503 - Latin America: Land of Opportunity...for Employees

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Mr. Velazquez is a licensed attorney in Mexico who graduated from the Universidad Nacional Autónoma de México and received a Master of Laws degree from the American University, Washington, D.C. He served as intern at the US International Trade Commission.

Mr. Velazquez is vice chair of the Mexican Association of Importers and Exporters of México ("ANIERM") and for vice chair of the International Corporate Counsel Forum of the Section of International Law of the ABA. He is past Chair of the Mexican Association of Corporate Counsels "ANADE" and was the Coordinator of the NAFTA Dispute-Settlement Committee of the Mexican Business Coordinating Council during NAFTA negotiations.He is the liaison between "ANADE" and The ACC and "ANADE" and The Canadian Corporate Counsels Association (CCCA).

Mr. Velazquez is an active member of the Mexican Bar Association and the Mexican Law Committee of the American Chamber of Commerce of Mexico. He has been lecturer in US, Canada and Mexico: on doing business in Mexico, corporate governance, strategic alliances, foreign investment, competition law, product liability, cross border legal issues and NAFTA issues and has written several articles on such areas. He taught on legal aspects of NAFTA at the Universidad Iberoamericana in Mexico City and Family and Estates, Obligations Civil Procedure, Economic Law and Consular Law at the Universidad Nacional Autónoma de México, Acatlán Campus.

VENEZUELAN LABOR LAW

The following summary comprises the main labor provisions under the Organic Labor Law ("OLL") and other Venezuelan labor and social laws.

I.- **Labor benefits and rights provide under Venezuela Labor Laws**

Minimum Wage

Salaries and/or wages are freely negotiable between the employers and employees as a general labor principle. However, the OLL establishes that salaries and wages may not be set under the minimum wage level determined by the corresponding authority. The minimum wage is periodically adjusted by the government.

Vacation and Vacation bonus

According to the OLL, the employees are entitled to enjoy fifteen (15) working days of paid vacation upon the completion of one (1) uninterrupted year of service, plus one (1) additional working day for each subsequent uninterrupted year of service, up to fifteen (15) additional working days.

Additionally, employees are entitled to receive payment, when enjoying vacations, of a vacation bonus equivalent to seven (7) days salary upon completion of the first uninterrupted year of service, plus one (1) additional day of salary for each subsequent year of service, up to a maximum of twenty one (21) days of salary.

Vacation payments should be made upon the basis of the normal salary, which is the salary earned by the employee on a regular and permanent basis.

Profit Sharing

The OLL established a duty to employers of distributing among their employees fifteen per cent (15%) of their annual net income. Within the limits mentioned below, employers must distribute said percentage of net profits, determined on the basis of their income tax return.

Employees are entitled to receive the annual profit sharing payment (utilidades) in an amount of not less than fifteen (15) days of salary and not more than: (i) two (2) months salary, if the employer has less than fifty (50) employees or a capital stock not exceeding Bs. 1.000.00,oo; or (ii) four (4) months' salary, if the employer has fifty (50) or more employees and a capital stock exceeding Bs. 1,000,000.00.

This benefit must be paid within two (2) months the end of the company's fiscal year. It is mandatory to make and advance payment of this benefit equivalent to at least fifteen (15) days salary, before December 15th of each year. Profit sharing is paid in direct proportion to the number of full months of service rendered and based on the salary earned by each employee during the given fiscal year.

Paid Holidays and Mandatory Weekly Rest

According to the OLL, the following dates are considered as holidays: Sundays, January 1st, Maundy Thursday and Good Friday, May 1st and December 25th, the dates listed in the Law of National Holidays, including April 19th, June 24th, July 5th, July 24 and October 12th, and those days declared holiday by either the National Government, or the State or Municipal authorities, up to a maximum of three (3) days per year.

It is Constitutional right that employees enjoy a weekly rest days. The holidays and the obligatory weekly rest days are compensated by the payment of one (1) day's salary. When a monthly fixed salary has been agreed upon, the payment of holidays and rest days are already included in the salary.

When an employee works on his/her mandatory weekly rest day, employer must pay the work performed with a surcharge of fifty percent (50%). Should the work is performed for four (4) or more hours, employer must pay a complete day of salary, and if it is for less than four (4) hours, half day salary payment must be made. When working during the mandatory weekly rest day, a compensatory rest day must be given within the following week.

Overtime

The daily workday is limited to eight (8) hours, and the weekly work hours must not exceed forty-four (44) hours. The night workday is limited to seven (7) hours daily and to thirty-five (35) hours in a week. Work performed during night hours (from 7 pm to 5 am) must be compensated with a surcharge of thirty per cent (30%) over the day work payment.

Overtime work is compensated with a fifty percent (50%) surcharge. No employee may work more than ten (10) hours of overtime weekly, or more than one hundred (100) hours in a year. In unforeseeably and urgent circumstances, overtime may be worked without the prior permission of the Labor Inspector, provided that notice is given to the Labor Inspector on the following working day explaining the reasons for the overtime work performed.

Paid Maternity Leave

Women are entitled to maternity leave of six (6) weeks prior to giving birth and twelve (12) weeks thereafter. The post-natal leave can be extended in case of illness. Female employees may not be dismissed without cause during the entire pregnancy and until one (1) year after giving birth.

Integral Care for Employees' Children

Employers with more than twenty (20) employees are required to provide day-care service (guardería) for their employees' children up to five (5) years of age. To comply with this requirement, employers may choose among: (i) to provide a day-care center for its employee's children directly or thorough a non-profit civil association established by the employer; (ii) to establish a joint child-care center with one (1) or more employers operating in the same are either directly or through a non-profit civil association: or (iii) to pay the cost of an approved private or public day-care center located near the residence of the employees, with a maximum tuition and monthly fee of thirty-eight percent (38%) of the minimum wage). Payments are made directly to the institution providing the child care and are not deemed part of the employee's salary.

Health and Safety

The employer must provide a safe environment for work. Failure to comply with obligations set forth in the Organic Law on Prevention, Conditions and Environment of Work recently enacted ("LOPCYMAT") may subject the employer to severe penalties and the employer's representative to criminal liability.

LOPCYMAT also established penalties to employers who do not assure that employees enjoy their vacation, take their daily rest, or breach the provisions related to maximum duration of daily work shift and nigh surcharges. These situations are considered as very serious infractions and employers may be subject to fines.

Food

According to the Feeding Law Employees, employers with twenty (20) or more employees are obliged to provide a healthy food during the workday. Beneficiary employees are those earning salaries up to the equivalent ot three (3) minimum wages (currently, up to Bs. 1.397.250,00).

This benefit may be granted through coupons or electronic debt cards, in which case the value of the benefit may not be less than 0,25 Tax Units (currently Bs. 8.400,00) nor exceed o,50 Tax Units (currently Bs 16.800,00) per day worked. This benefit is not deemed part of the employee's salary.

II. *Severance Benefits*

Seniority Payment

According to Article 108 of the OLL, seniority payment (prestación de antiguedad) is equivalent to five (5) days' salary for each full month of service, starting from the fourth

month of services. This means, forty-five (45) day's salary for the first full year of service, and sixty (60) days' salary for the second year of seniority and for each subsequent year of service.

In addition, starting with the second year of services, the employer must pay two (2) day's salary for each year (or fraction of a year greater than six (6) months of service), up to a maximum of thirty (30) additional days.

The seniority payment must be calculated based upon the salary earned by the employee in the corresponding month, including the profit sharing and vacation bonus. The employee may elect weather the seniority payment is deposited in an individual trust or on the employer's books.

Employees may request advances of up to seventy five percent (75%) of the amount credited or deposited to meet obligations arising from: (i) the construction, purchase, improvement or repair of his family residence, (ii) the cancellation of mortgages or any other loan on the family residence; (iii) educational expenses for himself, his spouse, his children, or common-law spouse; and (iv) medical and hospitalization expenses of any of the people listed in the preceding item.

In case of termination of employment, if the seniority is between three (3) and six (6) months, the employee shall receive the equivalent to fifteen (15) day's salary. For subsequent years if service, should employment end in a year exceeding a fraction of six (69 months, the employee is entitled to receive the seniority payment that would have been earned in case he/she had worked for the entire year.

System applicable in the case of an unjustified dismissal

Should employment end because of an unjustified dismissal, employee is entitled to receive two indemnities: (i) the indemnity for unjustified dismissal, which is equivalent to thirty (30) days salary for each year of service or fraction of a year greater than six (6) months, up to a maximum of five (5) months' salary, and (ii) the indemnity in lieu of termination notice, which depends on seniority, for which calculation salary basis can not exceed the equivalent to ten (10) minimum monthly wages (currently, Bs. 4.657.500,00) and may not exceed the equivalent to three (3) months' salary.

Inamovilidad

Nowadays, there is a special bar against dismissals, (inamovilidad) for employees earning a monthly up to Bs. 633.600.00, who cannot be dismissed without a justified cause.

In order to dismiss these employees with cause, employers must previously obtain an authorization from the Labor Inspector, for which purposes an administrative procedure must be filled.

III. Mandatory Employer's a Contributions and Withholding Obligations

Social Security Contributions

Both employers and employees must contribute monthly to the Venezuelan Social Security Institute ("IVSS"). The employer is required to withhold and pay employee's contribution. All contributions are computed as a percentage of the employee's normal salary up to a maximum of five (5) minimum monthly salaries.

Employees are obliged to contribute with 45 of their salary and employers between 7% and 9%, according to the occupational risk the law assigns to the employer's business. Companies must register with the IVSS within three (3) working days of beginning activities and must also register all their employees within three (3) working days of their hiring.

According to LOPCYMAT, these contributions shall remain in force until the National Treasury of the Social Security System is created. After its creation, employer's contributions will vary from 0.75% to10% of employee's salaries, depending on the risk and classification of the employer's business, to be determined by the Regulations to the LOPCYMAT.

Employment

Contributions to IVSS for Employment Regime (before named Paro Forzoso) are also calculated based upon the employee's monthly salary. Employers must contribute an amount equal to 2% of the employee's normal salary and must withhold the employee's contribution, which is 0.5% of employee's salary. The maximum taxable base for these purposes is ten (10) minimum monthly salaries, currently Bs. 4.657.500,00

COLOMBIAN LABOR LAW

LABOR SYSTEM REGULATIONS

Colombian Labor System is regulated by: the Constitution (the last one was approved in 1991) the Laws (including the ILO Resolutions that have been confirmed by the Congress), the Resolution and Decrees issued by the Ministry of Social Protection (formerly the Ministry of Labor), the Jurisprudence of the Supreme Court the Constitutional Court, the Tribunals and the Labor Courts, and, finally, the doctrine.

During the last few years, there have been some difficulties between the Supreme Court and the Constitutional Court in Labor matters because of the difference of interpretation of the essential rights.

GENERAL CONSTITUTIONAL AND LEGAL LABOR PRINCIPLES

The main constitutional and legal labor principles are:

- The right of the person to have a work
- The freedom to choose a job
- The stability on a job
- The Government protection of labor rights
- The Association rights
- The employee's equality before the law
- The guarantee of the minimum rights established on the Labor Code
- The denial of waiver of the rights given by the Labor Legislation
- The guarantee of acquired rights
- The applicability of the law more beneficial to the employee

SPECIFIC LABOR OBLIGATIONS OF THE EMPLOYER

Labor law establishes obligations for both parts: employers and employees.
Employer's main obligations are:

- To provide the employee with the necessary elements to comply with his duties
- To prevent occupational risks, as diseases and accidents related with the employee's activity.
- To pay salaries in the agreed conditions.
- To respect the employee's dignity, believes and feelings.
- To pay the expenses in case the employee had change his domicile because of his work and
- To affiliate the employee to the Social Security System in Pensions, Health and Occupational Risks.

LABOR BENEFITS AND INDEMNITIES

The Labor Code establishes the principles and main regulations of the labor relation. There we find the benefits and indemnities that the employer has to recognize to the employees.

