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The Maquiladora Experience: Employment Law Issues in Mexico

*Magdeline R. Esquivel and Dr. Leoncio Lara**

I. Introduction.

Historically, in very old Spain, the word "maquila" originally meant "wheat." Then the millers of the wheat started to charge for their milling services. Accordingly, the word *maquiladora* came to mean the part of the wheat that the *maquillero*, or laborer, took as consideration for his services.¹ Today, the word *maquiladora* or *maquila* refers to manufacturing operations that import raw material or equipment into Mexico on a temporary basis to carry out the service of assembling components into a product to ultimately export to another country.

Many foreign corporations (not just the United States or Canadian corporations) look to Mexico as an offshore production site, where relatively inexpensive labor can be used to assemble products for exportation back to the country of origin or other countries. In fact, the *maquiladora* industry is one of the most important sources of foreign direct investment (FDI) in Mexico, making it one of the most important groups of industries for economic recovery and future growth including job creation, exports, and foreign exchange earnings.² The growth of *maquiladora* plants has been nothing short of explosive, growing from 578 in 1980 to 2,941 in the first nine months of 1998.

The Mexican *Maquiladora* Program (MMP) is regulated by a detailed customs decree.³ The main economic benefit to be derived from offshore production in a *maquiladora* is that temporary imports into Mexico are duty-free and free from VAT (Value Added Tax). "For example, a company manufacturing televisions in Mexico under the *Maquiladora* regime would not pay any import duties or VAT upon those components coming from the Far East."⁴

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1. See Carlos Angulo Parra, *How to Use Maquiladoras in Mexico Today*, 6 U.S.-MEX. L.J. 111 (1998).
2. See David W. Eaton, *Transformation of the Maquiladora Industry: The Driving Force Behind the Creation of a NAFTA Regional Economy*, 14 ARIZ. J. INT'L & COMP. L. 747, 751 (1997).
3. See "Maquiladora Decree," D.O., 22 Dec. 1989, as amended, D.O., 24 Dec. 1993 and D.O., 23 Oct. 1996.
4. Parra, *supra* note 1, at 112.

"It could then manufacture a television set in Mexico."⁵ If the maquila utilized sufficient goods coming from the United States, Mexico, or Canada to comply with the North American Free Trade Agreement (NAFTA) rules of origin, the television would be a NAFTA-origin television set.⁶ The manufacturer would be able to export the television set out of Mexico to the United States or Canada, and the television set would be eligible for any applicable NAFTA preferences.⁷ "If that NAFTA preference applied a zero tariff, there would be no duties imposed all the way from Malaysia to Chicago."⁸

In addition to zero or relatively low tariffs on certain imports and exports, many multinational corporations look to Mexico because of the availability of a rapidly growing workforce, a younger population, and a lower average of earnings compared to the United States. Over the last forty years, the Mexican population has more than tripled, growing at an average annual rate of 2.9 percent.⁹ According to Mexico's National Population Council (CONAPO), the Mexican labor force will increase from 36.4 million to 46.4 million people between 1996 and 2005.

Additionally, the wages for this ready workforce are very low by American standards, ranging from \$28.05 Mexican (pesos) to \$30.20 (pesos) per day depending on the geographical region where the worker is employed. This translates to a minimum salary of some \$3.30 (U.S.) per day or a 12:1 earnings ratio when comparing the average daily minimum wage of Mexican workers to U.S. workers.¹⁰ Not surprisingly, the minimum wage in Mexico is not enough to meet the basic needs of the average Mexican family. Accordingly, jobs in the maquila sector, which generally pay more than the minimum wage for unskilled labor, are highly sought after.

Attorneys with multinational clients considering relocating their production facilities to a Mexican maquiladora should prepare their clients for the fact that despite lower costs with respect to wages, the Mexican Constitution and Federal Labor Laws mandate that significant benefits be given to workers. These benefits include, for example, mandatory profit sharing, training, pregnancy benefits, severance packages, and housing allowances. Additionally, multinational employers should be made aware of the fact that the right to unionize and strike are constitutionally protected and that all factual disputes between employers and employees must be seen in the light most favorable to the employee as a matter of law.

