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Mexican Labor Reforms—What Do They Mean?

By Stephen Johnson and Alek Suni | December 14, 2012

Until this month, Mexico's labor code was a relic that recalled 1931 when it was established. Lawmakers have tried for years to update it, but that did not happen until President Felipe Calderón decided to fast-track legislation in the lame duck period of his presidency. For a U.S. president, such a gamble would be considered foolhardy. In Mexico, it was a bold stroke, and it worked. In September, Mexico's Chamber of Deputies, which is dominated by the union-backed Institutional Revolutionary Party (PRI), approved a version that stripped out some key measures on union transparency and elections that would limit the power of union leadership. In October, the Senate, which is dominated by the National Action Party (PAN), reinstated these measures and returned the bill to the lower house. After much haggling and a promise by the PRI to take up labor transparency in the future, the Senate passed a final version by 99 votes to 28 on November

13. President Calderón signed a decree that enacted the law on December 1.

Though watered down, the reform was a significant victory for outgoing Calderón and for Mexican bipartisanship, as the president's PAN and opposition PRI lawmakers had to work together to craft a compromise. Even incoming president Enrique Peña Nieto praised it. The bill was not supported by left-of-center Democratic Revolutionary Party (PRD) legislators who wanted stronger worker rights, however. Whether it will add 1.5 percent to the gross domestic product or 400,000 jobs a year, as proponents have claimed, remains to be seen, as there are many other factors that affect labor markets. Nonetheless, this is an important step in making Mexico much more competitive in trade and ready for membership in such organizations as the proposed Trans-Pacific Partnership.

What's in the Law

Having entered into force, these reforms generally make it easier for businesses to hire and dismiss workers, contemplate trial periods and training contracts for employees, better guard against child labor, regulate subcontracting or outsourcing, protect working women, and provide for hourly wages (as opposed to daily wages). Here are the details:

- **Hiring and dismissing labor.** Perhaps most prominently, the reform lays out new rules that enable firms to dismiss employees more easily, while repealing a key “closed shop” rule (Article 395) that limited hiring. Under “closed shop” rules, unions establish agreements with firms to hire only members, as well as dismiss any worker expelled from the union. These agreements were found to be unconstitutional by the Mexican Supreme Court some 12 years ago, paving the way for repeal of this clause. Closed shops, meaning employers could hire only union members, were outlawed in the United States in the 1947 Taft Hartley Act. The law also limits severance payments and back pay that a firm can continue to owe a former employee after terminating their contract. Long periods of litigation that accompanied severance disputes piled up large back-pay sums. That will be curtailed with a new 12-month limit on back wages and benefits. Lastly, grounds for dismissal now include bullying and sexual harassment.
- **Trial periods and training for employees.** The law adds a requirement for employers to train employees for periods of time that correspond to their standing in the company. For example, initial training periods that serve as employee trials are now required and last from three to six months depending on a worker’s qualifications. If, after a trial, the employer does not want to hire the worker permanently, it must consult with its internal productivity commission, which all companies of over 50 employees are required to have, before making a dismissal. Seasonal agreements are also outlined as hiring options, which may benefit younger workers looking to gain experience.
- **Employee-employer relationship.** The reform grants companies the advantage of being able to promote employees on a merit-based system and also to offer productivity or performance bonuses. Previously, advancement was often based on seniority or years of experience within a company rather than achievement or potential. Business leaders hope such performance perks will help boost productivity.
- **Safeguards against child labor.** The law prohibits illegal child labor and strengthens the rights of legally employed youths. Children under 14 years, for example, cannot legally work for an employer that is not a close relative. For youth laborers above this age, they must be compensated the same as adults. More specific child labor regulations apply to the mining industry, where no laborer can be under 18 years of age. Existing regulations are reinforced to include rules against the employment of minors after 10 p.m. or in environments deemed hazardous to their physical or mental health.
- **Subcontracting and outsourcing.** For the first time, the law sets clear rules for the conditions where subcontracting may be permitted. For example, tasks already performed within a company by its employees cannot be subcontracted to an outside firm. A company subcontracting another is responsible for ensuring the subcontractor’s compliance with labor laws. This seeks to prevent larger companies from using less visible contractors that may not adhere as strictly to labor laws. The reform stops short, however, of imposing joint liability between contractors and client firms.
- **Gender and sexual orientation protection.** The reform also helps expand protections for certain employee groups. This includes banning mandatory pregnancy tests and marital status questions that might discriminate against women in the hiring process. The nondiscrimination clause spells out the equal standing of all employees in comparable positions and forbids any exclusion or differentiated treatment based on ethnicity, nationality, gender, age, disability, health

condition, social standing, religion, marital status, or sexual orientation. Stiff penalties are specified for employers who violate this rule. Additionally, the law provides for a 12-week maternity leave.

- Provision for hourly wages. The new law provides for hourly wage payments and mandates that they may not amount to less than the daily minimum wage of salaried workers. This effectively creates an hourly minimum wage. Previously, minimum wage rules were set only at a daily rate, creating leeway for employees hiring informal or part-time labor. Under the new framework, companies will have to pay hourly wages that are aligned with corresponding daily wages to avoid under-compensation. It also formally permits payment by direct deposit, transfer, and other means to these workers with their consent, which was not spelled out previously.

What's Not in the Law

The Labor Relations Committee in the Chamber of Deputies stripped out President Calderón's union initiatives to limit the power of union leaders. These included measures to force unions to hold elections for senior leaders by secret ballot, make them publish financial records to show how members' dues are spent, and permit the government to break up protracted strikes. For now, elections may be held by a simple show of hands—which means that union members who don't vote with the majority can be singled out and coerced. Opaque financial records can hide some leaders' lavish salaries and perks to preserve the fiction that members' rights come first. And, the public can be adversely impacted by prolonged disputes or demonstrations in key sectors if the government lacks tools to help resolve them.

Bottom Line

Mexico's labor reform is a legislative landmark. It shows how far Mexico has come from the failing economic environment it had in the 1980s toward the competitive one it embraced at the turn of the millennium. On balance, both workers and businesses benefit from the new code. Workers get protections against exploitation, while enterprises

get flexibility in shaping their employee rolls to meet market needs. For their part, union leaders got a reprieve from having to undergo democratic election and show their finances. But they may not get a free pass for long.

Most PAN and PRD lawmakers share a desire to see greater transparency in union management. It's conceivable they could put together a slim majority of votes in both the Chamber of Deputies and the Senate to push through those reforms. Moreover, newly appointed Secretary of Public Education Emilio Chuayffet Chemor is no friend of Mexico's powerful teachers' union. His goal is to take a system in which union members can sell their teaching positions into one that better serves students and prepares Mexico's workforce for the marketplace of tomorrow. To do that, he needs the help of lawmakers in the PAN and PRD, as well as his own Institutional Revolutionary Party.

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