The main benefits that the employee receives are:

- A salary (all what an employee receives as a retribution his services is considered salary except in the cases in which the law permits to agree otherwise)
- Transportation aid and uniforms in case the salary of the employee is less twice the minimum legal salary.
- Fringe benefits:
- "Cesantía" (Severance) (1 salary for each year of service – Jan 1 to Dec 30)
- Interests on Cesantía (Severance) (12% per year on the amount of severance);
- Service bonus (1 salary per year payable half in June, half in December)

There are also mandatory paid relieves on Sundays and Holidays and the employee has the right to an annual paid vacation equivalent to 15 working days.

Labor law establishes indemnities in case of termination of the contract without a just cause (these causes are established by the Law), in case of dismissal of pregnant employee or during the lactation period, and in case of delay in payment of salary or fringe benefits.

In the firs case, the indemnity depends on the amount of the salary and the duration of the contract.
In the second case, the employee has the right to receive in addition to the former, an indemnity equivalent to 60 days of salary plus 12 weeks of paid relief in case she has not taken them. In the case the indemnity is equivalent to 1 day of salary for each day of delay in the payment.

The labor benefits and indemnities can be improved by the employer's own decision or by negotiating with the Union or Unions to which the employees are affiliated. Once it has been signed a collective contract it becomes part of the employee's contract and the employer has to comply with it.

The employees of a company can create a Union to affiliate its workers (called Base Union) or can affiliate to a Union that joins employees of a specific profession or job (called Trade Union)

Once the negotiations begin with the Union, the employer cannot terminate the contracts of his employees until an agreement is signed. When the employer receives the Petitions from the Union, he must hold a meeting with the Union negotiation commission in the next 24 hours to announce the names of his negotiations is going to take place. The first

meeting to start the negotiation must be held in the next 5 days. The conversations of this stage must take no more than 20 days that can be extended for other 20 days only once. If there is no agreement, the Union can choose to go on strike or to submit the differences to an arbitration tribunal. This decision must be made during the 10 days after the first stage is over.

If the Union votes the strike it cannot begin before 2 days after that decision is made and no more than 10 days after. If the parties agree, there can be conversations between them during the strike. During this period the majority of the employees can decide to submit the decision to an arbitration tribunal. If there is no agreement after 60 days for strike, the Ministry of Social Protection can order an arbitration tribunal and in that case, the employees must begin to work in no more than 3 days.

SPECIAL LAWS REGULATING PENSION, HEALTH AND SAFETY

The Social Security System was crated by Law 100/93. This System has 3 main regimes: Pensions, Health and Safety (Occupational Risks).

The Pension Regime covers the employee in case of oldness and disability and his survivors in case of death. The Health Regime covers the employee in case of general disease and maternity. And, the Safety Regime covers the employee in occupational risks (diseases and accidents). Some adjustments have been introduced for Pensions and Safety regulations after Law 100.

The Pension Regime has two systems: one, the old one, managed by the Social Security Institute (a Government entity) and other, the new one, managed by Private Funds.

In the first one the employee will have the right to receive a pension when he has the age and the number of paid weeks established on the law. In the second, the employee can receive his pension at any age as long as he has the established capital in his account.

The Health Regime is managed by private companies called “EPS” that render services through institutions called “IPS”. The Social Security Institute also has an EPS for attending this regime.

Both, employers and employees have to pay a monthly sum in order for the employee to be covered by these Regimens:

- For Pensions the minimum contribution is equivalent to the 15.5% of the employee’s salary. This contribution increases depending on the amount of the salary. The employer has to pay 755 of this contribution.
- For Health the contribution is equivalent to the 12% of the employee’s salary. The employer has to pay the 85 of this contribution.

The employee has the right to choose the Pension System that he wants to be affiliate to and the Fund to manage his Pension. He also has the right to choose the EPS were he wants to be attended in Health.

If the expatriates show that they are affiliated to a Pension Plan in the country where they come from, they and their employers will be exempt of paying the contribution to the Pension Regime.

The employer has the right to choose the entities that will manage the Security Regime of his company in relation to Occupational Risks. The amount of its contribution depends on the activity of the company and the number of incidences.

CONCLUSION

The following chart shows the labor cost of an employee with a monthly ordinary salary equivalent to US$ 2.500

Description	Percent	US$
Salary	100%	$ 2.500
Fringe benefits & obligations	22%	$ 550
Social Security Regime Contributions	22.38%	$ 560
Compensation Fund	9%	$ 225

There is another kind of salary that can be agreed with the employee: the whole salary (called integral salary), which amount cannot be less than the equivalent of 10 minimum legal ssalaries plus a 30% of fringe benefits factor. With this kind of salary, the employer pays the fringe benefits in advance and the only additional payment that he has to pay the employee is that related to the vacations.

Finally it is important to say that all the differences related to labor relations can be submitted to the judicial system. In first term, the proceedings are held in the Labor Courts. Their decisions can be appealed and the case will then pass to the Superior Tribunals. When the case has an amount that exceeds the equivalent of 120 minimum legal salaries there can be filed an appeal before the Supreme Court (called cassation).

The Ministry of Social protection is the entity that is in charge of the employee’s claims and of the investigation of the violations to the contract of the labor regulations.

The unemployed also can file their claims in first term in the Ministry of Social Protection before beginning a judicial proceeding.

GENERAL OVERVIEW – LABOR LAWS IN BRAZIL

1.1.- Legal grounds

The Brazilian Federal Constitution lays out minimum guarantees afforded to laborers, such as the organization of unions and the right to strike. A Labor Code (consolidação das Leis do Trabalho – CLT), enacted in 1943, although not technically a code, contains a compendium of major labor regulations.

Other laws regulate issues not covered by the Labor Code, such as social security and accidents at work, or were otherwise enacted to regulate rights granted by the Constitution or to make the regulations of the Labor Code less strict. Brazil is also a signatory of several International Labor Office Treaties.

1.2.- General Labor Law Priciples

Labor laws are based on 4 major principles:

- ***Protection to the employee***: Labor laws are intended to protect the employees, and the interpretation of the laws shall always be in favor of the employee.
- ***Labor laws are mandatory:*** Labor laws cannot be modified by contract or otherwise by the parties, except in limited instances, if provided by law.
- ***Labor rights cannot be waived:*** The employees cannot waive their rights, and all settlements in which an employee waives part of the otherwise applicable employment rights are void.
- ***Substance over form:*** The authorities are not bound by the form adopted by employer and employee to structure their relationship.

2.0.- EMPLOYMENT AGRREMENTS

Brazilian labor law does not distinguish between laborers and employees.

All persons can be employees, except for children under sixteen years of age. Children fourteen and older, however, can be apprentices. Any laborer under eighteen cannot work overtime, at night or under hazardous conditions, and they have the right to adjust their working schedule in order to attend school.

The test to determine the existence of an employment relationship disregards any formal agreement. Employment relationship will exist – and the employee will be subject to labor benefits – if there is subordination between employee and the person contracting the services, if services are rendered personally by the employee, if there is compensation for the services, and the services are rendered on a habitual manner.

Brazilian laws do not require formal contracts. Formal contracts are, in fact, quite uncommon and only used for highly compensated individuals. Nevertheless, all employees must have details of their labor relationship (salary, start and termination dates) recorder in their Labor Identification Card (Carteira de Trabalho e de Prevodêncial Social – CTPS).

Employment agreements can be temporary or permanent. Permanent agreements are the general rule, and all agreements are deemed permanent unless otherwise stated in the Labor Identification Card. Permanent employees may be dismissed at any time, provided that the procedures for dismissal and applicable severance payments are observed. The employer may establish, however, a probation period at the commencement of the relationship, not to exceed 90 days, during which period the employee may be dismissed summarily and with no indemnification.

Temporary agreement are limited to two years, and are only available if the nature of the services is temporary or the nature of the company's activity is temporary. At the expiration of a temporary employment, no indemnification is due to the employee. However, if an employee is dismissed without a cause prior to the expiration of a temporary contract, the employee is entitled to half of the compensation the employee would have received up to expiration date stated in the agreement. Early termination of an employment contract by an employee is also considered a breach, and the employee is responsible for damages limited to the indemnification that would have been paid to the employee if the employee was dismissed.

3.0.- VACATIONS AND OTHER LEAVES OF ABSENCE

Employee are not entitled to vacation time during the first year of work, but are entitled to 30 days of vacation for each subsequent year, provided that the employee has not been absent from work for more than five unjustified times during the period. The first year of work is considered an accrual period, after which the employee is entitled to receive *a pro rata die* compensation for the vacation she would have been entitled to take on the following year if the employment had not been terminated. If the employee does not take vacation leave once per year, the employer must pay the equivalent of two salaries for the vacation period actually worked.

During the vacations period, the employee is entitled to full salary plus a vacation bonus equivalent to one-third of the salary at the time of the vacations. In addition, the employee may request an advance equivalent to one half of the employee's year-en bonus.

Brazilian laws afford a weekly rest day to all employees. Although there are no "Blue Laws" in Brazil, the rest day should preferably be on a Sunday, and employers should set a scheme to afford different employees to take turns in having breaks on Sundays.

Maternity leave one hundred and twenty days, during which the employee's job and salary are secured. During the maternity leave, Brazilian Social Security System (Instituto Nacional de Seguridades Social – INSS) pays the employee's salary. Men are also entitled to a five-day paternity leave.

Note that Labor Agreement may be suspended for short periods, under which no compensation and computation of the length of service are applicable. Typical examples are non-remunerated leaves of absence, and the participation in strikes, without wages. In addition, and employee may take a leave of absence from two to five-months for professional training offered by the employer for a period equivalent to the leave of absence. Such leaves of absence must be provided for in collective labor conventions or collective bargaining agreements and are subject to the employee's express agreements.

4.0.- COMPENSATON

4.1. General Compensation

The concept of compensation under Brazilian law includes not only the salary, but also commissions, bonuses, fringe benefits and living expenses. Except for the salary and year-end and vacation bonuses, none of the other forms of compensation are mandatory, but will be incorporated to the compensation and taken into account for calculation of any indemnifications that may be due. In addition, once form of compensation is granted, it cannot be reduced or abolished.

Salaries cannot be paid in kind, and may be paid monthly, bimonthly, weekly or even per task, depending on the conditions established for hiring. Minimum wage laws require, however that salaries be above the minimum wage established by the Government or the lowest wage level established in a relevant collective bargaining agreement. The current minimum wage established by law is R$ 300.00 (Circa US$ 136.00, at US$ 1.00 = BRL 2.20). Effective April 1st, 2006, the minimum wage has been raised to R$ 350.00 (Circa US$ 159.00, at = US$ 1.00 = BRL 2.20). Nevertheless, in most cities of major Brazilian States, such as Sao Paulo and Río de Janeiro, it is uncommon to fin laborers working for minimum wages.

Annually, in December, employers must pay a year-end bonus. Such year-end bonus, know as the "13th salary", is in the amount of the monthly salary paid in December, plus the annual average of all other monies habitually paid to the employee.

For employment activities considered by law to be a health hazard, an additional monthly allowance equivalent to 10%, 20% or 40% of the minimum wage is due, depending on the degree of hazard. In the case of ultra-hazardous activities, such as those involving explosives, flammables and electricity, an additional allowance equivalent to 30% of the employee's salary will be due.

4.2.- Overtime and Night Shift

For most laborers, regular working hours may not exceed 8 hours a day and 44 hours a week, with one-hour breaks for meal and rest. Between two workdays, there must be a minimum rest period of eleven consecutive hours. Work performed beyond the time limits provided under the law is treated as overtime, and shall be compensated at a minimum 50% above the normal hourly rate. Work performed in the night shift, between 10:00 pm. And5:00 am, entitles the employee to compensation at least 20% higher than the normal hourly rate, and this payment may be added to overtime.