II. The North American Agreement on Labor Cooperation.

In bringing about NAFTA, the United States, Canada, and Mexico considered labor issues of such paramount importance that they negotiated and executed a labor "side agreement," the North American Agreement on Labor Cooperation (NAALC). The NAALC sets forth objectives that include promoting eleven basic labor principles, promoting international cooperation, improving working conditions and living standards, and ensuring the effective

5. *See id.*

6. *See id.*

7. *See id.*

8. *Id.*

9. *See* SECRETARIAT OF THE COMMISSION FOR LABOR COOPERATION, NORTH AMERICAN LABOR MARKETS: A COMPARATIVE PROFILE (1997).

10. *See* ANNA L. TORRIENTE ET AL., MEXICAN & U.S. LABOR LAW & PRACTICE: A PRACTICAL GUIDE FOR MAQUILAS AND OTHER BUSINESSES 74 (1997).

enforcement of labor laws. Following these objectives, the parties agree to a set of six obligations that relate specifically to the effective enforcement of labor law.¹¹

A. NAALC'S OBLIGATIONS.

1. *Levels of Protection.*

"Each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light."¹²

2. *Effective Enforcement.*

"Each Party shall promote compliance with and effectively enforce its labor laws through appropriate government action."¹³

3. *Transparency and Due Process of Law.*

Each Party shall ensure that persons with a recognized interest under its laws have appropriate access to administrative, quasi-judicial, judicial, or labor tribunals for the enforcement of labor law. Each Party shall ensure that its labor law enforcement proceedings are fair, equitable, and transparent.

4. *Public Information and Awareness.*

Each Party shall ensure that its laws and regulations are publicly available and that proposed changes are published in advance and open to public comment. Each Party shall promote public awareness of its labor law.

B. THE NAALC'S ELEVEN LABOR PRINCIPLES.

Eleven "labor principles" define the scope of the NAALC.¹⁴ Covering nearly all aspects of labor rights and labor standards, they are principles that the countries are committed to promote, but they do not establish common laws or standards. However, the countries agreed to open themselves up to reviews and consultations among themselves on all labor matters within the scope of the NAALC. The NAALC Labor Principles are as follows:

1. Freedom of association and protection of the right to organize;
2. The right to bargain collectively;
3. The right to strike;
4. Prohibition of forced labor;
5. Labor protections for children and young persons;
6. Minimum employment standards;
7. Elimination of employment discrimination;
8. Equal pay for men and women;
9. Prevention of occupational injuries and illnesses;

11. North American Agreement on Labor Cooperation, Dec. 17, 1992, U.S.-Mex.-Can., arts. 2, 3, 4, 5, 6, & 7, 107 Stat. 2057, 32 I.L.M. 1499 [hereinafter NAALC].

12. *Id.*

13. *Id.*

14. *Id.* annex 1.

10. Compensation in cases of occupational injuries and illnesses;
11. Protection of migrant workers.¹⁵

C. LEVELS OF TREATMENT UNDER THE NAALC.

The NAALC creates four levels of treatment of "labor law matters" as defined in the Agreement. These four levels and their subject matter jurisdiction are:

1. *NAO Review and Consultation.*

The NAALC requires each government to maintain a National Administrative Office (NAO) within the Department (or Ministry) of Labor in each country. The NAOs receive and respond to public communications regarding labor law issues arising in another country. A consultation and/or review may be undertaken on the NAO's initiative or in response to complaints from private parties.¹⁶

The scope of NAO "review" includes "labor law matters arising in the territory of another Party" (the definition of "labor law matters" covers Labor Principles 1-11).¹⁷ The scope of NAO "consultation" includes "the other Party's labor law, its administration, or other labor market conditions in its territory."¹⁸ Individuals, unions, employers, non-governmental organizations, or other private parties may file submissions seeking NAO reviews in accordance with the domestic procedures established by the country's NAO.

