement;
- Agreement’s duration, or a statement to the effect that it will apply for an unspecified period or for the performance of a particular project;
- Hours of work;
- Rest days and annual leave;
- Pay levels;
- The training to be provided to employees, including initial training for new recruits; and
- Rules for the establishment and operation of the various joint employer-employee committees that must be created in accordance with the law.

The pay provisions of collective agreements must be revised every year, and the other provisions every two years.

A collective agreement must not provide for conditions that are less favorable for employees than those under any agreements that already apply to the undertaking or establishment.

The provisions of collective agreements apply to all employees in the undertaking or establishment concerned, whether members of the signatory union or not. This includes employees in a position of trust and confidence, such as managers, unless the agreement provides otherwise.

Collective agreements are generally binding on only the signatory employers and their employees. However, legislation allows for a special form of sector-wide collective agreements known as “contrato-ley” which are legally binding union contracts covering an entire industry at a national, state or local level and made official by the government, at the request of unions representing at least two-thirds of unionized employees in the particular area of coverage. In practice, collective bargaining occurs predominantly at single-employer level, with few "contrato-ley" or sector-wide agreements in place.

As discussed above, a trade union has a right to strike in order to pressure an employer to sign a collective agreement if the union has any members among the employer’s workforce. The union

does not need to have a majority of members in the workforce in order to exercise this right. This potential for strikes creates a considerable incentive for employers to have a duly registered collective agreement in place.

1.7. - Right to Strike

Employees have a constitutional right to strike. Strikes may be called by trade unions or other temporary groupings of workers. To be lawful, a strike must have as its objective:

- Attain a balance between the rights of the employer and the employees;
- Pressure the employer to sign, revise or comply with a collective agreement;
- Obtain annual pay increases;
- Force the employer to comply with its obligation to make profit-sharing payments; or
- Support a strike at another employer aimed at achieving any of the aforementioned objectives.

Employers are obliged to negotiate in cases where a union calls a strike over:

- The annual revision of collectively agreed pay rates;
- The two yearly revisions of the collective agreement; or
- A breach by the employer of the terms of an existing collective agreement.

Strikes require majority support among the workers concerned. A trade union is required to file with the relevant Conciliation and Arbitration Board a strike notice prior to a planned strike, which the Board must forward to the employer within 24 hours of receipt. The notice must state the union's demands, its intention to strike and the objectives of the strike. The strike must not commence until six days after the employer has been given notice of the planned strike (10 days if public utilities are involved). The employer must file a written response within 48 hours of receipt of the notice. The Conciliation and Arbitration Board then holds a hearing to try to find a settlement to the dispute. The parties may by agreement postpone the commencement of the strike in an attempt to reach a settlement.

Once a strike begins, the employer has a window of 72 hours to petition the Conciliation and Arbitration Board to declare the strike illegal. The Board will do so if the strike has an unlawful objective or lacks majority support. Both parties are given an opportunity to be heard. If the Board determines the strike to be illegal, employees must return to work within 24 hours or risk dismissal.

Strikes may only involve a suspension of work by employees and the closure of the employer's facilities. Other forms of industrial action or work stoppage are illegal. Moreover, strikes are unlawful if a majority of those participating in it engage in acts of violence against people or property.

Employment relationships are suspended for the duration of a lawful strike. If the Conciliation and Arbitration Board finds the employer liable for the strike, the employer must pay back wages for the duration of the strike.

Employers are prohibited from hiring replacements for striking workers, except for providing essential safety services and locking out employees.

1.8. - Occupational Health and Safety

Employers are obliged by the Constitution to observe the legal regulations on health and safety, adopt adequate measures for the prevention of accidents, and organize work in a manner that ensures the greatest possible guarantee of the health and safety of workers to the extent the nature of the work allows. General employment laws (including the Federal Labor Law) place a number of obligations on employers and employees, while specific health and safety legislation contains detailed provisions. Specific rules are also set by the Department of Labor and Social Welfare.