Employees engaging in external activities, which cannot be subject to fixed work hours, or employees in management positions are not due overtime or extra compensation for work during the nigh-shift, as they are usually compensated above minimum levels.

5.0.- SOCIAL CONTRIBUTION AND TAXES

Brazilian laws establish a number of social contributions to be paid by the employers to the relevant authorities in addition to the general compensation due to employees. Such contributions vary from contributions to the employee's personal unemployment fund to various Social Security charges.

All employees must be enrolled with the Brazilian Social Security System (Instituto Nacional de Seguridades Social – INSS). Social Security in Brazil is sponsored by monthly contributions from employees, employers and the State. After a certain period of enrollment and contributions, the employee is entitled to receive social security retirement benefits and assistance. In addition to contributions to the Social Security System, a number of other Social Contributions are due for different social services.

The unemployment fund (*Fundo de Garantia por Tempo de Seriviço – FGTS*) is a fund created for all employee hired after the enactment of the Brazilian Federal Constitution. All employers must deposit, each month, an amount equivalent to 8.0% of an employee's compensation in a blocked bank account held in the name of the employee. Such employees, if dismissed without a cause, can withdraw the total amount deposited in the fund, including all interest and penalties applicable.

6.0.- GENERAL LABOR COST

Due to the social contributions, labor benefits and taxes applicable to employee compensation, the overall costs for the employer associated with an total over 70% of the employee's monthly salary.

Depending on the nature of the employer's activities, several Social Contributions are due by the employer, and that amount can total 28.8% for the employee's salary. In addition, the deposits to the unemployment fund and the provisions for vacations and

year-end bonuses also contribute to an increase in the overall costs associated with an employee.

Employees, as well, share some of the costs associated with the Brazilian labor system, as they are obligated to make contributions to the Social Security System, at rates ranging from 7.65% to 11%, depending on the employee's salary. The employer, however, is responsible for withholding the Social Security Contributions and lack of withholding can generate tax contingencies.

ALTERNATIVES METHODS OF COMPENSATION

7.1.- **Participation in Company's Profits or Results**

Brazilian entities are required to negotiate with their employees, or the relevant labor unions, on the procedures in connection with profit-sharing plans. Each company is to agree with its employees, through a commission formed by their elected representatives and a union representative or by collective bargaining agreements, the details of the profit sharing plan. Profit sharing distributions cannot be made over period less than six months, and ca be accounted for as an expense in the company's income task.

7.2.- **Stock Option plan**

Brazilian Companies have started to offer to their employee's stock option plans, following the trend initiated in the Unit States, where such types of compensation are often a large part of the compensation of high level executives. Although in Brazil the stock option plans are normally a substantial portion of an employee's general compensation, they are an important compensation tool. Moreover, the use of stock option plans for purposes of labor duties is not considered as part of compensation.

Companies desiring to offer a stock option plan to its employee must comply with general securities regulations and make full disclosure of the plan to the employees, to Brazilian Securities and Exchange Commission (*Comissao de Valores Mobiliarios – CVM*), and the general market.

Interestingly, stock option plan is one of the few exceptions in Brazilian Securities regulation by which the "offer" or "trading" of foreign securities is permitted. Foreign companies with subsidiaries in Brazil may offer stock option plans from the parent company to Brazilian employees. Each employee of a Brazilian subsidiary can send money abroad to purchase securities of the foreign parent by using a bank authorized to deal in the foreign exchange market. No prior.

8.0.- **EMPLOYMENT TERMINATIONS**

8.1 Dismissal

Employment agreements may be terminated by the employer for cause and without cause. If the employee is dismissed for cause, the employee will be only entitled to the compensation corresponding to the days already worked during the month of dismissal, plus the payments for accrued vacations and vacation bonus.

Employee may also be dismissed without a cause if given 30-day prior notice and are paid the compensation corresponding to the days already worked during the month of dismissal, the 30-day prior notice period (the employee does not have to work during that period, but must be compensated as if she was working), plus the payments for accrued vacations and vacation bonus and year-end bonus. In addition, the employee's unemployment fund account must be released and the employer must pay a penalty equivalent to 40% of the total deposits made at the employee's fund.

Individual employment contracts and collective bargaining agreements may provide for additional benefits.

In case of abuse by the employer, an employee can terminate the employment relationship for just cause, and claim indirect or constructive dismissal. In this case, the employee will be entitled to the same severance payments as due for terminations without cause.

Employees subject to temporary agreements dismissed without cause prior to the expiration of a temporary contract are entitled to half of the compensation that would have been paid up to expiration date if the agreement had not been terminated.

8.2.- **Resignation**

On temporary employment contracts, early termination of a temporary employment contract by an employee is considered a breach, and the employee is responsible for damages limited to the indemnification that would have been paid to the employee if the employee was dismissed.

On permanent employment contracts, a resigning employee is entitled to the compensation corresponding to the days already worked during the month of dismissal, plus the payments for accrued vacations and vacation bonus and year-end bonus. When an employee resigns prior to completing one year's employment with the same employer, the employee will have no rights to receive payments for accrued vacations.

8.3.- **Procedures**

If any of the abovementioned events of termination of employment contract, and provide that the employee has worked with the same employer for more than one year, the

termination must be acknowledged by the employee's labor union or the Regional Labor Office. If the employee is a manager or an officer, other steps should be taken in connection with the termination, such as cancellation of powers of attorney and filings with the Commercial Register for the replacement of managers and officers.
All severance payments must be made within ten days of the resignation or prior notice. If the employee is kept on the job during the prior notice period, the severance payment must be made available on the first business day after the end of the notice period.

9.0- LABOR CALIMS

9.1.- **Labor Court System**

Brazil has established a Federal Courts System to deal exclusively with labor issues, with its own Circuit Courts of Appeals and a Federal Superior Labor Court. Pursuant to the Constitution, all states must have at least one Circuit Court of Appeals. LABOR Courts are competent to decide on all matter involving the relationship between laborers and employers and the competence of the courts was recently extended to include public employees.

The Labor Courts System is also based on the same principles generally applicable to Labor Law, and as a result the employees are afforded a great level of protection in labor proceedings, with the burden of the proof being shifted to the employer in a number of situations.

9.2 Arbitration

With the enactment of Law 9,307, dated September 23, 1996 (Brazilian Arbitration Law), several labor claims have been submitted to arbitration. It is currently unsettled whether labor claims can be subject to arbitration in Brazil, as the Brazilian Arbitration law provides that only claims subject to waivers are subject to arbitration – and labor claims are usually not subject to waivers.

In the published decisions, courts have entered decisions in some cases allowing arbitration and in others rejecting arbitration. However, a general understanding has emerged under which claims made by labor unions would be subject to arbitration, while individuals would be barred from claiming their labor rights in an arbitration proceeding.

10.0.- **EXPATRIATES**

10.1 **General**

A large number of expatriates have been working in Brazil since the 1959's and this number is continually increasing. Work done by expatriates is done either on a permanent or temporary manner, under permanent or temporary visas. In addition to permanent or temporary visas, Brazil grants business visas for foreigners entering Brazil for business reasons, for a specific purpose, and for a limited period of time.

Foreigners working as (i) scientist, professors, technicians or other professionals under an employment or independent contractor agreement; (ii) hired/contracted by the Brazilian Government; and (iii) artists or sportspersons are entitled to temporary working visas. Temporary visas for technical assistance are also granted to foreigners for long stays in Brazil pursuant to work contracts with foreign entities. Temporary work or technical assistance visas (VITEM V, i.e., type V of temporary visa) are usually granted for one-year terms, renewable for one extra year, or the duration of the contract (if less than one year).

The Brazilian entity bringing an expatriate must prove that for employing or contracting the foreigner it will not (a) increase the number of expatriates to over one third of its workforce; or (b) cause the payroll to expatriates to exceed one third of company's payroll. In addition, proof of qualification must be shown, and a Brazilian laborer may not be paid a wage lower than an alien for performing the same work, and whenever it is necessary to lay off employee, an alien be laid off before a Brazilian performing the same type of work.

Permanent visas are available to foreigners who are appointed to management positions in Brazil. In order to apply for a permanent visa for manager expatriate, normally the company sponsoring the visa must establish that there is al least a US$ 50.000.00 investment in the company for each foreign director or manager. This minimum capital requirement is applied to each visa requested and it should be adjusted according to the number of expatriates in managerial position.

Applicants for a permanent visa may enter Brazil during the application process under a valid business or tourist visa, but they may not be included in the payroll in Brazil until the permanent visa is issued. Upon final arrival in Brazil, under the permanent visa, the applicant must file for a Brazilian identity card, taxpayer registration number and Labor Identification Card, as a normal Brazilian employee.

Note, finally, that Brazilian entities are not allowed to hire, as employees or administrators, expatriates who do not hold the proper visas and work permits. Violation of this rule may subject the Brazilian entities to fines and the company's officers to criminal sanctions. Also, the foreigner would be subject to deportation.

10.2.- **General implications**

Once a temporary or permanent visa is granted to an expatriate, the expatriate's worldwide income will immediately become subject to Brazilian taxation.

Temporary and permanent work visas are granted individually. The visa may be extended to include the person's legal dependants (spouses and children under 18). However, this extension only allows them to live in Brazil; they cannot take paid work. If the dependants want to perform paid work, they must apply for their own authorization.

Temporary visa holders are entitled to bring their domestic belongings, excluding cars and their professional equipment into Brazil, under a Special Temporary Admission Customs Regime, with suspension of the customs duties and for which no import permits is required.

MAIN MATTERS ON CHILEAN LABOR LAW

Item	***Legal requirement (s)***
Child care facilities ("CCF")	CCF are mandatory if 20 or more female employees (regardless of age and marital status) have children of up to 2 years (the benefit applies ot these children only). Facilities must be provided by and at the cost of the employer at own premises or through outsourced premises near the work site. The one-hour per day leave for breast or bottle feeding could be taken at the CCFs.
Collective bargaining	Allowed after one year of commencement of business activities of the company/employer.
Collective employment agreement	A CEA could be negotiated by the union, if it does exist, and is binding only in respect of employees who freely become members of the union; or, outside or in absence of a union, by any group of employees of the company provided that any such group comprises a minimum of 8 employees. I**n consequence, it is possible to have a situation where a union-negotiated collective employment agreement and individual employment agreements co-exist.**
Fixed term contracts ("FTC")	An FTC could be entered into for up to 12 months (renewable for additional 12 months in case of executive employees only). If the employee remains working beyond 12 (or 249 months, the employment agreements is automatically turned into one of indefinite duration, subject to general rules on termination/severance payment.
Foreign employee	Up to 15% of the labor force could consist of foreign employees for which a temporary work permit for up to 2 years – extendable – and temporary resident visa must be obtained based on an employment agreement entered into with a Chilean employer. Alternatively, a foreign employee could be directly assigned to work in Chile by his/her non-Chilean employer aboard, in which case a "Chilean" employment agreement is not required The 15% foreign/85% Chilean rule applies only to those companies employing more than 25 persons.