2. *Ministerial Consultations.*

The labor minister of any NAALC party may request consultation with another minister regarding any labor law matter reflecting Labor Principles 1-11. Under article 22 of the NAALC, any party can formally request consultations at the level of the Council of Ministers to consider any matter within the scope of the agreement. Ministerial consultations may address issues pertaining to the enforcement of labor laws, but they are not restricted to such issues. Ministerial consultations are a flexible mechanism by which the parties to the agreement can engage one another formally, in a cooperative manner, at the highest political level (involving the Secretary or Minister of Labor) on issues of importance relevant to their agreement.

3. *Evaluation Committee of Experts.*

Following a ministerial consultation, a single country may initiate the establishment of an Evaluation Committee of Experts (ECE). The ECE performs independent, non-adversarial analysis and then provides recommendations covering all three NAALC countries' labor law enforcements in the particular subject area raised in the request for an ECE. An ECE may analyze "patterns of practice by each Party in the enforcement of its . . . technical labor standards."¹⁹ Technical labor standards are defined as labor law matters related to Labor Principles 4-11.

These eight principles (Labor Principles 4-11) may advance to the next level—an ECE evaluation. Drawn from a tri-national roster of labor experts, a three-member ECE

15. *Id.* pt. 6, art. 49.

16. For more detail on NAALC's provisions governing consultations and evaluation procedures see *id.* pts. 4, 5 & 6, arts. 10(2), 16(3), 21-23(2), 25-37 & 49.

17. See Leoncio Lara, *The NAALC's Consultations and Evaluations: The First Labor Cases*, 4 NAFTA: L. & BUS. REV. AM. 95, 98 (Summer 1998).

18. *Id.*

19. *Id.*

may, at the request of a party (i.e., a government), conduct a review and issue an Evaluation Report and recommendations on disputes involving these eight principles.

4. *Dispute Resolution by an Arbitral Panel.*

The scope of the NAALC's arbitration procedures are limited to an "alleged persistent pattern of failure . . . to effectively enforce occupational safety and health, child labor or minimum wage standards."²⁰ Only those three subjects—child labor, minimum wage and hour laws, and occupational safety and health—can go on to the final enforcement stage. A country that is found by the ECE to demonstrate "a persistent pattern of failure . . . to effectively enforce such standards"²¹ can be brought before a five-member arbitration panel for a ruling on whether it has complied with recommendations from the ECE. If not, the country is subject to a fine of up to \$20,000,000 or a re-imposition of pre-NAFTA tariffs up to the amount of the fine if it fails to pay.²² The five-member arbitral panels examine effective enforcement of the laws related to Labor Principles 5, 6, and 9, and develop an "action plan" to remedy a persistent pattern of failure. Failure to implement the plan may result in fines or trade sanctions.²³ Matters subject to evaluation and dispute resolution must be trade-related and/or covered by mutually recognized labor laws.

III. The Mexican Labor Law Scheme.

A. THE CONSTITUTION.

The rights and obligations of employees and employers are set out in Article 123, Title 6 of the Political Constitution of the United Mexican States (Mexican Constitution).²⁴ Section A applies to the employee-employer relationship in the private sector.²⁵ Section B governs the public sector and the rights of workers in the federal government and the Federal District.²⁶ Workers' rights enjoy a prominent role in Mexico's constitution and history. Mexico's constitution was born in the wake of a popular revolution, the Mexican Revolution of 1910, which sought to end the exploitation of landless peasants, as well as women and children, at the hands of rich landowners and capitalists. In fact, Mexican labor laws recognize certain individual and collective rights despite the fact that some of these rights do not necessarily promote commercial interests.²⁷

The Mexican Constitution explicitly guarantees its citizens freedom of association, the right to organize, and the right to strike. The Constitution also specifies basic labor conditions regarding minimum wages, hours of work and work shifts, overtime pay, child labor, maternity leave, vacation and holidays, profit sharing, housing, training, safety and health, just cause for discharge, equal pay for equal work, seniority in pro-

20. *Id.*

21. *Id.*

22. *See id.* at 100.