Employers' general duties under employment legislation include:

- Ensuring that workplaces meet health and safety standards, in order to prevent occupational hazards and harm to workers;
- Taking the necessary measures to observe pollution limits set by the relevant authorities and, where required, modifying facilities in line with instructions from these authorities;
- Observing statutory health and safety rules, in order to prevent accidents and illnesses at the workplace and other places where work is performed;
- Making available at all times the necessary medical supplies to provide rapid and effective first aid;
- Informing the competent authorities about any accidents at work; and
- Displaying visibly throughout the workplace the relevant provisions of health and safety rules and procedures.

1.9. - Workplace Violence and Harassment

The FLL defines *harassment* as the exercise of power in an actual subordinated work relationship between the victim and the aggressor, which is expressed verbally and/or physically. *Sexual harassment* is defined in the FLL as a form of violence and abuse of power that leads to a state of helplessness and risk to the victim, even in the absence of a subordinated relationship and regardless of whether the behavior occurs once or repeatedly.

Employees are under a general duty to behave appropriately at work and are forbidden from any acts of harassment or sexual harassment against any person in the workplace.

Likewise, employers have a duty to treat employees fairly, to refrain from "bad treatment by word or deed" and "refrain from performing or allowing acts of harassment or sexual harassment". Further, "lack of probity or honesty" - which has been interpreted by case law to mean any improper or wrongful behavior – and "harassment or sexual harassment against any person in the workplace" on the part of employees is forbidden and considered "just cause" for dismissal, along with acts of violence, threats, injury or maltreatment towards the employer or other workers that disrupt work discipline. Employers are therefore entitled to dismiss for "just cause" employees who discriminate against and/or harass other employees. Similarly, such behavior by employers towards employees is prohibited and "just cause" for the employee to terminate the contract.

1.10. - Employment Information and Privacy

For purposes of the personal data protection law, employers are considered to be "data controllers" and employees and job applicants are "data subjects". All personal data processing (gathering, disclosure, storage and use) is subject to the consent of the employee or job applicant, unless such processing is contemplated within one of the exceptions provided by law (for example in an emergency or where the data is publicly available).

The employer must issue a privacy notice to employees and applicants whose data is to be processed. The notice must state, as a minimum:

- The identity and address of the data controller;
- The purposes of the data processing;
- The options and means offered by the data controller to limit the use or disclosure of personal data;
- The means by which the employee or applicant can exercise his or her rights to access, rectify, cancel or object to the personal data being processed;
- Any national and/or international transfers of the data; and
- How the data controller will notify the employee or applicant about any changes to the privacy notice.

Failure by the employee or applicant to object to the privacy notice is considered to be tacit consent to the data processing. However, for the processing of financial and/or sensitive personal information, the employee's consent must be expressly provided. Sensitive information relates to matters such as racial or ethnic origin, health status, genetic make-up, religious belief, trade union membership, political views and sexual preference.

In addition to informing employees and job applicants that their data is to be processed, and obtaining their consent to the processing, employers must ensure that the personal data to be processed is correct and up to date, and delete data after it has been used for the purposes identified in the privacy notice. Employers must establish a personal data department to promote the protection of personal data within the organization and represent the employer if a data subject files an application for access, rectification, cancellation or objection with the Federal Institute for Access to Information and Data Protection ("Instituto Federal de Acceso a la Información y Proteccion de Datos"), the agency responsible for enforcing the personal data protection law.

The transfer of personal data always requires the consent of the data subject unless the transfer is in accordance with a law or treaty, or is necessary or legally required for a specific purpose established in the data protection legislation. When personal data is being transferred from a holding company to a subsidiary or related company that operates the same processes and policies as the holding company, the data subject's consent is not required.

With the exception of employees' right to access their personal data that is being processed, records kept by the employer are confidential and the employer is not required to allow employees access to such documents, unless expressly agreed to by the parties.

Importantly, copyright law makes it advisable for employers to obtain prior consent from their employees in order to maintain, process and, if necessary, transfer employee data when this information is contained in a database.