Item	*Legal requirement (s)*
Hours of work per week	The statutory ordinary 45 working hours must be distributed in five or six days per week. Employees that because of their rank as managers or legal representatives, or because of their work outside the establishment and/or without immediate higher supervision, are excluded from the limitation of 45 working hours. These employees do not have the right to be paid overtime and, therefore, it is not necessary to indicate in their employment agreements a determined and limited number of ordinary working hours. A most typical example is that of salespersons whose only obligation is to check-in daily at the establishment at a determined hour or at such other time as adequate for their sales activities.
International regulations ("IR)	IR are required if more than 10 permanent workers are employed by an employer. The IR must contain detailed rules in respect of internal order, health and safety conditions in the workplace, working hours, shifts – among other matters.
Maternity employment stability ("MES")	From date of pregnancy through 1 year counted from the end of maternity leave the employee cannot be fired unless the cause for termination is based on immoral conduct, unjustified absence, serious non-compliance with obligations under employment agreement, destruction/tampering of employer's assets, drug or liquor intoxicating, and similar misconduct/misbehavior.
Maternity leave	6 weeks before delivery through 12 weeks after delivery. Cost: Health System/Social Security. This rule applies to all qualifying employees, to include those working in the public sector.
Overtime	Work performed in excess of 45 hours per week qualifies as overtime. Maximum hours per day, including overtime: 10. The daily work schedule must include a minimum 30-minute (maximum 60-minute) lunch break. The lunch break does not count toward the 445 weekly hours. Overtime is paid with a surcharge of 50%
Part-time employees	Could be employed for up to 30 hours per week. Any excess thereof must be paid as overtime.
Profit sharing	The law established that in any year where the employer company has profits, the company may opt for distributing 30% of the profits among the labor force. This obligation may be alternatively discharged, at the option of the employer, by paying to each employee an amount equal to 4.75 minimum monthly salaries (for this purpose only, in January 2006 the minimum monthly salary was CLP 82,889 or US$ 160 – or annual total of CLP 393.723 –or US$ 760- which could be paid in installments throughout the year, PROVIDED that this payment is due even if the company's year end accounts show no profits.
Social security payments	Employer must contribute an amount equal to 0.9% of the employee's monthly salary (capped to UF 60 or CLP 1,075,567 or approx. US$ 2,068 – On January 31, 2006) on account of social security (health and retirement) and an amount of up to 3.4% (depending on the employer's risk rating) under the Labor Accident and Occupational Disease Law.
Termination notice	Must be given 30 days in advance of the effective termination date. Alternatively, at the option of the employer, a payment of amount equal to 1 month's last salary could be made in lieu of the 30-day advance notice.
Termination/Severance payment	When due, (that is, when termination is not caused by resignation or death of the employee or by any one of the causes for termination indicated, for example, in the "Maternity employment stability" box above) it applies to employees who have worked continuously for at least 1 year for the same employer. It amounts to 1 month's last salary (capped to UF 90 or LP 1,613,350 or approx. US$ 3,103- on January 31, 2006) times the number of years of services, limited to a maximum of 11 years of services.
Training programs	Tax credit for employee training programs (SENSE). Cost: employer, but income tax credit available.
Vacation (annual leave)	15 working days per year for employees that have completed I continued year of service (minimum continued vacation / annual leave: 10 working days). Employee with more than 10 years of service earns an additional vacation day for every three additional years of services.
Unions	The setting up of a union is not mandatory by law but optional if certain requirements are met, as follows: **Company with more than 50 workers** A minimum of 25 workers, representative of at least 10% of the total number of persons rendering services to a company, is needed to set up a union. **Company without a labor union** Companies where no labor union has been set up need a minimum of 8 workers – but 25 employees corresponding to at least 10% of the total number of workers rendering services to the company, will have to become union members within the term of one year as of the union formation date - In the event that such number is not reached within such period of time, the union will cease to exist as a legal entity.

	What is "current union"? It is an active and effective union, i.e. that which has an up-to-date governing board and complies, as to the number of its members, with the necessary quorum required for its formation. **Company with 50 workers or less** 8 workers will be necessary to organize a union. **Company with more than one establishment or workplace/shop.** Workers of each establishment of the same employer may organize a union with a minimum of 25, representing at least 30% of the whole number of workers of the establishment. Anti-Union Practices Among others, the following practices are deemed to be "anti-union". To hinder the formation and operation of the labor union. For example, to maliciously performs acts with the intention to alter the quorum necessary to set up a union. To offer or grant special benefits with the sole purpose of encouraging or discouraging the affiliation to or disaffiliation from the union. Sanctions Fines of CLP 314,130 to 3,711,950 (on January 31, 2006: US$ 604 – 9,061, approx.), depending on the seriousness of the infringement, and whether it is a reiterated practice. The workers who participate in the organization of the union enjoy work protection during the period starting 10 days before the holding of the formation meeting and ending 30 days thereafter. Such work protection cannot exceed 40 days.

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"Latin America: Land of Opportunity &... for Employees"

MEXICAN LABOR LAW AS APPLIES TO FOREIGN EXPATRIATES WORKING IN MEXICO

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I. EXPATRIATES

A. Maximum Percentage of Foreign Employees

Pursuant to the Law, at least 90% of a company's employees should be Mexican nationals, except for directors, administrators, and other managerial-level employees. In practice, this rule is not significant, since foreign national require proper immigration documentation in order to be employed.

B. Immigration Work Permits

Under the Mexican Immigration Law, foreigners shall perform solely the activities authorized in their respective immigration documents upon their entering Mexico. Such documents are issued and controlled by the Ministry of the Interior.

At the planning stage is critical to decide (i) who will pay the expatriate´s salary and benefits (parent company or Mexican subsidiary or both) and (ii) whether or not he/she will become a permanent resident in Mexico in order to asses his/her tax obligation in Mexico, before applying for a working visa.

The immigration document states the possible activities that a foreigner can perform in Mexico, such as business activities and non-lucrative activities including business and tourism. The activity registered on the visa shall match with the expatriate's real activities and tax personal status in Mexico.

The Non-Immigrant Visitor status is the most common category for foreigner who enter the country for business meeting, market studies, and performance of technical or management activities for Mexican companies or on behalf of foreign companies.

Foreigners may reside and work in Mexico as Non-Immigrant Visitors upon obtaining the "FM3" Migratory Form.

1. FM3 is granted for up to one year, renewable on an annual basis.
2. It states no restrictions in the number of the foreigner entries to and exits from our country.
3. Annual renewals are mandatory.
4. The permit shall specify the activities to be performed and the place of their performance.

5. Where the foreigner performs a remunerated activity for a Mexican entity, the latter will be jointly responsible for penalties incurred in violation of the FM3 terms.
6. FM3 may be obtained at the Mexican Immigration Office or at Mexican Consulates.

Documents required to obtain a permit for legal entry under the above-mentioned status are the following:

1. Full copy of the individual's passport;
2. General personal data on the individual;
3. A letter from the Mexican employer;
4. A letter from the foreign company. Please note that this document must be notarized and "apostilled".
5. Title or diploma accrediting the individual's professional ability. This document must be notarized and "apostilled".
6. Copy of the Mexican company's by-laws;
7. Copy of the Mexican company's tax-returns. If the company is of new creation, copy of its Mexican taxpayer ID.

Lawyers from abroad may enter Mexico without an FM3. Under NAFTA, they can use the temporary-business immigration form. This benefit applies to all American and Canadian nationals and European Union nationals. The applicable business visa will be provided in the plane to business persons as Non-Immigrant Visitors with non-lucrative activities in Mexico for a maximum 30-day term. To that effect the "business" box –not the "tourist" one- in the respective form must be checked.

C. Legal Rules Applicable to Foreign Employees

Foreign employees have the same rights and obligations as Mexican ones, and all provisions in the Law apply to them, with the exception that they may not be part of any union's leadership.

D. Salaries of Expatriate Employees

Regarding top executives, it is usual for companies to set an annual salary income. In the event that the employee does not receive Christmas bonus and vacation premium in addition to that annual salary, it is convenient that his/her employment contract stipulates that the annual amount shall be paid in thirteen monthly installments, with the thirteenth installment being

payable in December and corresponding precisely to the Christmas bonus and vacation premium, so as to protect the employer from claims of these benefits foreseen in the Law.

Frequently, also, top executives' salaries are fixed in U.S. dollars, in which event it should be considered that Mexican Monetary legislation provides that obligations acquired in foreign currency must be released through payment in Mexican currency.

Should the executive want his salary in U.S. dollars to be deposited in a Mexican or foreign bank account, and the employer accept it, it is convenient that the respective employment contract, besides containing the provision fixing the salary in dollars, stipulates that it is the express will of the employee that his/her salary in U.S. dollars be deposited in such bank account, in order to protect the employer from claims of double payment.

E. Most Common Fringe Benefits for Expatriates

Expatriates' most common fringe benefits include the following:

1. Reimbursement of expenses incurred in moving the employee's household equipment from his/her country of origin to Mexico and from Mexico to his/her country of origin upon termination of the employment relationship;
2. Target or performance bonuses. It is advisable to state in writing, signed by the employee, the goals, amounts and other terms of the bonuses, since in case of litigation the burden of proof is on the employer;
3. Payment of lodging or hotel expenses during the employee's first months in Mexico, and further on, a home-leasing allowance;
4. Partial or total tuition for the employee's underage children;
5. Life and medical-expenses insurance;
6. Company car. We advise to state in the employment contract that the company car will be used by the employee for the performance of his duties, i.e., that the car has the character of a work-instrument; in this way, should litigation arise, the employer will be able to hold that the car must not be included as benefit in the consolidated salary for the calculation of indemnities;
7. Cell phone;
8. Reimbursement of expenses incurred by the employee in the performance of his/her duties.

F. Claims of Employees against Foreign Corporations

Frequently, both Mexican and foreign top executives choose to sue both the Mexican subsidiary and also the foreign parent company.

Labor Boards generally admit these actions, which hinge on an employment relationship between the plaintiff and the foreign parent company. Even assuming rejection by one Board of legal action against the foreign company, the plaintiff may then appeal its ruling before a Federal court to force the Board to recognize the lawsuit.

Labor Boards may request that summons be served through diplomatic means to the parent companies at their addresses abroad, in which case the foreign companies should grant a power of attorney to Mexican attorneys for them to represent them in court.

2. SALARIES

A. Salary Increases

Except in the case of minimum salaries, the Law does not compel employers to raise salaries in accordance with increases in the cost of living. Salaries higher than minimum are fundamentally regulated by the labor market. To determine increases in annual revisions of collective bargaining agreements, it is common practice to consider the percentage of increase in minimum salaries.

B. Minimum Salaries

Mandatory increases in minimum salaries are fixed annually by a National Commission formed by representatives from the federal government, employer organization and trade unions. The expected rate of inflation is one factor considered by the Commission to determine

For purposes of determining minimum salaries, the country is divided in three geographical zones. The highest minimum salary is paid in Zone "A", which includes Mexico City's urban area, several municipalities along the northern border, some oil-producing regions, and the city of Acapulco. The daily minimum salary in Zone "A" is currently $50.57 pesos

(roughly US$4.60), that is, a 4% increase with respect to the minimum salary in force during 2006.

Under the Law, minimum salaries must be paid in cash. Only small employers pay minimum salaries.

The National Commission also determines the so-called "professional" minimum salaries, a term covering eighty-six specific occupations, such as cashier, bar-tender, restaurant cook, teachers of private primary schools, and written-press journalist.

C. Salary-Payment Schedule

The Law provides that payment of salaries of manual workers shall be made weekly, whereas other employees shall be paid every fifteen days. (i.e., fortnightly).

Often, however, top executives' salaries are paid on a monthly basis, which should be stipulate in their individual employment contracts, to protect the employer from any claim in this regard.

D. Procedure for Payment of Salaries

In case of litigation the employer shall bear the burden of proof regarding the amount and the payment of salaries. The appropriate documents to submit as proof are payroll receipts.

When the employee's salary is paid through transfers or deposits in his/her bank account, the employment contract should stipulate that such procedure is valid, and that the employee recognizes that the respective bank deposit vouchers, shall be sufficient evidence of his/her salary's payments, despite the employee's obligation to sign the payroll receipts.

E. Reductions in Salaries

Any reduction in salary by the employer is grounds for the employee to claim the justified rescission of his/her employment contract and the respective damages.

Reductions in salary must be justified, for instance by the employee changing to a lower position or by a reduction of his/her working hours. It must be accepted in writing by the

employee and included in a written agreement that must be ratified (approved) by the Labor Board.

F. Deductions from Salaries

The Law designates those grounds on which the employer may make deductions from salaries, among them, payment of debts incurred by the employee with the employer; excess payments made to the employee; damage to or loss of employer's property by the employee; or acquisition by the employee of items produced or marketed by the business.