23. *Id.*

24. *Constitución Políticas de los Estados Unidos Mexicanos*, art. 123, tit. 6 [hereinafter Mexican Constitution].

25. *Id.* art. 123(A).

26. *Id.* art. 123(B).

27. *See* TORRIENTE ET AL., *supra* note 10, at 49.

motions, and other labor standards.²⁸ These minimal conditions cannot be waived by workers or bargained away by unions. However, greater rights and/or benefits may be negotiated and enforced.

B. FEDERAL LABOR LAWS.

The basic workers' rights set out in the Mexican Constitution are implemented through federal labor legislation. The Mexican Federal Labor Law (FLL) regulates employment relationships in Mexico.²⁹ The FLL is applicable throughout the Republic of Mexico.³⁰ Article 56 of the FLL sets forth the general parameters of the employment relationship and specifically provides that employers must not subject workers to employment conditions that fall below the minimal standards provided in the FLL. Article 5 of the FLL further provides that all workers, male and female, shall work under equal conditions and shall receive equal pay for equal work. Workers who believe that their employers have violated the FLL may petition the appropriate labor Conciliation and Arbitration Board (CAB).

1. *General Employment Law Concepts.*

Article 3 of the FLL prohibits discrimination on the basis of race, sex, age, religion, political creed, or economic status. Article 5 establishes that the rights guaranteed in the FLL are a matter of public policy or "public order," accordingly, any contracts attempting to deviate from the FLL standards will be declared null and void. Moreover, the terms of illegal contracts will be replaced by the FLL standards as a matter of law.

Pursuant to article 7, at least ninety percent of the workers hired by employers must be Mexican nationals except for directors, administrators, or general managers. All technical and professional workers must be Mexicans unless there are no Mexicans qualified in a particular specialty. In the case of a shortage of professional or technical workers, a limited number of foreign workers may be hired, but the employer must have the foreign workers train Mexicans in the specialty area.

Article 18 expressly states that, due to the presumed unequal bargaining power between the employees and employers, all facts in employment disputes shall be construed in the light most favorable to the employee. In other words, the burden of proof in an employment dispute is on the employer, not the employee.

C. LABOR LAW ENFORCEMENT.

1. *Conciliation and Arbitration Boards.*

Unlike in the United States, in Mexico there is no big "pay day" awaiting the individual employee who prevails in a wrongful dismissal case, just the local CAB. State or federal CABs hear individual employment discrimination cases and union labor disputes. As a general rule, state or local CABs hear private sector employment disputes, while disputes involving governmental employees are heard by federal CABs. CABs are composed of a government official who serves as president, one representative from labor, and one representative from management.³¹

28. Mexican Constitution, *supra* note 24, art. 123.

29. "Ley Federal de Trabajo," D.O., Aug. 18, 1931 (amended Jan. 1, 1988) [hereinafter FLL].

30. *Id.* art. 1.

31. *See id.* art. 605.

Workers must bring any claims they have regarding nonpayment of wages, vacation pay, bonuses, overtime, seniority pay, or profit sharing within one year. However, workers have two years to make a claim for unjust dismissal under the FLL.

PHASE 1 MEDIATION

Once a claim is filed, the CAB must summon the employer to a hearing. There are three stages to the hearing process: (1) mediation, (2) pleading of claims and defenses, and (3) evidentiary. Phase one, or the mediation phase, mandates the appearance of the plaintiff and the employer without counsel.³² If a settlement is not reached through mediation then the next phase commences.

PHASE 2 CLAIMS AND DEFENSES

During this stage, a plaintiff must describe in the complaint the time, place, and facts that support the allegation of unjust dismissal. Counsel may represent both the employee and employer from this stage forward. Counsel need not be a member of the bar or even a lawyer. Failure of the employer to appear and answer the complaint orally or in writing results in a presumption that the employer agrees with facts presented by the employee.

