

COVID-19 and Labour Law: Mexico

Alfredo Sánchez-Castañeda, José Pablo Hernández Ramírez*

Abstract

Mexico has an applicable labor law framework to epidemics as Coronavirus. However, given the labor market's context, and the ambiguity stemming from government agreements and ordinances emitted to legally make a stand against COVID-19, the workers are being left vulnerable, regarding their employment and wages.

Keywords: Covid-19; Labour Law; Paid leaves; Informal workers.

Mexico's labor market situation is an element to consider while facing Coronavirus. Mexican labor legislation contemplates causes for suspending labor relations in case of infectious illnesses. Also, the Federal Government has emitted a series of agreements and ordinances to confront Coronavirus. Nevertheless, the lack of concrete action from the Federal Government and the ambiguity of their actions causes non-optimal results.

1. Employment facing COVID-19

Mexico's labor market is characterized by two elements. On one side, most of the country's enterprises are small businesses, and on the other, there is a high rate of labor informality. In the country, 95.4% of businesses are "micro-businesses" and 3.6% are small enterprises. Regarding informality, 57% of workers find themselves in the informal economy, which impedes them from accessing social security schemes. Added to this, there is no unemployment insurance in Mexico.

Services and manufacturing of goods are being affected. In the country, the automotive plants have temporarily shut down¹ and the manufacturing default rate has risen to 31%².

* Alfredo Sánchez-Castañeda, Researcher in labour law at National Autonomous University of Mexico (UNAM); José Pablo Hernández Ramírez, Licensed lawyer attached to the Faculty of Law at UNAM.

¹ <https://www.eleconomista.com.mx/empresas/Paran-10-de-las-12-plantas-automotrices-en-el-pais-20200323-0011.html>

² <https://www.eleconomista.com.mx/empresas/Covid-19-propicia-31.4-de-incumplimientos-en-manufacturas-Index-20200323-0076.html>

Tourism practically is closed. Numerous employers have fired their workers, meanwhile others have extended a resting period without pay, or working with reduced wages³.

Workers that remain laboring: practically people working in delivery, garbage recollection, messengers, convenience stores and supermarket; and also all the labor force working in health services; do so with a high risk and currently there are no labor inspections from labor authorities to protect their health within work.

2. Legal framework for sanitary contingencies

The Federal Labor Law (LFT) regulates the suspension of individual and collective labor relations. First, it is possible to suspend the labor relation, according to Article 42 of the LFT, without the workers' obligation to attend to work and the employer's obligation to pay wages, whenever the worker suffers from a contagious illness that did not stem from a work accident or illness. In this case, the worker, if he is in the formal sector, can access to paid sick leave from the Mexican Social Security Institute (IMSS). Paid sick leave can reach up to 78 weeks, and during this time, the worker will receive 60% of the wage registered by his/her employer. In COVID-19 cases, IMSS is issuing paid sick leaves online.

The second cause for suspension, related to a contagious illness was introduced to the LFT in 2009, in response to the AH1H1 pandemic. Article 42 Bis was introduced, which is relative to the declaration of sanitary contingency. When a sanitary contingency is emitted by the proper authorities, the employer does not require the Court's authorization to suspend labor relations and is obligated to pay workers 1 minimum wage per day, for each day the suspension lasts, for up to a month. In Mexico, the current minimum wage is 3,966 pesos (around 150 euros).

In Mexico, the number of workers that earn a minimum wage is one fifth of the occupied population. Most people earn 2.5 minimum wages. In that sense, guaranteeing a minimum wage is not enough. Also, small businesses will have a hard time to be able to pay their workers a minimum wage in case of a sanitary contingency. This is the case for the formal sector, the remaining 57% of the working population cannot access this labor benefit.

In March, we must highlight, that the Ministry of Labor has issued the *Action Guide for Work Centers in the face of COVID-19*⁴. Even when risky occupations are identified by this guide, up to date there are no labor inspections made by the Ministry of Labor to verify if workers who are at risk are adequately protected.