These discounts must first be expressly consented to by the employee in writing, and their amount may not exceed 30% of the difference between the employee's salary and the minimum salary in force.

Unlawful discounts from salaries will be deemed reductions in salary and entitle the employee to claim the justified rescission of his/her employment contract and payment of the respective damages.

G. Pre-Emptive Right of Employees to Be Paid Salaries and Indemnities over other Debts of Employer

Salaries earned by employees within the last year and statutory severance indemnities shall be paid with preference over any other debt incurred by the employer, and secured with the employer's property.

To collect such salaries and severance, employees need not to participate in commercial bankruptcy proceedings. They must claim them before the Labor Board, which may then seize and auction off employer's property.

3. SOCIAL SECURITY SYSTEM AND WORKERS' HOUSING FUND

A. Social Security

All employers must register both themselves and their employees with the social security system, which is managed by a government's agency named the Mexican Social Security Institute, known by its Spanish acronym IMSS.

The system covers the following types of insurance:

Work-Related Risks

Employers that comply with the obligation to register their employees with the IMSS are exempt from the liabilities imposed by the Labor Law if an employee sustains a work-related injury or suffers a work-related illness. These include providing medical assistance, payment of salary during temporary disability and payment of damages in the case of permanent disability or death.

The IMSS gives employees the necessary medical assistance, and pays them subsidies equivalent to 100% of their quotation salaries during the time of temporary disability. Should the employee develop a permanent disability, he/she will be entitled to receive a pension for life. If the employee dies, his widow and children will also be entitled to a pension.

Premiums for work-related risks insurance are paid exclusively by the employer. Their amount depends upon the company's activity and its annual work-related risks statistics.

General Illnesses and Maternity

The IMSS provides medical assistance to employees suffering injuries or illnesses other than work-related ones, as well as to pensioners and employees' and pensioners' direct relatives. The IMSS also provides too gynecological and obstetric assistance to pregnant employees, female pensioners and wives of employees and pensioners.

To employees on temporary disability for causes other than work-related ones, the IMSS pays subsidies equal to 60% of their quotation salaries. Also, the IMSS pays subsidies to female

employees during maternity disability (i.e., 42 prior to, and 42 days after, labor) equal to 100% of their quotation salaries.

Payment of premiums General Illnesses and Maternity insurance is shared among employers, employees and the government.[167]

Disability and Life

Should the IMSS rule that an employee has a permanent disability caused by factors other than work-related ones, that employee will be entitled to receive a life pension. If the employee dies, his widow and children will also be entitled to payment of a pension.

Payments of pensions are conditioned to the employee's having accrued a certain number of work weeks during which dues were paid to the IMSS ("quotation weeks").

Premiums for Disability and Life insurance are paid by employers, employees and the government.

Retirement, Senior Unemployment and Old Age

Employees who retire at a minimum of 60 years of age and have accrued the required quotation weeks are entitled to be paid a pension for life.

Premiums for this insurance are paid among employers, employees and the government.

In 1997 a new Social Security Law went into effect which introduced important modifications to the social security system, the most relevant of which involved the replacement of the system for administration of employee retirement funds that had been controlled by the IMSS since its inception in 1943. As of July 1997 such funds are managed by private, specialized financial entities known as AFORES, their acronym in Spanish.

A complex network of organizations, rules and related procedures have been created to extend the Retiring Savings System known in Spanish as SAR. The main goal of this system is in the individualization of retirement accounts for employees. These accounts accumulate payments for retirement, senior unemployment and old-age insurance paid by the government, the employers and the employees. The funds in this individual account are then invested by the AFORES' specialized subsidiaries.

Day-Care and Social Welfare Benefits

The IMSS provides day-care services for employees' children from 43 days to 4 years of age.

Premiums for this insurance are paid exclusively by the employer.

By law, social-security payments are treated as taxes. The IMSS has the authority to move for collection of omitted payments, plus surcharges, to impose fines on employers for noncompliance with their obligations, and to seize employers' assets.

If an employee suffers a work-related injury or illness, and his/her employer fails to register him/her with the IMSS, the employee is still entitled to receive medical assistance from the IMSS, as well as subsidies and a pension. The Social Security Law then empowers the IMSS to collect from employer the amounts spent in the medical assistance, subsidies and pensions given to that employee, plus surcharges and fines.

Employers must make their own payments to the IMSS along with the portions payable by employees –via withholding- either monthly or bi-monthly, depending on the type of insurance.

In general, social security dues are calculated on percentages of the employees' quotation salaries, which are limited to the equivalent of 25 times the minimum salary in force in Mexico City in the case of work-related risks, general illnesses and maternity, retirement, and day-care and social welfare insurance. The daily minimum salary is $50.57 pesos, so the daily cap equals US$114.93 ($50.57 pesos x 25 /11.00).

Dues payable by employees equal 3% to 5% of their quotation salary. In general, dues payable by the employer vary from 13% to 23% of quotation salaries, depending upon the classification of the company concerning the work-related risks insurance.

B. Workers' Housing Fund

All employers must pay dues to the National Workers' Housing Fund Institute, known in Spanish as INFONAVIT. Only employers pay dues.

Employers' dues to INFONAVIT amount to 5% of quotation salaries, which are currently capped at 25 times the daily minimum salary in force in Mexico City.

The employer must pay dues to INFONAVIT bi-monthly, along with dues to IMSS for retirement, senior unemployment and old-age insurance.

Workers' housing fund dues are considered taxes. The INFONAVIT has also the authority to collect any omitted dues plus surcharges, and to impose fines on employers for noncompliance of related obligations.

Housing contributions are part of the Retirement Savings System (SAR). Employees may use their housing fund to purchase, repair, upgrade or pay mortgages on, their homes according to the policies applied by INFONAVIT. The net balance of the housing fund, if any, will be paid to the employee or relatives in the case of his/her total disability, retirement, or death.

4. SAFETY AND HYGIENE IN THE WORKPLACE/ WORK-RELATED RISKS

A. Safety and Hygiene in the Workplace

The Law provides that the workplace premises must comply with basic principles of safety and sanitary conditions in order to prevent work-related hazards and harm to employees.

Employers are obliged to fulfill the Mexican Official Standards and regulations in the matter of safety, hygiene and workplace environment.

There are more than forty Mexican Official Standards in this matter, among which are the following:

1. Safety and hygiene conditions in workplace buildings, facilities and areas.
2. Fire prevention and confrontation measures in the workplace.
3. Systems for the protection and safety (in the use) of machines and equipment used in the workplace.

4. Handling, transportation and storage of hazardous chemicals.

5. Safety conditions in agribusiness facilities, tool, machines and equipment.

6. Hygiene and safety conditions in noise-generating workplaces.

7. Hygiene and safety for workers exposed to anomalous environmental pressures.

8. Safety conditions for boilers and boiler operators.

9. Safety and hygiene conditions for workplaces where static electricity is generated.

10. Registration and operation of safety and hygiene joint commissions.

Under the Law in every workplace a safety and hygiene joint commission must be incorporated which will be in charge of investigating causes of work-related injuries or illnesses of employees, and proposing measures to prevent them and ensuring compliance with such measures. These joint commissions must be registered with the Labor Department.

Administrative labor authorities may perform inspections of the companies' premises to verify compliance by the employer of its safety and hygiene-related obligations.

B. Work-Related Risks

Under the Law, employers are liable for any injuries or illnesses sustained or suffered by employees while performing their work or in connection therewith.

Employers are responsible for providing the medical assistance required by the employee who has sustained a work-related risk, and for paying him/her indemnities in the case of temporary or permanent disability, or paying them to the employee's relatives if he or she dies.

The aforesaid indemnities consist of the following:

1. In the event of temporary disability, payment of salaries from the first day of the employee's disability and during all the time that such disability prevents the employee from performing his/her job or until a permanent disability is decreed.

2. In the event of permanent total disability, a payment of 1,095 days' salary

3. In the event of permanent partial disability, the Law specifies an assessment index to classify it, wherein the percentage compensations are assigned and computed in a casuist manner on the basis of the amount that should be paid if said disability were a total one.

4. If the occupational hazard results in the employee's death, his/her beneficiaries will be entitled to a compensation equal to 730 days' salary plus two months' salary for funerary expenses.

Compensations in items (2), (3) and (4) are limited for their calculation to the equivalent of twice the minimum salary in force in the geographical zone where the workplace is located.

However, the Social Security Law, a mandatory-application statute, provides that the employer that registers its employees with the government agency charged with managing the social-security system, shall be exempt from the responsibilities that the Labor Law imposes on employers concerning work-related risks.

Said government agency subrogates itself for the employer regarding the latter's responsibilities, and provides the employee with every required medical assistance by means of its own medical staff and clinic and hospital facilities. The agency also pays the employee or his/her relatives, as the case may be, subsidies and pensions, taking into account that for this subrogation to occur the employer will exclusively pay the dues to finance the so-called work-risks insurance.

Any employee who sustained a work-related risk is entitled, if he/she is able, to go back to work, as well as to have the temporary-disability term deemed as time of active services.

C. Tests and Medical Examinations

A set regulations in the Law named Federal Regulations for the Safety, Hygiene and Environment in the Workplace binds employers to require employees to submit to medical examinations whenever employees are exposed to physical, chemical, biological and psycho-social agents that by reason of their characteristics, concentration levels and time of exposure might affect their health.

On the other hand, the Law stipulates that employees are obliged to submit to medical examinations provided for in the companies' internal work regulations, so as to verify their not having any inability or infectious, incurable or work-related illnesses.

We note that there is no provision in the Law preventing employers from submitting employees to entry-level medical examinations, skill tests and background investigations

5. EMPLOYMENT CONDITIONS

A. Work Schedules and Payment of Overtime

Under the Law there are three kinds of work shifts:

1. Day shift, from 06:00 A.M. to 08:00 P.M., for a maximum of eight hours daily.
2. Night shift, from 08:00 P.M. to 06:00 P.M., for a maximum of seven hours daily.
3. Composite shift, which includes hours of the day and night shifts. The night portion can be three and a half hours at most, otherwise it becomes a night shift. This shift must not exceed seven and a half hours daily.

Since the Law provides that for every six working days the employee must have at least one paid rest day, the maximum weekly work schedule is limited to 48 hours (day shift); 42 hours (night shift); or 45 hours weekly (composite shift).

The Law permits spreading Saturday's working hours from Monday through Friday. It is valid, for instance, that Monday through Friday employees on day-shift work more than eight hours daily, without entitlement to payment of overtime. This is a customary practice for office personnel. However, such weekly-schedule should be spelled out in the respective employment contracts, so the employer is protected against overtime claims.

In a fully shift, workers are entitled to have a break to rest and take a meal.

For the hours worked exceeding their ordinary work schedule, employees are entitled to be paid overtime, as follows:

1. The first nine extra hours per work week must be paid double (i.e., at twice the normal salary);
2. Any overtime in excess of nine hours per week must be paid at three times the normal salary.

It should be noted that when an employee claims payment of overtime, the burden of proving otherwise is on the employer. The employer must demonstrate that the employee worked only his/her contractual hours (within statutory limits). Failure to prove this will oblige the employer to pay the claimed overtime.

Because many employees are not subject to recordable attendance controls, we recommend that all individual employment contracts include the stipulation that the employee not work overtime unless he/she first obtains written permission or order by the employer to do so, so that the employer has some protection against overtime claims.

Special discussion should be taken re: confidential employees, i.e., those employees who under the Law perform direction, inspection, surveillance and/or monitoring duties for companies.

In Mexico it is common practice not to pay overtime to confidential employees due to considerations outside the law, Among these are: the fact that these employees usually receive better salaries and benefits than others; their work schedules are flexible and not subject to attendance controls; and they don't necessarily receive extra pay for working longer hours.