PHASE 3 EVIDENTIARY

During this phase each party presents its evidence. The CAB determines the admissibility of all evidence.³³ After all of the evidence has been presented, the parties submit written arguments to the CAB. After reviewing the arguments and the entire record, the CAB will issue a draft of an award within ten days, which will then be voted on by the CAB members. Once a majority vote is reached, it is signed by the CAB members and issued as a final award.

Of some 50,000 individual claims brought before the Federal CAB of Mexico City in the first months of 1996, fully half involved claims of unjust dismissal.³⁴ Few of these complaints progress beyond the CAB award stage. Since the FLL sets the liability for unjust dismissal as either reinstatement or severance pay, the CAB does not have to struggle with the nature of the award. Most employees who prevail in their claims for unjust dismissal before the CAB choose to accept the statutorily mandated severance package over reinstatement. According to data from one office of the Federal Labor Ombudsman (the free legal service for workers claiming unjust dismissal), only one worker among 154 who won a claim for unjust dismissal in 1995 took reinstatement as a remedy; the rest chose severance pay.

2. *Amparo* Lawsuits.

CAB decisions may be challenged through the use of a special type of lawsuit authorized by the Mexican Constitution called the *juicio de amparo*. The right to bring an *amparo* lawsuit is addressed in Mexican constitutional articles 103 through 107.

32. See *id.* art. 876.

33. See *id.* art. 879, app. G.

34. See Ignacio Cordova, *50% de las demandas individuales por despedidos*, EL NACIONAL, Oct. 17, 1996.

Generally, the *amparo* lawsuit must allege that a constitutionally guaranteed right has been violated. The resulting opinion in an *amparo* suit only applies to the individual petitioner and has no *stare decisis* effect unless a majority of the Mexican Supreme Court has issued five corresponding decisions on the same issue.³⁵ Most published *amparo* decisions have come in the area of union labor rights as opposed to individual employment discrimination.

IV. Minimum Employment Standards and Employee Benefits.

A. EMPLOYMENT CONTRACTS.

In Mexico, there is no "employment-at-will." All employment is by contract and all terminations must be "for cause." The FLL requires that terms and conditions of employment be reduced to writing.³⁶ Due to strong public policy dictates, employers and employees are not free to deviate from, or contract out of, the minimum employment standards contained in the FLL.³⁷ In the absence of a written contract, an employment relationship will be presumed between the person performing a personal service and the person receiving such services.³⁸ The employment contract must indicate at least the following information to be valid:

- name, age, nationality, sex, marital status, and address of the worker and the employer;
- whether the labor relationship is for a specific piece of work or for a specific time period or without a time limit;
- the service or services to be given;
- the place or places where the work is to be performed;
- the daily hours of work;
- the form and amount of the wages;
- the day and place of payment of the wages;
- an indication of the occupational training to be given to the worker; and
- other employment conditions such as rest days, vacation leave, and other conditions agreed to by the worker and employer.³⁹

B. WORK HOURS.

There are three types of work days recognized by the FLL, including day work (work performed between 6 A.M. and 8 P.M.), night work (work performed between 8 P.M. and 6 A.M.), and mixed hours (split shifts including some day and night work hours).⁴⁰ However, the maximum hours in any given workday may not exceed eight hours for day

35. See Mexican Constitution, *supra* note 24, arts. 103, 107 & 192.

36. FLL, *supra* note 29, arts. 21 & 26.

37. *Id.* art. 5.