II. Employee Rights

2.1. - Work Shift and Overtime

Working time is defined by statute as the time during which the employee is at the disposal of the employer to perform his or her work. The statutory maximum for normal daily working hours are:

- Eight hours for day work - defined as work between 6am and 8pm;

- Seven hours for night work - defined as work between 8pm and 6am; and
- Seven and a half hours for "mixed" work - defined as a shift that includes both day and night work, if the night work component comprises less than three and a half hours (if it is three and a half hours or more, the shift is considered night work).

As a six-day working week is the norm, the legislation implies that working weeks have a maximum of 48 hours for day work, 42 hours for night work, and 45 hours for mixed work.

Any hours worked in excess of these statutory limits are considered overtime. The employee must receive a premium of 100% on top of normal pay for the first nine overtime hours per week, and a premium of 200% for the 10th and subsequent overtime hours. Further, case law has established that a 200% premium is payable after an employee has worked more than three overtime hours on a particular day, or has worked overtime on more than three occasions in one week.

2.2. - Work Minimum Wage

There is no single national statutory minimum wage rate. The National Minimum Wages Commission ("Comisión Nacional de los Salarios Mínimos") sets minimum wage rates based on geographical areas, on an annual basis. For purposes of establishing a minimum wage, Mexico is divided into two geographical areas:

- Area A, which encompasses Mexico City and much of the area north of the capital up to the US border; and
- Area B, which consists of the rest of the country.

For each area, there is a statutory general minimum wage, plus higher minimum wage rates for each of around 70 specific, generally skilled, occupations.

The minimum wage is set as a daily rate. As of 1 January 2013, the general daily minimum wage rates are:

- Area A - MXN 64.76; and
- Area B - MXN 61.38.

The occupational minimum wage generally exceeds the general rates by approximately 25% to 40% for some occupations (e.g. housekeeping in hotels), but by as much as 200% for particularly skilled occupations (e.g. journalists).

The relevant statutory minimum wages apply to all workers, irrespective of age and experience.

2.3. - Minimum Benefits

The Federal Labor Law establishes the minimum benefits that Employers must furnish to employees, as follows:

1.- *Profit sharing:* Employees are entitled to a share in the company's profits, currently fixed at 10% of the company's pre-tax income. However, new companies are exempted from this requirement during their first year of operation. In addition, the highest-ranking officer of a company is not entitled to this benefit.

2.- *Paid vacation:* Employees are entitled to a paid vacation period based on their seniority as follows:

Seniority in years	Paid Vacation Days
1	6
2	8
3	10
4	12
5-9	14

After the fifth year of seniority, the vacation entitlement increases by two working days for each five years of service.

3.- *Mandatory holidays:* New Year (January 1); Constitution Day (first Monday of February); President Benito Juarez Day (third Monday of March); Labor Day (May 1); Independence Day (September 16); Revolution Day (third Monday of November); December 1 (every six years for election of President); and Christmas (December 25).

4.- *Vacation premium:* Employees are paid an extra 25% of their usual salary during their vacation.

5.- *Christmas bonus*: Employers must give each employee the equivalent of 15 days' salary by December 20 of each year.

6.- *Social Security System:* All employees must be registered with and contribute to:

- The Mexican Institute of Social Security ("IMSS"), which provides medical services, child day care, compensation for occupational accidents and diseases, pensions upon death or disability, and pregnancy benefits;

- The National Workers' Housing Fund Institute ("INFONAVIT"), which provides subsidized housing to employees, as well as loans for building a home, or for home improvements, at low interest rates; and

- The Retirement Savings Program ("SAR"), which provides employees with retirement benefits when they reach 65 years of age.

7.- *Parenthood rights:*

- Paternity Leave: A male employee is entitled to a leave of absence of 5 days at full pay for the birth or adoption of a child.

- Maternity-Related Leave and Benefits:

  -A pregnant employee is entitled to six weeks of maternity leave prior to the birth of a child and six weeks for maternity leave after the birth of the child. The law allows the employee to transfer four of the six weeks of the prenatal rest leave, to add to the maternity leave for after the birth of the child. In adoption cases, the female employee is entitled to six weeks of rest leave, with full pay. In cases of children with disability, the leave may increase to up to eight weeks.