On the other hand, the Law does not restrict the right of confidential employees to payment of overtime, and they are certainly entitled to claim such payment in court.

The above makes it crucial that even in the case of top executives, their employment contracts provide that they will work overtime if they first have the employer's written permission to do so.

B. Weekly Rest Days and Mandatory Holidays

As discussed above, employees are entitled to a paid rest day per every six working days, the Law providing that such paid rest day will preferentially be Sunday.

Employees who normally work Sundays are entitled to receive a premium equal to 25% of their daily salary for that day only.

The Law establishes the following days as mandatory holidays:

1. January 1st.
2. The first Monday in February to commemorate February 5 (anniversary of promulgation of the Mexican Constitution).
3. The third Monday of March to commemorate March 21 (marking the Birth of President Benito Juárez).
4. May 1st. (Labor Day)
5. September 16 (Commemoration of Independence Day).
6. The third Monday of November to commemorate November 20 (which marks the start of the Mexican Revolution).
7. December 25.
8. September 1st, every six years, on the President's Inauguration Day.
9. The days set by federal and state electoral laws for ordinary election days.

The employees who work on a mandatory holiday or on their rest day, are entitled to an additional payment of 200% of their salary for that day.

C. Vacations and Vacation Premium

All employees are entitled to enjoy the following minimum paid vacations, in accordance with their years of employment:

Years of Employment	Vacation (Working) Days
1	6
2	8
3	10
4	12
5 to 9	14
10 to 14	16
And so on.	

Also, employees are entitled to be paid a premium equal to at least 25% of salary earned during vacation.

D. Christmas Bonus

All employees are entitled to be paid, by December 20th, a year-end bonus equal to at least fifteen days' salary.

Where an employee has not completed one year of employment, he/she will be paid the Christmas bonus in proportion to the time he/she has been employed.

E. Profit Sharing

Employers must share a percentage of their profits with their employees as determined by a Joint National Commission comprised of representatives of Federal Government, employers organizations and trade unions.

Since 1985, the National Commission has provided that the profit distributable among employees shall be ten per cent of the companies' income (before taxes) as stated in their annual tax returns.

The following are exempt from the obligation to share profits among employees.

(i) newly created companies within their first year of operation;
(ii) newly created companies engaged in the introduction of a new product, within their first two years of operation;
(iii) newly created mining companies, still in the exploratory stage;
(iv) private assistance institutions such as the Red Cross;
(v) government's social security or social-welfare agencies; and
(vi) Companies having an annual income stated to tax authorities not exceeding $300,000 pesos (roughly US$27,270).

All other employers must share profits with employees within the sixty calendar days counted from the date on which they should have paid their yearly income tax to the Treasury Department (Under the Income Tax Law, such tax must be paid by March 31 each year).

Companies may not use losses to offset gains.

Fifty percent of the distributable profit shall be shared in proportion to the number of days worked by each employee during the year; the other fifty percent will be shared in accordance with each employee's salary.

The officer with the highest level of authority in the company is not entitled to share in its profits. Employees in confidential positions will share in the company's profits. However, if their salary is higher than that of the highest-paid unionized worker (or absent a union, the highest-paid non-confidential worker), such salary plus 20% thereof shall be considered as the maximum basis for profit-sharing among confidential employees.

Temporary employees shall be entitled to share in the profits provided that they have worked for at least sixty days during the previous year.

F. Contractual Benefits

Most companies provide benefits in excess of legal (statutory) minimums, such as Christmas bonuses, vacation entitlements, vacation premiums and holidays.

For non-unionized employees, it is common practice for companies to grant them benefits other than those provided in the Law, such as:

(1) Life and major-medical insurance. Buying a policy which benefits employees does not exempt employers from the obligation to register them with the government's agency in

(2) charge of social security, which provides health-care and other services both to employees and their direct relatives.
(3) Savings fund, made up by equal contributions by the employer and the employee.
(4) Food coupons or vouchers

Deductibility of life and medical-expenses insurance premiums, food coupons and employer's contributions to the savings fund, are conditioned to the fulfillment of the Income Tax Law requirements.

Companies often grant managers or top executives fringe benefits such as company car, cell phone, educational assistance, and target bonuses.

While the benefits granted to unionized employees vary, these are traditional:

1. Allowances and paid leaves in marriage, childbirth, and death of relatives;
2. Savings fund;
3. Food coupons;

4. Attendance and punctuality awards;
5. Group life insurance;
6. Sporting allowances;
7. Transportation, or transportation allowances;
8. Educational allowances;
9. Payments to supplement social security subsidies when temporarily disabled for causes other than work-related risks;
10. Night-work incentives;
11. Allowances for union activities;
12. Holidays in addition to the statutory ones.
13. Severance payments higher than those provided for in the Law.

G. Statute of Limitations to Claim Outstanding Benefits

Employees have one year to claim payment of earned and outstanding benefits such as vacations, vacation premium, Christmas bonus, commissions, bonuses, overtime, as well as salaries.

H. Modification of Employment Conditions

The Law establishes that employment contracts and relationships to bind the parties to that which they have explicitly agreed upon and the consequences thereof, if consistent with current employment-law regulations, good faith and fairness.

Federal Judiciary courts hold that any modification to employment conditions – including employment benefits - is subject to the employees´ consent and that the minimum statutory benefits are not affected.

The Judiciary also holds that unilateral modifications of employment conditions detrimental to employees shall allow the latter to rescind his/her employment contract and claim payment of the respective legal damages.

The foregoing applies to the unilateral cancellation or reduction of benefits established by custom, since, under the Law, customary practice is a source of rights and obligations, provided that they give employee better benefits than minimums provided by statute.

I. Employment Conditions for Female Employees

While in principle female employees have the same rights and obligations as male ones, the Law establishes special rules that protect maternity.

Pregnant employees shall not perform unhealthy, unsanitary or dangerous tasks, shall not work industrial night-shifts, nor in commercial facilities after 10 p.m., and shall not work overtime.

In addition, female employees are entitled to a paid leave of six weeks prior to, and six weeks after, giving birth.

If the employer registers the female employee with social security, then the employer is exempt from paying the employee her salary during pre- and post-natal periods, as the government's social security agency will pay her a subsidy equal to 100% of her registered base salary.

When the female employee has not accrued payment of social security dues for at least thirty weeks during the year previous to her prenatal leave, the social-security agency will not pay her any subsidy and the employer will be obliged to pay her salaries during the pre- and postnatal periods.

At the end of her postnatal leave, the mother is entitled to return to work with the same position, salary and employment conditions, and her twelve weeks leave shall be considered as active working time.

J. Anti-Discrimination Rule

Under the Law, employment terms and conditions shall be equal for equal jobs, regardless of differences of race, nationality, ethnicity, sex, age, religious creed or political ideology.

K. Training and Apprenticeship

Employers must set up training and apprenticeship programs for their employees, specifically aimed at:

1. Updating and improving their knowledge and abilities for the tasks they perform;
2. Preparing the employee to fill a vacancy or a newly-opened position;
3. Preventing work-related hazards;
4. Increasing productivity;
5. In general, upgrading the employee's capacities.

These programs may not cover more than four years and must be registered, along with the joint commissions monitoring their compliance, with the applicable administrative labor authority.

L. Transfer of Employees

In Mexico, when employees are transferred from one company to another, the legal concept of "employer substitution" is applied.

The Law provides that such employer substitution shall not affect current employment conditions, that is, the new, or substitute employer cannot unilaterally reduce or modify these conditions to the detriment of employees, and is bound to respect not only their seniority, but also their current salaries, benefits and all other employment conditions.[55]

Unilateral reduction or modification of employment conditions by the new employer that is detrimental to the transferred personnel, will entitle them to rescission of their employment contracts, and the payment of damages.

On the date on which employees are notified of the employer substitution, a six-month period starts during which the former employer and the new one will be jointly responsible for obligations and liabilities that arose prior to the substitution. Upon expiration of this term the new employer will assume responsibility.

Substitution of employer may arise from two different situations:

1. When the economic unit is transferred from one party to another, as in a merger or when one business purchases another. In this case the employer substitution applies "by its own nature".

In these "economic-unit-transfer" scenarios, the transfer of employees is automatic and mandatory to protect workers´ rights, without their consent being required.

Statutory notice to employees is aimed at informing them both of the substitution and of the beginning of the six-month term during which both employers will have joint liability.

2. Employer can also be substituted when there is no transfer of the economic unit (as in a merger), nor a purchase thereof, but a business decision is made to transfer employees from one company to another.

In this situation, it is necessary to obtain the individual and written consent of the employees involved, since the transfer alters the employment relationship by placing the company by which the employees originally agreed to be hired.

The transfer of employees from one company to another, can be carried out either by using the procedure for employer substitution discussed above, or by terminating the employment relationship and his/her subsequent hiring by the new employer, with acknowledgment of his/her seniority.

In any case, transfer or re-assignments, even temporary ones, should be adequately documented so that the employer is protected against any claims brought by the employee against either business.

M. Internal Work Regulations and Policies

Disciplinary measures applying to employees are enforceable only when included in "Reglamento Interior de Trabajo" (Internal Work Regulations), written by a joint commission comprised of representatives of the employer and the employees and registered with the respective Labor Board.

Unpaid suspensions cannot exceed eight days, and the involved employee has the right to be heard in his/her defense.

With the exception of the disciplinary measures discussed above, tlegal work rules contained in Company Policies or Employee Handbooks are valid if the employee has signed them and recognizes in writing that compliance with such policies are part of his/her work contract.

N. Privacy in the Workplace

The employer must provide its employees with the equipment, tools and items necessary to perform their work, An employer cannot demand compensation from the employee for ordinary wear and tear of such work equipment and tools.

Internal Work Regulations and Company Policies and Employee Handbooks recognized by the employee may stipulate the employer´s right to monitor information contained in the software and computer equipment used by the employee for the performance of his/her job.

Criminal action can be taken against that party who wrongfully and deceitfully tampers with the telephone communications of third parties.

O. Inventions by Employees

The Law provides that the employee who produces an invention is entitled to have his/her name recognized as that of the author thereof.

Regarding the economic rights arising from the invention, the Law considers whether or not the employee was hired to carry out research tasks, i.e., to "perform activities of research or for the upgrading of the procedures used within the company, on behalf of the latter."

If research is part of the employee's job, the Law provides that ownership of both the patent and the rights of exploitation belong to the company. The employee is entitled to additional compensation by the company when the benefits that the company may obtain are out of proportion with the salary that the employee ordinarily receives.

Whenever the invention is made by an employee not hired for research, the Law determines that any economic benefits derived from the invention shall belong to the employee.

Since the company's facilities and manufacturing techniques encourage innovation, the company has a pre-emptive right to acquire the ownership of the related patent from the employee.

P. Non-Compete, Non-Disclosure Obligations

(a) Non-Compete

As long as the employment relationship is in force, an employee's breach of non-compete provisions stated in his/her employment contract entitles the employer to dismiss the employee with cause.

Competitive activities forbidden by the non-compete imply acts of lack of integrity and dishonesty against the employer, which, constitutes grounds for justified dismissal.

However, because the Mexican Constitution guarantees freedom of occupation and an individual constitutional right, generic post-employment non-compete covenants are invalid.

(b) Non-Disclosure

The Law classifies as grounds for justified dismissal disclosure by an employee, of trade secrets, reserved matters or other confidential information.

Even after termination of the employment relationship, disclosure by the former employee of trade secrets (identified as such in a tangible way), may be grounds for bringing criminal action against him/her, provided that the company has sufficient and conclusive evidence of the disclosure.

6. TERMINATIONS

A. Dismissals

Under the Law, an employer may dismiss an employee without liability only in one of the following circumstances:

1. Within working hours the employee incurs act of dishonesty or indicative of lack of integrity.
2. The employee intentionally causes material damage to employer's property.
3. Through negligence or inexcusable carelessness, the employee jeopardizes the safety of the premises or of the persons inside them.
4. The employee disclosure confidential matters to the detriment of the company;
5. The employee disobeys orders without reasonable cause.
6. The employee is unjustifiably absent from work for more than three days within any 30-day period.