38. See *id.* art. 21.

39. See *id.* art. 25.

40. *Id.* art. 60.

work, seven for night work, and seven-and-a-half hours for mixed hours work. The work-week is six days long, from Monday through Saturday. The maximum workweek may not exceed forty-eight hours.⁴¹

C. OVERTIME PAY.

The maximum number of hours that an employer may require its employees to work, without having to pay overtime, is forty-eight hours per week. The employer must pay the first nine hours of overtime at double-time rates and overtime exceeding nine hours at triple the rate of standard pay.⁴² An employer may not require its employees to work more than nine hours of overtime per week. The normal work hours may be distributed throughout the week as necessary; most maquiladora employers now distribute them in five days (9.5 hours per day). At least one paid full day of rest per week must be observed. Sunday work is subject to a twenty-five percent premium, independent of any overtime premium that may apply. If an employee works in excess of fifty-seven hours a week or eleven hours a day, the labor authorities may penalize the employer.

D. WAGES.

The FLL establishes a minimum amount that must be paid to all employees in cash, without deductions or withholdings, on a weekly basis.⁴³ Saturday is the typical pay day or *día de raya*. Such minimum wage is determined from time to time by the National Minimum Wage Commission. The minimum wage varies for each of the three economic regions into which the country is divided. A general minimum wage applies to all employees within each economic region, except those that fall within a series of specific job categories. The general minimum wage for the three regions as of January 1, 1998 was as follows:

Zone A (including Mexico City):	\$ 30.20 Mex. cy. per day
Zone B:	\$ 28.00 Mex. cy. per day
Zone C:	\$ 26.05 Mex. cy. per day

Article 86 of the FLL mandates that equal pay shall be given for equal work regardless of sex.

E. CHRISTMAS BONUS.

Mexican employees receive an annual year-end bonus called the *aguinaldo*. The *aguinaldo* is calculated on the basis of the employee's base pay—the amount earned per day. All employers must pay their employees a year-end bonus equal to at least fifteen days' wages, payable before December 20th of every year.⁴⁴

41. See *id.* arts. 60-69.

42. See *id.* arts. 67 & 68.

43. *Id.* art. 88.

44. See *id.* art. 87.

F. PAID HOLIDAYS.

The following are the legal paid holidays that must be observed.⁴⁵ An employee required to work on any of these holidays must be paid overtime at the rate of at least three times his normal wages.

1. January 1 (New Year's Day);
2. February 5 (Constitution Day);
3. March 21 (Benito Juarez Day);
4. May 1 (May Day);
5. September 16 (Independence Day);
6. November 20 (Revolution Day);
7. December 1, every six years upon inauguration of a new President;
8. December 25 (Christmas).

G. VACATIONS.

All employers must pay vacation days at a rate of at least 125 percent of the employee's wages.⁴⁶ Employees with more than one year of seniority are entitled to six days of paid vacation. Such six-day period is increased by two days per subsequent year of seniority up to twelve days. After the fourth year, minimum paid vacation is increased by two days every five years thereafter. Employees must be allowed to take at least six consecutive, uninterrupted vacation days. FLL article 79 makes it illegal to pay compensation in lieu of vacation leave.

H. TRAINING.

All employers are obligated by law to provide training to their employees.⁴⁷ The employer must have a training program approved by the Ministry of Labor. That program must be implemented by a Mixed Commission for Training and Instruction, comprised of an equal number of representatives of the employees and of the employer. The purposes of the training must include the following:

1. to actualize and perfect the knowledge of the worker in his activity; to keep up with new technology;
2. to prepare the worker to occupy a new post or vacancy;
3. to prevent work accidents;
4. to increase productivity; and
5. in general, to improve the aptitudes of the worker.⁴⁸

I. HOUSING CONTRIBUTIONS.

The FLL requires employers to pay an amount equal to five percent of each employee's wages to the Federal Workers Housing Fund (INFONAVIT).⁴⁹ Employers must deposit these contributions in a special account at a financial institution authorized to receive the corresponding payments.

45. *See id.* art. 74.

46. *See id.* art. 80.

47. *See id.* art. 153(A).

48. *See id.* art. 153(F).

49. *Id.* art. 136.

J. HEALTH AND SAFETY.

The employer is obligated to provide a safe and sanitary environment for the workers to render their services.⁵⁰ A Mixed Commission for Health and Safety must be created to investigate the causes of illness and accidents and to propose means to avoid them.