  -A female employee is entitled to rest periods for lactation during the first 6 months after the child's birth. The lactation rest period may be taken as two extraordinary paid rest breaks of 30 minutes each or to reduce the employee's work shift by one hour.

2.4. - Holiday and Holiday Pay

Employees cannot be compelled to work on mandatory holidays. (See “Mandatory Holidays” 2.3.3, above). Those who do work on mandatory holidays are entitled to receive three times their normal rate of pay and must agree with the employer as to the number of hours that they will work. Absent an agreement, the dispute will be resolved by the relevant Conciliation and Arbitration Board.

2.5. - Time Off from Work

The Federal Labor Law establishes that during a continuous workday, the worker will be given a rest period/time off of at least one half hour. If the worker cannot leave the workplace during the rest or meal period, the time corresponding to such periods shall be counted as time worked and included as part of the workday.

2.6. - Disciplinary Procedures

Disciplinary measures and procedures are subject to statutory requirements and must be set out in the organization’s "internal labor regulations". Disciplinary measures, other than dismissal and suspension, may not exceed eight days and employers are forbidden from imposing financial penalties on employees. Generally, employees are entitled to be heard before being disciplined.

2.7. - Internal Labor Regulations and Employer Policies

At each undertaking or establishment, a joint employer-employee committee must draw up a set of "internal work rules" (known as “RIT” or “reglamento interior de trabajo”) to establish mandatory rules that would be applicable to both the employer and employees. Generally, the issues addressed in the RITs are as follows:

- Employees’ arrival and departure times, meal times and rest breaks;
- The time and place at which work shifts start and end;
- The schedule for the cleaning of facilities, machinery, equipment and work tools;
- The day and place of payment of wages;
- Measures to prevent work accidents and provide first aid;
- The unhealthy and dangerous work that may not be performed by children and pregnant employees;
- The timing and form of medical examinations for employees;
- Disciplinary measures and procedures; and
- Any other standards necessary or convenient to improve safety and the better functioning of work in the undertaking or establishment concerned.

The internal work rules must be registered with the relevant Conciliation and Arbitration Board. They must be displayed in the employer’s facilities and copies must be distributed to the employees.

If the employer wishes to introduce any form of code of conduct to be observed by employees, it must be included in the internal works rules and registered with the relevant Conciliation and Arbitration Board in order to be enforceable.

III. Legal Termination of Employment

3.1. - Termination of Employment Agreements

Employment agreements can be terminated:

- By mutual agreement;
- Because of the death of the employee; or
- Because of the employee's physical or mental incapacity or disability, where this makes work impossible, in which case, if the incapacity or disability is not work-related, the employee is entitled to receive a severance payment of one month's pay, plus a statutory "seniority bonus"
- For cause
- Unless terminated early (with or without just cause), fixed-term contracts end at the completion of their specified term, and contracts to carry out a specific task or project end when the task or project is completed.

3.2. - Severance Payment

If an employer terminates the contract of an employee without just cause, the employee is entitled to receive a severance payment from the employer, comprising:

- Three months' full pay, including all bonuses, premiums and commission;
- 20 days' full pay per year of service with the employer; and
- "Seniority bonus" of 12 days' pay - capped at twice the rate of the relevant statutory minimum wage - per year of service.

The employee is also entitled to payment for any accrued but unpaid wages and benefits (such as annual leave entitlement, holiday/Christmas bonuses and commission) up to the termination date

3.3. - Employment Termination for Cause

➢ *Termination by employer for just cause*

Legislation specifies that certain types of behavior by an employee constitute "just cause" (causa justificada) for the employer to terminate the employment contract. These are:

- The use of false documentation (such as certificates or references) to secure employment (although this ceases to be a just cause after 30 days of employment);
- "Lack of probity or honesty" or acts of violence, threats, injury or maltreatment directed towards:
  - the employer, the employer's family or managers during working hours, except where provoked or in self-defense;
  - the employer, the employer's family or managers outside working hours, if the behavior is so serious as to make continuation of the employment relationship impossible; or
  - other employees, where this disrupts work discipline;
- Acts of harassment or sexual harassment directed towards any person in the work place;
- Intentionally damaging the employer's property;
- Negligently causing serious damage to the employer's property;

