Mexico Reforms Federal Labor Law

By Elena Rueda

Since the nineties, most Latin American countries underwent reforms in labor legislation, which focused on moderate firing costs and facilitation of temporary hiring of workers. After three hundred and ninety reform initiatives, a decree to reform Mexico’s Federal Labor Law (FLL) (Ley Federal del Trabajo) was published on the November 30, 2012 in Mexico’s Federal Official Gazette (Diario Oficial de la Federación). The reform was accompanied by many controversial issues such as governance, the inclusion of new forms of individual contracts, the payment of wages. This commentary is to present a general overview of the principal changes and additions on the controversial Federal Labor Law reform.

The new labor law reform brought new notions in the legal text: "Decent work; substantive equality between workers in front of the employer; and bullying and sexual harassment at work." These new notions are quite controversial: what is meant by decent work? What does it imply that labor standards should promote decent work? Is it possible that a single labor standard can achieve this goal? The definition of decent work is in the first article of the FFL which, in my opinion is too pretentious; decent work is the one which fully respects human dignity of workers in an environment without discrimination on the basis of ethnic or national origin, gender, age, disability, social status, health status, religion, immigration status, opinion, sexual orientation or marital status; a decent work grants access to social security and a salary; employees receive continued professional guidance and training to increase productivity, optimum safety and health to prevent occupational diseases and accidents.

The reform includes additional obligations and prohibitions for employers and workers; among the obligations are official Mexican standards with regard to occupational safety and health. Moreover, the reform prohibits sexual harassment immoral acts in the workplace.

As regards the probationary work period, it may be issued only when the duration of employment is for a specified period or when it exceeds one hundred eighty days; it cannot exceed thirty days for any type of work and one hundred and eighty days for executive positions, management or business administration. The duration of 30 days is being criticized for being insufficient to verify that an employee meets the qualifications and skills required for a certain job.

Contracts of an Indefinite Duration are exceptional because they are preferred to continuous work; may be agreed to discontinuous work when required services are for fixed and periodic employment of a discontinuous nature, in cases of seasonal activities or do not require the provision of services all week, month or year; the law establishes that these workers have the same rights and obligations as determining time employees, but is it possible that these workers are guaranteed the same rights as a determining full-time employees?

One of the major proposals for substantive equality is the new paternity leave under «article 132 Bis-section XXVII» which states that employers have the obligation to give the parent a permit of five days with pay, on the occasion on the birth of a child or adoption; Working mothers that adopt children shall be accorded a six-week leave with pay.

«Article153, part I», deals with question of productivity, which is of great importance, through a national diagnosis; the goal is to identify the requirements needed to increase productivity and competitiveness in all sectors, including micro and small enterprises. This article also indicates that
agreements and systems to increase competitiveness should be established by the involvement of employers, workers, trade unions, government and learned society. The Ministry of Labor and Social Security, in conjunction with the Ministry of Economy, shall convene employers, trade unions, workers and academic institutions in order to constitute the National Productivity Committee (Comité Nacional de Productividad), which will have the character of consultative-auxiliary body that may have branches of subcommittees by state or sectoral activities.

Another important reform is on writing the notice of dismissal referred to in article 47 of the FFL. When an employer dismisses a worker, they must hand the employee a notice in writing with a clear reference to the behavior or conduct that justify the termination of the employment contract, together with the date or dates on which such misconducts were committed. The dismissal notice shall be delivered in person to the employee or notify the Board of Conciliation and Arbitration within the five working days.

In terms of collective rights, important modifications are made, among which stands out the union transparency. For some authors⁴, the reform does not touch substantive aspects of collective labour relations model existing in Mexico and that the collective rights are the least reformed. The addition of the second paragraph of article 357 of the Federal Labour Law legislates that employees and employers have the right to form trade unions.

In terms of trade union rules, two main points must be referred to: 1) the procedure of choice for union leadership and 2) the accountability of union under «article 371, sections IX and XIII».

Section IX of the article, establishes that the statute that should include the election procedure for the election of the directive and the number of its members, safeguarding the free exercise of voting modalities to be agreed upon by the general assembly; indirect and secret vote or direct and secret vote, so it is presumed that the law does not allow trade unions to be free in the determination of their choice of leaders and this is a great interference of authority.

The statute also mentions the sanctions for trade unions executives and establishes the procedures in order to ensure the resolution of disputes between members of trade unions. Trade union executives are also enforced to submit to the Assembly every six months a full and detailed account of the administration of the union assets. The statute gives the right to workers to request information on the administration of the union and if they are denied information or observe any irregularity in the management, they can go to the concerned authorities.

In reference to the proxy of labor justice, the reform proposes the following changes. The first concerns the professionalization of the judicial personnel of the Boards of Conciliation and Arbitration by increasing the academic backgrounds of personnel that works in the boards; all personnel are required to have a law degree. In addition, article 525 Bis of FFL is added to establish a Vocational Training Programme for entry, promotion, retention, performance evaluation, separation and retirement of public services, which is betting that once it is established, there will be transparent and objectivity in hiring, promotion and retention of the personal.

The labor process has historically been characterized by conciliation; the creation of the Public Service of Conciliation «article 627 A» indicates the legislator’s willingness to strengthen the work of judicial bodies and conciliatory labor. New officers will be required to ensure that the parties resolve the disputes through conciliation.

An important inclusion to be highlighted is an entire new section in the law on Social Security Individual Disputes «Chapter XVIII, Section One » which is a wise addition insomuch as we remember that these procedures have become a heavy weight for the administration of justice. At the end, my reflection on the recent reform of Mexican labor law is that it should mark the beginning of a new era in labor law and should encourage all parties to establish a new employment relationship amongst workers, employers and authority that are identified in this legislation, and to satisfy the needs of the parties, finding a balance between the flexibility of labor regulation and true

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respect for the rights of employees and at the same time benefit the labor market. All in all, the new labor law does not meet the country's reality, and it's useless for a country to reform its labor laws if it does not provide real and effective solutions and answers.

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