



DOING BUSINESS *IN MEXICO*

2020

VTZ

VAZQUEZ TERCERO & ZEPEDA
ABOGADOS



LABOR MIGRATION INTRODUCTION

As a result of Mexico's Trade and Investment Promotion Agency -PROMEXICO– extinguishment, **Vázquez Tercero & Zepeda (VTZ)** seeks to fill that void and promote Mexico as a business destination.

This is why **VTZ** has developed the guide **Doing Business in Mexico 2020**, which is divided into the following seven chapters:

1. *Why Invest in Mexico?*
2. *Foreign Investment.*
3. *International Trade Policy.*
4. *Trade Policy for the Manufacturing Industry.*
5. *Creating a Company in Mexico.*
6. *Taxation.*
7. *Labor & Migration.*

In line with our values, our chapters seek to provide relevant business and legal information in a practical and concise manner. This chapter, *Labor & Migration*, our member **Rafael Alday** will provide a general overview of the relevant labor law provisions on employment, from worker rights, dismissals to unions and collective bargaining, including a brief summary regarding the USMCA, the rapid response mechanism, as well as information on migration.

Emilio Arteaga Vázquez, Jr. Partner
VTZ's *Doing Business in Mexico* Coordinator
emilio@vtz.mx



VÁZQUEZ TERCERO & ZEPEDA
ABOGADOS

LABOR MIGRATION IN MEXICO

Questions? Contact us:
info@vtz.mx

- 7. Labor and Migration Environment1**
- 7.1 Individual Employment Agreements2**
- 7.2 Foreign Employees2**
- 7.3 Outsourcing2**
- 7.4 Salary / Wages.....4**
 - 7.4.1. Over-working hours..... 4**
 - 7.4.2 Rest day 4**
 - 7.4.3 Labor Rights and Premiums 5**
- 7.5 Termination of Employment5**
- 7.7 USMCA Labor Chapter7**
 - 7.7.1 Labor Chapter and its Enforcement Mechanism..... 8**
 - 7.7.1.1 Public Communications 8
 - 7.7.1.2 Enforcement Mechanism: State to State Disputes and Rapid Response Mechanism..... 8
 - 7.7.2 Labor Mexican Amendment: Unions and Collective Bargaining 9**
- 7.8 Migration Matters11**



LABOR MIGRATION IN MEXICO

Questions? Contact us:
info@vtz.mx

7. Labor and Migration Environment

Mexico's labor framework is set forth in the Constitution and the Federal Labor Law (hereon "Labor Law"). Accordingly, a "job" or "working relation" is defined as *rendering of a subordinated personal service to another person in exchange for a wage.*¹ The job definition is quite broad because any person that renders a *subordinated* service to another, who in turn pays compensation, is deemed as an employee, regardless of the nature of the service performed, and he or she is entitled to labor rights.

Pursuant to the Labor Law, workers are entitled to numerous rights. Employees are entitled, for instance, to profit sharing, which can only be dismissed in a limited number of cases. If a worker is terminated without a justified cause, he or she is entitled to seek job reinstatement or severance pay. Indeed, foreign investors perceive Mexican Labor Law as "overprotective" and costly, as noted in WEF's Global Competitiveness Index 2019.

In addition to the Labor Law, Mexico has the following labor-related laws or regulations that complete its regulatory framework:

- Social Security Law,
- Retirement Savings System Law,
- Institute of the National Housing Fund for Workers Law (INFONAVIT Law),
- Federal Regulation on the Safety, Hygiene, and Environment at the Workplace,
- The Mandatory Standard NOM-035-STPS-2018 on Psychosocial Risk Factors at Work - Identification, Analysis and Prevention,² establishing the elements to identify, analyze and prevent psychosocial risk factors, as well as to promote an environment organizational support in the workplace.