7. A final judgment imposing prison sentence on the employee preventing him/her from fulfilling the employment contract.
8. In the case of confidential employees, the employer has reason to lose trust in the employee.

Employees with more than 20 years' seniority may be dismissed with cause solely when the cause or causes are particularly grave or make impossible for their employment relationship to continue.

The statute of limitations to dismiss is 30 calendar days from the date on which the employee incurred the cause or causes for dismissal or the date on which the employer learned of such cause.

An employer dismissing an employee with cause is bound by law to provide written notice stating both the date of termination and the grounds for the dismissal.

Should the employee refuse to receive the written notice of dismissal, the employer must, within five days of such refusal, notify the issue to the Labor Board, and request that it serve notice to the employee at his/her registered home address.

Under the Law, failure by the employer to provide written notice of dismissal will lead to the Labor Board's deeming the dismissal unjustified, even if the employer proves that the employee incurred the cause or causes justifying it.

After termination, the employee has a 60-day term to file suit before the Labor Board for having been unjustifiably dismissed. Employees are entitled to demand reinstatement on the job or payment of a sum equal to three months' salary. Failure by the employer to conclusively prove in court the sufficient cause for dismissal and its compliance with the above described dismissal formalities will lead to the employer being required to pay back salaries to the employee, i.e., the consolidated salaries in arrears from the date of termination to the date on which the award of the Labor Board is granted.

The courts (labor boards) may admit as evidence expert reports and opinions, documents and witnesses' depositions. Signed documents, however, are the most effective evidence.

As to employees with less than one year seniority; confidential employees; household servants; part-time employees and employees having direct and continued contact with the employer, the Law permits the employer to refuse the reinstate the employee and pay him/her

instead a sum equal to twenty days' salary per each year of employment, in addition to the aforesaid three months' salary award.
This right applies solely once the respective suit has been filed and once the Labor Board has approved of its application.

While the twenty-days' salary-per-year-of-employment award legally applies only in the cases mentioned above, it is customary for employers to incorporate such payment into the proposed severance package (when the employee has not incurred a valid cause for dismissal or there is insufficient evidence of that cause), making the financial package attractive to the employee and possibly preventing the employee's suing for reinstatement.

To protect the company against labor claims, it is advisable to have the employee sign a letter of voluntary termination and a special itemized receipt wherein he/she grants the employer full release of obligations, or to execute a termination agreement approved by the Labor Board.

Under the Law, the basis to calculating awards, including back salaries, is the "consolidated salary" so called because it results from adding to the base salary any additional benefit paid in consideration to the employee's work, such as bonuses, commissions, Christmas bonus, vacation premium, and other fringe benefits.

B. Other Reasons that May Justify Termination of the Employment Relationship

Individual employment relationships may also be terminated by mutual agreement; death of employee; conclusion of the cause for temporary employment; or physical or mental disability that makes impossible for the employee to perform the work.

If the physical or mental disability had a cause not related to work and the employer cannot give the employee a job compatible with his/her abilities, the employee is entitled to one month's salary plus his/her seniority premium. This consists of 12 days' salary per year of employment, capped for its calculation at twice the daily minimum salary in force in the area where the services were rendered.

In any case of termination, dismissals included, the employee must also be paid any earned and outstanding salaries and benefits that he/she is entitled to, such as bonuses, fringe benefits, commissions, unused vacation days, vacation premium and Christmas bonus.

The employee is also entitled to payment of seniority premium, except when, having resigned voluntarily, he/she has not accrued at least fifteen years of services.

C. Employees May Justifiably Rescind their Employment Contract

An employee may justifiably rescind his/her employment contract, if the employer commits acts of dishonesty: reduces the employee's salary; fails to pay employee his/her salaries on the date or at the location agreed upon; unilaterally modifies, to the detriment of employee, his/her employment conditions or benefits; exposes the employee's health or safety to serious danger, either because of unsanitary conditions or failure to comply with the preventative and safety measures established by law.

The employee will have a 30-day of absence to file for rescission of the employment contract before the Labor Board, counted from the date when the employee knew of the cause for rescission.

If during litigation the employee proves the cause for rescission, the Labor Board will require the employer to pay him/her three months' consolidated salary plus twenty days' consolidated salary per year of employment, seniority premium, the balance of the employee's earned and outstanding salaries and benefits and the consolidated back salaries.

D. Temporary Suspension of the Effects of Employment Relationships

Employment relationships may be suspended only for the causes provided for in the Law, including infectious disease of the employee; temporary disability of the employee for causes other than work-related ones; arrest or custody of employee; the employee's holding a publicly elected office; appointment of employee to government organizations; or failure by an employee to obtain the documents or permits necessary for the performance of the job.

The employer is not obliged to pay salaries to employee as long as the cause for suspension continues, unless the employee was arrested for having acted in the defense of the employer.

Once suspension ends, the employee is entitled to be restore to the same position, salary and employment terms and conditions.

E. Collective Terminations

The causes recognized for collective termination are quite limited.

1. Force-majeure or acts of God that make necessary to close
2. Bankruptcy and shutdown of operations ordered by competent judges at the request of creditors are grounds justifying collective termination.
3. Other justified causes are mineral depletion in the case of extracting industries, or business exploitation's being clearly and manifestly unprofitable.

However, no collective termination can be performed without prior authorization of the Labor Board's.

If the Labor Board authorizes the collective termination, employees are entitled to payment of three months' salary and their seniority premium (12 days' salary per year of employment, calculated on a basis capped at twice the daily minimum salary), plus the balance of any outstanding salaries and benefits.

When introduction of new machinery, equipment, or new procedures, lead to the need to reduce the work force, the Law provides that barring the execution of an agreement with the employees or with the union, if any, then the company must obtain the Labor Board's authorization for collective termination. Each terminated employees is entitled to payment of four months' salary plus twenty days' salary per year of employment or the amount stated in their contracts –whichever is higher- plus payment of their seniority premium and the balance of outstanding salaries and benefits.

Obtaining the authorization of the Labor Board can be difficult and time-consuming. It may also be postponed by a strike call filed by a union.

Any collective termination performed unilaterally by a company will be deemed unjustified, i.e., not authorized by the Labor Board, or done without prior agreement with the employees or with the union, if any.

Companies' option to downsize their work force, move or consolidate jobs or facilities, and shut down plants, depend fundamentally upon their being prepared to pay employees the

award provided for in the Law, and their obtaining the consent thereto by the employees and the union that represents them, if any.

The above does not preclude the possibility of negotiating such severance indemnities with the employees or with the union, if any.

Collective termination must be adequately documented, with inclusion, in the case of unionized employees, of agreements entered into with the union and then ratified by and before the Labor Board.

7. INDIVIDUAL EMPLOYMENT RELATIONSHIPS

A. The Law does not recognize the notion of employment "at will".

Employment "at will" is an American concept not recognized by Mexican Law. Once an "employment relationship" is established between a company and a worker, the Law protects the worker from being terminated without just cause.

As a general rule, the Law stipulates that an employment relationship exists, whenever an individual renders personal subordinated services to another individual or to a juridical person in exchange for pay.

B. Differences between employment relationships and relationships of companies with independent contractors.

The Federal Judiciary, including the Supreme Court of Justice, have repeatedly held in case-law: 1) that the element identifying the employment relationship is subordination in the services rendered, and 2) that this subordination implies the power of command of the party receiving the services (i.e., the employer), and the consequent duty of obedience of the party who renders such services (i.e., the employee).

The fundamental difference between an "employee" and a "consultant" is that the employee is subject to orders, controls, schedules, etc. given or set by the employer. A consultant

provides services independently, as a freelancer and is able to set terms under which work will be performed.

Even if a company enters into an independent-services agreement with a consultant, should litigation arise, and should the plaintiff prove that his/her services were actually subordinate, then the labor board will consider the plaintiff as an employee, and will find against the company.

These considerations also apply to sales personnel. Under the Law, even assuming that salesmen are not subordinated, they will be deemed employees if they perform their services on a permanent basis, not so if they do not perform them only in sporadically.

Even if the company executes agency contracts with the salesmen and them independent contractors, if litigation arises and it is shown that they act subordinately or that their services are personal and permanent, the labor boards would find an employment relationship.

C. Employee Hiring by Personnel Agencies or Services Providers.

In Mexico personnel agencies or service providers frequently provide staff for operating companies (manufacturing or marketing companies). This practice must consider both legal rule of subordination of the individuals' services as an element of the employment relationship, and also that the Law regulates intermediary is defining as that party which hires or intervenes in hiring employees to render services to an employer.

Because of such legal rules, employment contracts should stipulate both that the services that the employees render to the operating company are rendered on behalf of, and subordinated to, the services provider, and that the employees recognize such service provider as their sole employer and the only source from which they are entitled to receive salaries and other employment benefits.

Likewise it is advisable for the operating company to avoid both issuing written orders to the staff implying subordination in their services, and paying them, as these acts could characterize the operating company as the true employer and that the services provider as merely an intermediary.

These rules also apply to personnel agencies. If a contractor fails to have sufficient resources to comply with the statutory obligations owed its workers, the company beneficiary of their work or services will be held jointly liable for such obligations.

It is suggested that the operating company enter into a service agreement with the personnel agency, in which the agency agrees to fulfill all its statutory obligations as the employer, and to hold the operating company harmless from any employment-related liabilities that could be claimed. It is equally important that the operating company ascertain the solvency of the personnel agency.

Even if the services agreement requires the agency to hold the company harmless from employment-related claims, if the Labor Board rules against the company, either because the plaintiff proved that the company is the true employer or because the agency is insolvent, the company must pay the Board's judgment.

In this case, the company is entitled to bring a civil action to demand that the agency comply with the service agreement.

D. Written Employment Contracts and Hiring Practices

The Law requires that all employment relationships be formalized by a written employment contract. Even without such a contract, however, the employment relationship will be deemed to exist if an individual renders personal subordinated services, or in the case of salesmen, if their services are provided on a permanent basis.

Failure to execute a written employment contract is chargeable to the employer. After inspection by an administrative labor authority, the employer may be fined between 3 and 315 times the daily minimum salary in force in the workplace.

A written contract signed by each employee, regardless of level, will constitute proof of the terms of the employment relationship should a dispute or controversy arise between the employer and the employee.

Regarding executives employed with Mexican subsidiaries, their employment contracts shall state that any communications that they may have with the foreign (American) parent company, shall not in any way imply an employment relation between the executive and the parent company, thus protecting the latter from actions brought before Mexican labor boards claiming liabilities from it as employer.

The contract should state the terms and conditions of the employment relationship, including the nature of the work, schedule, salary, and all benefits, including bonuses, and the requirements and bases for the calculation of any bonus.

Where there is a union, the collective bargaining agreement will suffice. However, even in that case it is advisable for the company to execute individual written employment contracts since, should litigation arise, the employer bears the burden of proof regarding the terms and conditions of employment, which include its scope, compensation, and the worker's seniority or date of employment.

We do not recommend the use of employment-offer letters, because, besides not fulfilling the requirements of a written employment contract, these letters may be utilized to sue the company even if the addressee never actually worked for it.

Also, if such a letter is issued by the American parent company, a plaintiff can use it to demonstrate and claim liabilities from it as employer.

If an employment-offer letter has been issued, it is advisable, when the employee is hired, to replace such letter with written employment contract and stipulate that such contract supersedes the letter offering employment.

E. Term Employment

The Law contemplates that individual employment relationships last indefinitely.
It permits temporary hiring solely when it is justified by the nature of the tasks that the employee will perform. Examples are: specific works; work other than that usually performed in the company, and substitution of other employees on sick leave, holiday or a similar situations.