K. PROFIT SHARING.

Article 123(A)(IX) of the Mexican Constitution and article 117 of the FLL provide that workers may share in a percentage of the profits of the enterprise (but not the management) at a percentage rate fixed by the National Committee for Workers' Profit Sharing in Enterprises. As of the second year of operations, all employers must distribute among their employees an amount equal to ten percent of the employer's pre-tax profit within sixty days after the employer is required to file its year-end income tax return.⁵¹ Fifty percent of such amount is to be distributed in proportion to the number of days worked by each employee during the year and the remainder according to the wages of each employee.

The following employers are exempt from the profit sharing provisions of the FLL:

- new businesses, during their first year of operations;
- newly established businesses manufacturing a new product during the first two years of operations;
- new mining enterprises during the prospecting or exploratory period;
- private, non-profit, charitable institutions recognized by law;
- the Mexican Social Security Institution and all decentralized public institutions having cultural, assistance, or welfare objectives;
- businesses with less capital than the minimum amount set by the Department of Labor and Social Welfare for certain industries.⁵²

As a practical matter few maquiladoras ever distribute profit sharing because they find legal ways of avoiding declaring a profit or posting sufficient capital to trigger the duty to pay these benefits.

L. PAID MATERNITY LEAVE.

All employers must provide their female employees with a fully paid maternity leave of six weeks prior to the approximate delivery date and six weeks thereafter.⁵³ After this twelve-week period employers must offer such employees their former positions back, including any accrued rights thereunder such as accrued seniority and vacation pay.⁵⁴ In addition to maternity leave, a new mother is allowed two paid half-hour rest periods to nurse her infant as well as regular break periods.⁵⁵

50. See Mexican Constitution, *supra* note 24, art. 123(A)(XXIX).

51. See FLL, *supra* note 29, art. 127(VIII).

52. *Id.* art. 126.

53. See *id.* art. 170(II).

54. See *id.* art. 170(VI & VII).

55. See Mexican Constitution, *supra* note 24, art. 123(A)(V); FLL, *supra* note 29, art. 170, paras. II, IV, & V.

It bears noting that these pregnancy benefits are constitutionally protected rights. Indeed, one of the most controversial employment law issues in Mexico today is pregnancy discrimination on the part of employers who refuse to hire or fire pregnant women in order to avoid paying maternity benefits. This issue has made its way to the U.S. NAO and is currently being investigated and addressed under the NAALC scheme regarding complaints against the government of Mexico for failure to enforce its employment laws.

M. SOCIAL SECURITY BENEFITS.

The Mexican Social Security Law (*Ley de Seguro Social*) entitles a worker and his family to receive health care as well as a system of pension payments for old age, disability, death, and work-related accidents. The social security system is financed by contributions made by the employer, employees, and the government. In accordance with the Social Security Law (SSL), all employers must register their employees with the Mexican Social Security Institute (IMSS).⁵⁶ Such registration relieves the employer from any liability in connection with job-related illnesses or accidents and provides certain benefits to the employee and his dependents, including the following:

1. medical and hospitalization insurance for any illness, accident, or maternity;
2. insurance for disability, old age, unemployment during old age and death;
3. child care; and
4. retirement.

All services performed in connection with the above benefits are provided at IMSS facilities. Both the employer and the employee must make contributions to the IMSS.⁵⁷ The employer is obligated to withhold from the employee's salary the employee's portion of social security contributions and pay it, along with the employer's own contribution, to the IMSS. In the case of employees who earn minimum wage, the employer must make the entire contribution to the IMSS. Also, employers must pay an amount equal to two percent of each employee's salary (limited to twenty-five times the minimum wage for Mexico City) for deposit into a special retirement savings account.