The employers are required to register all of their employees before Mexican public institutions, namely the Mexican Social Security Institution (**IMSS**, acronym in Spanish), the National Housing Fund for Workers (**INFONAVIT**, acronym in Spanish) and the National Fund Institute for Workers' Expenditures (**FONACOT**, acronym in Spanish). As a result, an employer has to pay "social-taxes" to these agencies. Failing to register or make timely payments regarding these *social-taxes*, the employer is subject to penalties and surcharges.

¹ Article 20 of the Labor Law.

² Published on October 23, 2018, in the Official Gazette.

LABOR MIGRATION IN MEXICO

Questions? Contact us:
info@vtz.mx

Also, the employer will have to register before the tax or treasury authority of the State (i.e. local authority). States collect a Payroll tax that is paid by the employer based on wages and other expenditures.

7.1 Individual Employment Agreements

As a general rule, the Labor Law establishes that an individual employment agreement duration is *indefinite* (i.e. permanent). Temporary contracts are permitted, however, only when there is a justified cause, such as probationary periods, initial training, among other situations. The employer has the legal duty to have a copy of the agreement.

7.2 Foreign Employees

Mexican employers may hire foreign employees. However, the Labor Law provides that employers must comply....

Thank you for your interest in our guide and visiting our website!

To continue reading our **Creating the Labor and Migration Guide**, please fill out our form or contact us at info@vtz.mx.

7.3 Outsourcing

2 Outsourcing labor legal schemes are carefully regulated to prevent their abusive use against employees and their labor rights. The 2012 labor reform³ introduced the "*outsourcing or subcontracting regime*", including two very relevant provisions. In essence, a labor-intensive service agreement, for instance, may have far reaching legal consequences to the extent of deeming service provider's workers as employees of the contracting company.

³ Amendments to Labor Law published on November 30, 2012 and being effective as of December 1, 2012.

LABOR MIGRATION IN MEXICO

Questions? Contact us:
info@vtz.mx

In essence, the Labor Law considers that outsourcing entails a “contractor” (i.e. outsourcing company) that performs work or provides services to a “beneficiary”, an individual or enterprise. The beneficiary sets the tasks and supervises the development and execution of the contracted work. In turn, the outsourcing company will carry the services or work with his own employees.

An outsourcing company is responsible for all labor obligations, including social security and tax regarding, his employees. Needless to say, the beneficiary of the outsourcing services is jointly liable in the event that the outsourcing company fails to fulfill its labor obligations (including tax and social security).

The Labor Law considers, for instance, “human resources” companies (e.g. head-hunters) as...

Thank you for your interest in our guide and visiting our website!

To continue reading our **Labor & Migration** Guide, please fill out our form or contact us at info@vtz.mx .

Download our other chapters:

1. WHY INVEST IN MEXICO?

AUTHOR: EMILIO ARTEAGA

Contributors: Dora Luz and Susana Muñoz

2. FOREIGN INVESTMENT.

AUTHOR: EMILIO ARTEAGA

Contributors: Dora Luz

3. INTERNATIONAL TRADE & CUSTOMS POLICY.

AUTHOR: EMILIO ARTEAGA

Contributors: Dora Luz, Mariana Rivera, Adrián Vázquez, Verónica Vázquez, and Mariana Malvárez.

4. POLICY FOR THE MANUFACTURING INDUSTRY.

AUTHORS: MARIANA MALVÁEZ AND ALEJANDRO MARTÍNEZ

Contributors: Dora Luz and Mariana Rivera

5. CREATING A COMPANY IN MEXICO.

AUTHOR: EMILIO ARTEAGA

Contributors: Dora Luz, Juan Pablo García, Irela López, and Mariana Rivera

6. TAXATION

AUTHOR: JORGE MONTES

Contributors: Dora Luz and Mariana Rivera

7. LABOR & MIGRATION.

Author: Rafael Alday

Contributors: Dora Luz, Emilio Arteaga, and Mariana Rivera

Need More Information? Contact us.

info@vtz.mx