Should litigation arise, in order for the employer to make its case successfully as to the legitimacy of the termination of the temporary employee, the employer must prove the termination of the temporary work project. Failure of the employer to do so would lead to being sentenced for unjustified dismissal, since the Law provides that should the project continue to exist, then the employment relationship must continue to exist as well.

The Law does not permit "probation contracts", that is, those whose temporality contracts which may become permanent when the employee demonstrates that he/she has the skills and abilities to perform the job.

What the Law does provide is the right, for the employer, to justifiably dismiss the employee within the first 30 calendar days of employment, if it is proved that the employee deceived the employer through false documents or references regarding his/her capability, knowledge or skills. When this cause for dismissal is used, the employer must follow formal legal procedures.

8. UNIONS AND COLLECTIVE BARGAINING AGREEMENTS

A. Main Legal Provisions on the Formation and Operation of Unions

The Law recognizes the right of workers to form unions.

Unions are the only entities legitimized to enter into collective bargaining agreements with the employing companies.

For an employees' organization to be accredited as a union, and be entitled to enter into a collective bargaining agreement, it must register with the labor authority.

While the Law provides that incorporation of a union requires a minimum membership of twenty employees, nothing prevents fewer employees from affiliating with an already-formed and registered union, which, in turn, may enter into collective bargaining agreement.

Confidential employees may not be members of other employees' unions. They may, however, legally incorporate, or affiliate with, their own unions.

The following are the unions which may legally register with labor authorities:

1. Guild unions ("gremiales"), i.e., associations of employees engaged in a single occupation.
2. Company unions, or associations of employees working for a single company.
3. Local industrial unions, i.e. associations of employees who work for two or more companies pertaining to the same industry and located within the same state.

4. National industrial unions, or associations of employees working for two or more companies pertaining to the same industry and with premises in two or more states of the country.
5. Special unions formed by employees from various professions. This type of union can only be formed when in any particular municipality there are less than twenty employees of the same profession in any municipality.

Unions have legal powers and capacity only with respect to the following:

1. to acquire properties;
2. to acquire real state dedicated to the purposes of their organization
3. to defend the rights of its members and carry out all necessary actions related thereto before every type of authority.

Unions are legal entities with very precise limitations as to their legal capacity; mercantile, commercial and activities for profit are off-limits for unions.

B. Overview of Unions in Mexico

Except in the case of banks and insurance company, usually white-collar employees are not unionized.

Laborers in factories typically become members of unions that defend their interests by negotiating higher benefits and better employment conditions with an employer in a collective bargaining agreement.

Unions are particularly strong in the industries: oil and petrochemicals, mining, education, banking, transportation, entertainment, textile, restaurant, power, soft drinks, automotive and vehicle spare parts, and communications.

Usually unions become members of regional or national federations and confederations.

Union confederations with the most political clout are those affiliated with the P.R.I. (Partido Revolucionario Institucional), i.e., the political party that ruled our country for more than 70 years and still rules more than half of the country's states. Most influential are the Confederation of Mexico Workers (CTM), The Revolutionary Laborer and Peasant Confederation (CROC), and the Mexican Regional Laborer Confederation (CROM).

The corporate structure of union organizations and their affiliation with the P.R.I. led its government to grant them a fair number of advantages, including legal ones, in exchange for control over workers and their vote.

This symbiosis between the establishment's union organizations and the government gave union leaders considerable political clout reflected in Congress, governorships and government positions at the federal, state and municipal levels.

The presence of these union and their political influence has not diminished, even when many state governors and the President of the Republic belong to political parties other than the P.R.I.

Leaders of union confederations have steadily been losing their power to impose decisions on unions, as there has been a gradual process whereby regional leaders or union leaders themselves have gained autonomy.

In general, the establishment's union organizations are headed by skilled negotiators with usually moderate political and labor tendencies who, while defending employees' interests and pressing companies to obtain better salaries and benefits and employment conditions, also respect the companies' need for stability.

However, there are leaders well known for committing extortion and intimidation both against companies and employees.

There are also minority groups and union organizations with leftist, often radical political and labor tendencies. At times these organizations radicalize labor conflicts in pursuing political purposes not of a labor nature.

C. Collective Bargaining Agreements

The Law defines the collective bargaining agreement as a compact between one or more trade unions, and one or more employers for the purpose of establishing the conditions under which labor is to be performed in one or more companies or "establishments" (meaning premises).

Under the Law, a collective bargaining agreement applies to all the employees who work in the company although all of them are not members of the union, except if the collective agreement itself excludes non-unionized employees. Therefore most collective agreements contain provisions excluding non-unionized employees.

A union has the power to call a strike against an employer with the aim of obtaining the execution of a collective bargaining agreement, grounded on argument that it represents the majority of the employer's employees.

Details of the employer-employee relationships are spelled out in collective bargaining agreements, including length of work-shifts, wages, vacation, weekly rest days and mandatory holidays, uniforms, promotions, filling of vacancies, fringe benefits, etc. For any collective bargaining agreement to be valid, it must be registered ("deposited") with the competent Labor Board.

Employee benefits depend upon an employer's economic capacity and the strength of unions, as well as upon the age of the agreements. These are revised bi-annually as to conditions and annually as to their salary schedule. Unions are entitled to call a strike against companies in demand of such revisions.

While raises to minimum salaries are used as benchmarks to negotiate raises in collective bargaining agreements, unions traditionally obtain higher raises in each revision.

Most collective bargaining agreements include "exclusionary clauses". They provide that nonunion members will not be hired and that anyone leaving the union will be dismissed by the company without employer liability. In 2001 the Supreme Court issued a resolution declaring the provisions contained in the second part of that clause to be unconstitutional, although most collective bargaining agreements continue to include the whole exclusionary clause.

While a union's right to go on strike is conditioned on its actually representing the majority of the company's workers, the Labor Board lacks the power to resolve whether or not the union really represents this majority before the suspension of activities.

The Labor Board will receive the company's petition to declare the strike "legally nonexistent" filed within 72 hours after the suspension of works; After the petition is filed, employees vote on the union's representation in a location designated by the Board. The Labor Board may then determine whether the union represents the majority of employees and rule on the legitimacy of the strike.

These rules, and the fact that the length of the procedures to have the strike declared illegitimate is unpredictable, have allowed extortive moves by union officials who take advantage of the strike to obtain unlawful payments from companies.

To avoid that risk, it is customary for small industrial companies, commercial or service companies to execute collective bargaining agreements with friendly unions (known as "white unions"), this protects the company from having a strike called demanding a new collective bargaining agreement, since the Law prohibits this when the threatened company already has such an agreement on file with the Labor Board.

The goal of companies which enter into these agreements is not to evade their obligations as employers or harm their employees, but to avoid extortive strikes.

D. How Unions May Compete to Administer a Collective Bargaining Agreement

Entering into a collective agreement and its registration with the Labor Board does not prohibit a company's employees from affiliating with another union. The employees´ chosen union may claim before the Labor Board that it is entitled to administer the collective bargaining agreement because it represents the majority of the employees.

The Labor Board will resolve the matter based upon the result of a voting by the company's employees as to which union actually represents them.

The vote will take place in the company's facilities or at the place that the Board may designate, and will be conducted by Board officers with authority to attest to the truth of facts occurring in their presence.

The vote is taken form names on the payroll for the period that the Board designates. It may be supervised by representatives from both unions and the company.

Each worker must show an ID card to the Board's officers and choose by voice vote which union he/she wants to be a member of. Representatives from both unions are entitled to object to a vote, alleging, for instance, that an individual is not a company employee, or that he/she is a confidential employee, or that their ID card is insufficient.

Upon conclusion of the voting, the Board will set a hearing during which both unions may submit evidence to prove the objections posed by each one of them.

The Board's ruling will depend upon which union obtained the highest number of legitimate votes

If the plaintiff union obtains the majority of votes among the workers who attended the voting, the Board will rule that it behooves such union to administer the collective bargaining agreement.

If not, the Board will rule that the plaintiff union's suit is invalid and that the defendant union must and shall keep the administration of the company's collective agreement.

9. STRIKES

A. Grounds for Calling Strikes

The Law recognizes strikes as a tool for employees to obtain the execution, revision or enforcement of collective bargaining agreements. Because trade unions are the only entities empowered to enter into collective agreements, only they, as representatives of the employees, can call strikes on companies for issues related to these agreements.

Other grounds for strike foreseen in the Law are "to attain equilibrium between the factors of production by harmonizing workers' rights with those of the company"; claims for the employer to comply with legal provisions on profit-sharing; and support a strike carried out in another company for any of the above-mentioned purposes.

These support strikes, called "solidarity strikes", are rare, because the Law provides that in no case the workers will be entitled to payment of their salaries during the time of work suspension.

B. Strike-Calling Procedure

The union must send a written strike call to the employer and submit it to the Labor Board, which will then serve the writ to the employer.

In the strike call writ, the union must make concrete requests to the employer which must be related to grounds for strike mentioned above, and include its reason for suspending work if its in the company if its requests are not fulfilled.

The union's writ must also state the day and hour of work suspension. Under the Law, the union may set a six-days term counted from the day and hour on which the employer is notified of the strike call by the Labor Board. In strike situations, all days are counted as business days.

From the time the company is served the strike call, it may continue operating, but company may not sell or dispose of any of its assets, since the company's property is deemed guarantee of the employees' rights.

The Law provides that from the date on which the company is notified of the strike call, none of its assets can be seized, unless such a seizure is aimed at guaranteeing employees' damages, salaries and benefits, tax liabilities, social-security or workers' housing-fund assessments.

Before work is halted by a union, a conciliatory hearing will be held before the Labor Board, during which the Board must seek a conciliatory solution between both parties.

The Labor Board has the power to designate the number of employees who must continue working so that suspension does not gravely damage the security and conservation of the facilities, machinery and raw material, or the further resuming of work.

Under the Law, the Labor Board may rule on the validity of a strike only after it begins and may decide only if formal requirements were complied with or whether the majority of workers agreed to the strike. Generally, labor authorities intervene to reconcile the interests of the parties involved in order to avoid or terminate work stoppages.

C. Procedures at the Beginning of the Strike

The employees' right to go on strike implies the suspension of all activities within the company's workplace. Usually the union places red-and-black banners on the front of the premises as a sign of the suspension.

Within 72 hours following the suspension of works, the employer is entitled to petition the Labor Board to declare the strike "legally nonexistent". This petition can refer only to the strike not being based on any of the grounds foreseen in the Law, or to the union's noncompliance with the procedures established in the Law for the calling of strikes, or that the majority of employees do not agree to the strike.

Should the majority of workers on strike commit violent acts, the employer is entitled to ask the Board to declare the strike illegal. If after exhausting the procedures the Board rules that the strike is illegal, it will also declare terminated the employment relationships of all the workers who were on strike, without liability on the employer.

If the Labor Board deems the strike legally nonexistent, the workers on strike are not entitled to receive salaries for the time they refused to work, and must return to their work within twenty-four hours. If they fail to do so –except with justified cause- their employment relationships will be terminated without liability on the employer.

If the Labor Board rules that the strike is legal, work will continue to be suspended until the parties reach a conciliatory arrangement.

If a conciliatory arrangement is not reached, only the strikers, not the employer, can seek the Labor Board's ruling as to whether or not the strike is unjustified in accordance with the petitions served on the employers in the strike-call writ.

Should the Labor Board rule that the employer is responsible for the strike, the Board will declare the strike terminated and decide the judgment to be paid by the employer, including the salaries for the time work was healed.

Hearings on strike liability are rare, as the majority of strike calls are resolved by conciliatory arrangements between the parties.

Such arrangements usually include payment of fifty percent of the salaries for the period during which work was halted.

The majority of strike calls are amicably resolved before work is suspended. For example, of the 8,644 strike calls attended to from January 2004 to July 2005 documented by the Federal Labor Board, work was suspended in only in 33 cases.