- Through negligence or inexcusable carelessness, threatening the safety of the workplace or people within it;
- Committing immoral acts at the workplace;
- Disclosing trade secrets or confidential information, to the employer's detriment;
- Being absent from work more than three times in a 30-day period, without justification or the employer's permission;
- Disobeying the employer or its representatives without justification, in matters relating to work;
- Failing to adopt risk-prevention measures or follow safety procedures;
- Reporting to work under the influence of alcohol or non-prescription drugs;
- Being sentenced to imprisonment, thereby preventing fulfillment of the employment contract; and
- Any other acts that are as serious as those listed above and have similar consequences in work terms.

Employees with 20 or more years of service with the employer can be dismissed only where the just cause is particularly serious and makes continuation of the employment relationship impossible. This protection applies only to the first incident of such misconduct.

When dismissing an employee for just cause, the employer must notify the employee in writing of the date and cause of the dismissal or notify the relevant Conciliation and Arbitration Board within five days of the date of termination. If the employer opts to notify the Conciliation and Arbitration Board, the notice must include the employee's address to enable the Board to notify the employee. Failure to notify the employee or the Board makes the dismissal unjustified.

An employee dismissed for just cause is entitled to receive from the employer:

- Any accrued but unpaid wages and benefits (such as annual leave entitlement, holiday/Christmas bonuses and commission) up to the termination date; and
- A "seniority bonus" of 12 days' pay - capped at twice the rate of the relevant statutory minimum wage - per year of service.

➢ ***Termination by employee for just cause***

The employee may terminate the employment contract for just cause because of certain types of behavior by the employer. Just cause are considered to be the following:

- Misleading the employee as to the conditions of the job (although this ceases to be a just cause after 30 days of employment);
- "Lack of probity or honesty", or acts of violence, threats, harassment, sexual harassment, injury or maltreatment directed towards the employee or close relatives, by the employer, the employer's family or managers, either during working hours or outside working hours (in the latter case, the behavior must be so serious as to make continuation of the employment relationship impossible);
- Reducing the employee's pay;
- Not paying the employee on the agreed or customary date or at the agreed or customary place;
- Maliciously damaging the employee's work tools;
- Allowing a serious danger to the health and safety of the employee or his or her family, through failure to provide safe working conditions or to comply with statutory provisions;
- Through negligence or inexcusable carelessness, threatening the safety of the workplace or people within it; and

- Any other acts that are as serious as those listed above and have similar consequences in work terms.

In such cases, the employee is entitled to terminate the contract within 30 days of the occurrence of the facts constituting just cause, and is entitled to a statutory seniority bonus and the same amount of severance payment that would apply as if the employee had been dismissed without just cause but could not be reinstated.

IV. Plant Closings, Redundancies and Sale of Business

4.1. – Terminations due to Collective Redundancies

Collective redundancies arise when the employer permanently ceases to operate or permanently closes a department or specific area of the business, leading to a reduction of the workforce in the department or area concerned.

Under the law, the permitted grounds for reducing the workforce due to collective redundancies are as follows:

- Force majeure not attributable to the employer;
- Inability to operate at a profit;
- Exhaustion of natural resources in mineral extraction operations;
- Cases where mines cannot be operated on a cost-effective basis; and
- Bankruptcy resulting in the definitive closure of the business or a definitive reduction in production.

The employer must notify the relevant Conciliation and Arbitration Board in advance of any collective redundancies caused by force majeure or bankruptcy. The employer must obtain the prior authorization of the Board for collective redundancies caused by the employer's inability to operate at a profit or the exhaustion of natural resources.

Except when the collective redundancy is caused by the employer's inability to operate a mine on a cost-effective basis, redundant employees have a statutory entitlement to a payment of three months' full pay, in addition to the statutory seniority bonus.

An employer can reduce the workforce as a result of the introduction of new technology or work processes, as long as it obtains the authorization of the Conciliation and Arbitration Board or enters into an agreement with the relevant trade union. Employees deemed redundant for these reasons are entitled to a minimum payment of four months' full pay, plus 20 days' full pay per year of service with the employer and the statutory seniority bonus.