In the same month, the Ministry of Health emitted the *Agreement which states preventive measures to alleviate and control COVID-19's risks for health, the Ordinance which states preventive*

³ Grupo Alsea's case: (<https://www.economista.com.mx/empresas/Decision-de-Alsea-puede-considerarse-despido-injustificado-por-ser-decision-unilateral-expertos--20200320-0085.html> and Cancun's tourism industry: (<https://www.economista.com.mx/estados/En-Cancun-30-de-los-trabajadores-fue-despedido-CROC-20200326-0132.html>).

⁴ <https://www.gob.mx/stps/documentos/guia-de-accion-para-los-centros-de-trabajo-ante-el-covid-19>.

measures to alleviate and control COVID-19's risks for health and a Presidential Ordinance. The agreement states that both the public and private sectors must grant paid leaves to the elderly in the country, and workers with vulnerable health conditions. This ordinance obliges employers to keep these people's jobs and pay them full wages⁵.

The Agreement details that in the private sector all those who result necessary to face the contingency will continue working, especially health workers, and those workers in finance, telecommunications, media, hotels and restaurants, petrol stations, markets, supermarkets, convenience stores, transportation and gas distribution.

The agreement emitted on March 30th, 2020, which declares a sanitary emergency because of *force majeure* relating to COVID-19, should also be emphasized. This agreement is not legally founded on the LFT, but it implicitly pursues not suspending the labor relation and for the workers to keep receiving full payments for the time this emergency lasts. However, it creates the possibility for the employer to suspend labor relations or to terminate them, because of *force majeure*, a situation that would not benefit the workers. In this case, the Court, when sanctioning the suspension, must set the compensation to be paid to the workers, considering, among other factors, the possible time for suspension of labor and the possibility of finding new occupations, without exceeding one month's salary. If a labor relation ends because of *force majeure*, workers have the right to a 3 months wage compensation and to be receive their seniority premium.

3. Labor risk situations in front of COVID-19

All in all, there is a legal framework for labor matters regarding labor suspension because of contagious illnesses or a sanitary contingency. Also, various agreements and ordinances have been emitted to try to combat Coronavirus. Nevertheless:

- A) There has not yet been a social dialogue between the different social actors or tripartite national meetings between employers, workers and the government.
- B) There have been economic impacts to the production of goods and provision of services. It is calculated that the country will negatively grow from 1 to 6% of the national GDP.
- C) Today, there are no restrictions to the freedom of transit, which results in not all the population respecting the sanitary emergency.
- D) At a national level, only a sanitary emergency has been emitted, establishing measures for protecting health and the obligation to stop all non-essential production of goods and provision of services, pointing out that workers, even if they are not working, must keep receiving their salaries.
- E) A sanitary contingency, as the LFT defines, has not been announced. A reasonable explanation is that, if this were to be done, workers in Mexico would only have had one month of minimum wage guaranteed. Even so, the lack of a sanitary contingency declaration has reflected on labor relation terminations, diminution of

⁵ Agreement: https://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020.
Ordinance: https://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020

workers' salaries and even the suspension of labor relations without any pay. The Federal Government believes the false idea that if they do not declare a sanitary contingency, employers will keep paying their workers. Empirical evidence suggests otherwise.

- F) Since Mexico does not have an unemployment insurance, in these cases, workers can only withdraw money from their retirement fund, which is a solution for a short period of time but a problem in the long run, since they will have to work more time in order to reach a pension.
- G) Informal subordinate workers, informal independent workers or informal employers do not count with any type of support to alleviate their lack of income. Because of this, many of them keep working, even when deemed non-essential. For them, stopping work is not an option, because they completely stop receiving their incomes.
- H) Also, the Ministry of Labor, federally and locally, through their labor inspection, are not supervising that the workers who do have to keep laboring, do so protecting their health and safety at work.

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