

Pressures on U.S. Manufacturers with Mexico Operations, Supply Chains to Comply with New Labor Laws

By John L. Sander & James P. Verdi

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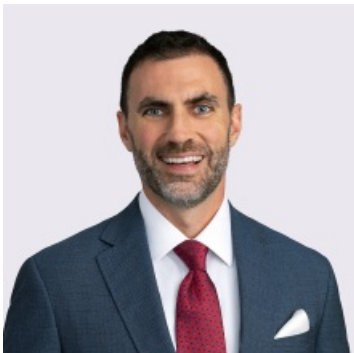


John L. Sander

Principal

(212) 545-4050

John.Sander@jacksonlewis.com



James P. Verdi

Principal

James.Verdi@jacksonlewis.com

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U.S. manufacturers that maintain operations or supply chains in Mexico will continue to face challenges as Mexico accelerates implementation of its new labor law and the United States increases pressure on Mexico for faster labor reforms through unprecedented enforcement tools available under the United States-Mexico-Canada Agreement (USMCA). Manufacturers are the principal focus of this new initiative.

Mexico Labor Law Reforms

Mexico [enacted sweeping labor law reforms](#) on May 1, 2019, that overhauled the country's labor laws to encourage meaningful unionization similar to what the United States has maintained for nearly 80 years. Mexico President Andrés Manuel López Obrador campaigned for labor law reform, and the reforms are an expressed (and critical) term in the USMCA. These reforms are designed to eliminate Mexican employers' reliance on "protection contracts," which are agreements between an employer and employer-sponsored union that provides favorable terms to employers with limited or no accountability to workers.

USMCA

Under the USMCA, the United States may enforce Mexico's labor law reforms through:

1. A mandatory dispute resolution procedure established between the two countries to address nationwide compliance; and
2. A unique facility-specific rapid-response arbitration mechanism that authorizes the United States to take action against a particular facility in Mexico for denying workers the right of free association or collective bargaining required under the USMCA.

While Mexico's federal labor law contemplates a four-year schedule to fully enact its reforms, the United States has sought faster reforms that could directly affect manufacturers that rely on Mexico.

U.S. Independent Mexico Labor Expert Board's Report Finds Mexico Needs to Speed Up Efforts

To oversee Mexico's nationwide reforms, the U.S. Congress established a bipartisan Independent Mexico Labor Expert Board that monitors and evaluates Mexico's nationwide implementation of its promised labor reforms. On December 15, 2020, the Independent Mexico Labor Expert Board issued its [first mandatory report](#) on the progress of labor law reform in Mexico.

While commending Mexico for its significant progress toward implementing the new labor laws, the Report criticized Mexico for missing critical deadlines, underestimating (and thus underfunding) the costs of implementation, and delaying the scheduled rollout of federal

and local conciliation centers and labor courts needed to enforce the reforms. The Report warned, “Unless significant additional resources are devoted to supporting workers to exercise these rights, the historic opportunity presented by the Mexican labor reform is unlikely to achieve its goals.”

To meet its obligations under the USMCA, the Board strongly recommended that Mexico allocate additional funds for more federal labor inspectors and administrative personnel to enact meaningful reform and accelerate the schedule of labor reforms. According to the Report, “Mexican workers who seek to exercise their rights under the new labor law have few options to learn how to implement the new law while constructing more democratic workplace relations.” To provide greater education to Mexican workers, the Report recommended greater cooperation between the unions in the United States and independent unions in Mexico. The Board proposed that the United States fund the training through grants to various parties that will encourage cross-border cooperation between unions.

Increased Facility Inspections Expected Under Biden Administration

The United States has not initiated any facility-specific rapid-response investigation *yet*. The Trump administration laid the groundwork for such investigations under the USMCA, but the Biden administration will be the first to use this procedure. Under regulations enacted by the Trump administration, any individual can file a complaint to an Interagency Labor Committee co-chaired by the U.S. Trade Representative and Secretary of Labor to initiate a facility-specific investigation. If the Interagency Labor Committee determines a violation at a specific site, the U.S. Trade Representative can file a complaint under the USMCA. If the United States decides to file a complaint, it can temporarily suspend a Mexican facility’s favorable tariff rates authorized under the USMCA.

What This Means for Manufacturers

The United States has targeted seven major manufacturing sectors for labor reform compliance, including auto assembly, auto parts, aerospace, industrial bakeries, electronics, mining, and steel and aluminum. The AFL-CIO has announced it intends to file complaints with the U.S. Interagency Labor Committee. In addition, the Biden administration has promised to promote unions and workers’ rights, which suggests the United States could enforce its rapid-response rights under the USMCA.

Manufacturers must review their operations (and supply chains) in Mexico diligently to ensure they comply with Mexico’s new federal labor law. It is no longer business as usual for manufacturers in Mexico. Any U.S. investigation into labor violations could significantly interrupt a company’s supply chain and immediately jeopardize the cost of goods coming from Mexico.

Jackson Lewis attorneys are collaborating with Mexican counterparts in L&E Global, the international alliance of labor and employment firms, to assist clients in navigating this major change in the law. We will continue to provide updates as enforcement of these new laws and the USMCA develops.

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