In all cases of redundancy, employees are entitled to payment for any accrued but unpaid wages and benefits (such as annual leave entitlement, holiday/Christmas bonuses and commission) up to the termination date.

In cases where the workforce of an undertaking or establishment is being reduced (rather than a total closure), employees with longer seniority with the employer must be given priority for continued employment.

4.2. - Termination of Collective Bargaining Agreement

In collective redundancy situations, if the employer recognizes a trade union and wishes to make employees who are union members redundant or make any amendments to an applicable collective agreement, it must negotiate with the union. If the employer and the union do not reach an agreement, the employer can file a petition for a "collective process of an economic nature", seeking a ruling on the redundancies issues from the relevant Conciliation and Arbitration Board. However, if the union strikes, the employer's petition is suspended, and the union can decide whether to refer the dispute to the Board for a decision. In practice, employers and unions generally reach an agreement and collective processes of an economic nature are not common.

If the undertaking or establishment is ceasing operations, the employer must negotiate with the union on the termination of both the employees' contracts and the collective agreement. If no agreement is reached, and the union strikes, the employer is not free to dispose of its real estate and movable property (machinery, raw materials, etc.).

Collective agreements may provide for different collective redundancy procedures and higher redundancy payments. In negotiations over specific redundancy plans, unions may demand higher redundancy payments or, for example, seek to have the redundancies classified as being caused by the introduction of new technology or work processes, therefore giving rise to higher redundancy payments.

It is a common practice to provide the same redundancy terms to employees in a position of trust and confidence, such as managers, as to unionized workers.

4.3. - Employer substitution

In the event of the transfer of an undertaking, the implications for employment relationships and rights depend on the nature of the transaction. In cases where "main assets" are transferred from one employer to another in order for the new employer to continue with activities inherent to the business, an "employer substitution" occurs. The law establishes that such transfer can be effected by any legal means, such as a sale or a lease.

Employer substitution means that the new employer (the transferee) takes over from the old employer (the transferor), thereby becoming the new employer. Employees continue their employment relationship unchanged and are deemed to have been employed continuously and without interruption since their original recruitment by the transferor, and their length of service is unaffected in terms of entitlement to employment rights. The transferee must provide the same employment conditions, payment and benefits as the transferor. The consent of the affected employees is not required for employer substitution to occur. However, each employee must be informed of the substitution in writing, as must any trade union representing the employees. For six months after this notification, the transferor and the transferee are jointly liable for the transferor's obligations towards employees and for any unpaid social security contributions.

Where employer substitution does not apply, or the transferee seeks to change employees' employment conditions, two options exist for the transferee:

- The transferee can terminate the employment contracts of all employees concerned and then rehire them, while acknowledging their length of service with the transferor (that is, treating them as if they have been employed by the transferee continuously since their original recruitment by the transferor). Under this procedure, on termination of the contract, the employees receive all unpaid entitlement to pay, holiday, bonuses, etc., that accrued with the transferor. However, they do not receive severance payment. The

transferee is entitled to establish new pay and conditions for the employees after rehiring. The consent of the employees is required for this procedure, and they must sign a resignation letter, an acknowledgment of receipt of full payment of wages owed, and a termination agreement. Where employees are represented by a union, the union's consent is also required. If the employees do not consent, the termination is deemed to be dismissal without "just cause" and the employees are entitled to a severance payment.

- The transferee can terminate the employment contracts of all employees concerned and then rehire them, without acknowledging their length of service with the transferor. In this scenario, the employees are treated as new recruits by the transferee, which is free to establish their pay and conditions. However, the employees are entitled to a statutory severance package on termination, comprising of:
    - Three months' full pay, including all bonuses, premium and commission;
    - 20 days' full pay per year of service with the transferor;
    - a "seniority bonus" of 12 days' pay, capped at twice the rate of the relevant statutory minimum wage, per year of service; and
    - Any accrued but unpaid benefits, such as annual leave, holiday bonus, Christmas bonus) and performance bonuses.

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