N. TERMINATION OF THE EMPLOYMENT RELATIONSHIP.

1. *Temporary Suspension of Obligations.*

An employer or employee may temporarily suspend the employment relationship without liability if (1) the worker contracts an infectious disease; (2) the employee suffers temporary incapacity due to an accident or illness that is not job-related; (3) the worker is released from custody after an acquittal (if worker was detained while acting in the employer's interests, employer must make up any lost wages); (4) the worker is imprisoned; or (5) the worker is appointed to any state body including a Conciliation and Arbitration Board; default of any document required by employment laws and regulations due to employee's negligence; fulfillment of the duties referred to in article 5 of the Constitution or other constitutionally mandated activities.⁵⁸

56. "*Ley de Seguro Social*," art. 5, D.O., Aug. 18, 1931 (amended Jan. 1, 1988) [hereinafter SSL].

57. See *id.* art. 12.

58. See FLL, *supra* note 29, art. 42.

2. *Terminating the Employment Relationship.*

Mexican employers may not freely dismiss employees without just cause. To dismiss an employee without liability, a Mexican employer must prove that the dismissal was for a statutorily defined "just cause," and give the employee prompt written notice of the dismissal and the "just cause" thereof.⁵⁹ If the employee refuses to accept the written reasons for discharge, the employer must file it within five days at the CAB.

a. "Just Cause" For Dismissal.

Article 47 of the FLL lists the specific causes for which an employer may dismiss an employee without being liable for severance pay. These causes include:

- falsification of the application for employment;
- misconduct at work directed at the employer, member's of the employer's family, or managers;
- misconduct directed at co-workers that disrupts workplace discipline;
- misconduct outside of work directed at the employer, member of the employer's family, or managers;
- intentional sabotage;
- sabotage through negligence;
- inexcusable breach of workplace safety;
- immoral acts in the workplace;
- revealing trade secrets;
- three absences within thirty days without permission or just cause;
- disobeying management orders without just cause;
- refusal to obey health and safety rules;
- working under the influence of alcohol or drugs (except medical prescriptions);
- imprisonment under sentence of law;
- any equally grave act with workplace consequences.

b. Severance Payments.

If the employer fails to prove "just cause" or give adequate written notice, the employer is obligated to make the following severance payments: (1) three months of salary; (2) a seniority premium, equal to twelve days of salary per each year of services rendered (subject to salary limitation up to twice the minimum wage); (3) back salary from the date of the dismissal through the date of payment; and (4) accrued benefits. If the employee ends the individual employment relationship for a statutorily defined "just cause" as explained above, the employer is required to pay, in addition to the foregoing, twenty days of salary per each year of services rendered. An employee dismissed without "just cause" has the option to be reinstated to his former job instead of receiving the severance payment.⁶⁰

59. See *id.* arts. 46 & 47.

60. See *id.* art. 48.

c. Employee's "Just Cause" for Resigning.

An employee may resign and be entitled to severance pay if his employer commits specified acts against him, which are listed in the FLL. Such acts include, for example, reduction of salary, failure to pay salary when due, and causing or allowing unsafe working conditions.⁶¹

d. Appeal to the CAB.

An employee may appeal his or her termination to the CAB. If the employer fails to persuade the CAB that it had good cause for terminating the employee, the employee is entitled to back pay up to the day of the award and to reinstatement. Certain classes of workers, including those employed less than one year, managers, domestic workers, and seasonal or temporary workers, are not entitled to reinstatement.⁶² If the CAB determines that it would be futile to attempt to reestablish the employment relationship, the employee is entitled to the severance payments described above.

V. Conclusion.

Many multinational corporations continue to look toward Mexico's maquiladora industry as an inviting offshore production location. However, these companies would do well to have a consulting firm evaluate the true cost of doing business in Mexico, including the actual cost of labor, wages, and benefits. Finally, companies and their attorneys should consult with local counsel or an international law firm to insure proper handling of employment law issues under the FLL, as well as appearances before local CABs.⁶³

61. *See id.* art. 51.

62. *See id.* arts. 48 & 49.

63. Nothing in this paper is intended to be legal advice. The international laws summarized herein have been translated from Spanish, summarized for shorter presentation, and may be overruled by changes that have occurred, or will occur, after the publication of this paper.
