

Independent Unions Continue Gains at U.S. Manufacturers in Mexico Under Mexican Labor Law Reform

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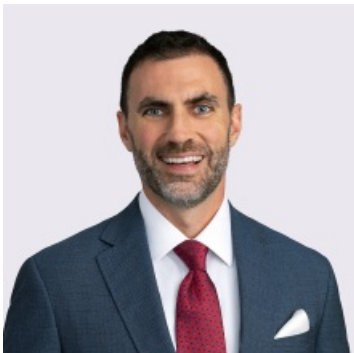


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The United States imported more than \$385 billion worth of goods from Mexico in 2021. Mexico is America's second largest trading partner, and many U.S. manufacturing companies, including the automotive and aerospace companies, have operations there.

For a long time, the labor law landscape was relatively calm in Mexico. With a few exceptions, passive unions, low-paid but skilled work, working in plants close to America with good roads and rail connections, made Mexico a good place for manufacturing companies to locate in North America. It may still be.

However, labor law is [changing rapidly](#) in Mexico. In May 2019, as required by the United States-Mexico-Canada Trade Agreement (USMCA), Mexico enacted a labor reform bill that substantially overhauled Mexico's labor law. Under Mexico's new labor law, which is similar to the United States' National Labor Relations Act, under Mexico's new labor law, workers in Mexico are afforded far greater protections and rights, including elections of unions by secret ballot, transparent negotiation and collective bargaining agreement (CBA) approval by the workers, an independent labor adjustment board or court, and the democratic election of union officers.

Prior to this change, company in Mexico could recognize a union and sign a contract with that union without any input or approval from workers. These agreements, referred to as "Protection Agreements," often set employer-friendly contract terms and were sometimes signed before the company had hired workers at its worksite. With limited accountability, transparency, and no democratic elections, most unions in Mexico accommodated the needs of the companies. Many U.S. companies operating in Mexico were signatory to Protection Agreements. These were perfectly legal and the companies even generally paid union dues for their employees.

USMCA

Mexico's new labor law requires democratic unions and overhauls the investigation and enforcement of Mexico's labor laws.

Under the new law, a union in Mexico may be recognized as the exclusive bargaining representative with just 30 percent of employee support. However, ratification of a CBA requires majority support of all represented workers. The aim of this requirement is the eradication of Protection Agreements.

Mexico's new law also requires the establishment of independent unions and sets up new administrative courts and agencies to enforce the law. It also allows complaints to be filed with the U.S. Trade Representative if someone believes that a U.S. company operating in Mexico is not adapting to the new environment and recognizing worker and union rights as

newly defined under the new law.

As of May 2023, unratified Protection Agreements are void.

When Independent Union Steps In

The situation in Mexico is reminiscent of the early 1930s in the United States, when the current labor law in the United States regulating most industry was first passed. In addition, like that time, many companies are being caught in the middle by these changes. Many details are yet to be fleshed out, but labor unrest is certain.

An illustration: American automotive parts manufacturer VU Manufacturing operated a plant in Piedras Negras, Coahuila, only a few miles from the United States. VU was a “Maquiladora,” a foreign-owned manufacturing plant near the U.S. border that made parts and products for those companies, operating under Mexican law.

VU reportedly had about 350 hourly workers making interior car parts at Piedra Negra.

In 2022, a new, more independent, and radical union, the Independent Mexican Workers League, filed for recognition as the union for employees. Shortly thereafter, the Confederation of Mexican Workers (CTM), an old-line union in Mexico that was known for signing Protection Agreements with employers, also showed up. The CTM also presented cards indicating 30 percent or more of the workers wanted the CTM to represent them. A classic union organizing campaign between two unions, fighting for the support of the workers, then ensued.

If the same situation had happened in Mexico before the new labor law went into effect, VU, which was union-free at the time, probably could have affiliated legally with the CTM with little problem. Times have changed, however.

The Independent Mexican Workers League in July 2022 filed a complaint with the U.S. Trade Representative. The U.S. Trade Representative referred the matter to Mexico and claimed the company was violating the independent League’s rights. Moreover, complaints alleged that the company was favoring the CTM over the League. Some allegations eventually were made that the company was allowing the CTM to conduct meetings with workers in the factory. There also were claims by the League that the company was laying off some workers thought to be sympathetic to the League and favoring those sympathetic to the CTM. (These allegations were made by various individuals are taken from press reports. The authors take no position on the truth or falsity of these allegations.)

An election was eventually conducted on September 1, 2022. The League won the election, 186-101 over the CTM. The company is required to conduct negotiations with the League and seek to reach a mutually acceptable CBA, which then must be ratified by a majority of the employees in another vote. Rightly or wrongly, the independent union had used the complaint procedure with the U.S. Trade Representative to promote its goals. The League is now recognized, not the CTM.

This illustrates how the changes in Mexican labor law affect even moderately sized companies.

Prepare for What’s Ahead

For many companies (especially in manufacturing, where scrutiny is especially high under the law), the need to develop sound strategies is now if they want to seek to remain union-

free. Relatedly, if they are faced with a successful union drive, they need to develop strategies on how they will conduct collective bargaining to remain competitive, while complying with the new Mexican labor law and the USMCA and getting the ratification of the workers.

Employees clearly have more rights to make decisions for themselves under the new system. Companies that succeed in the new environment will have to be mindful of employee concerns and develop more nuanced labor strategies. The old days of affiliating with the CTM or signing a Protection Agreement with another union and putting most labor concerns behind them are quickly coming to an end for companies operating in Mexico.

All remaining parts of the law become effective May 2023 and any remaining Protection Agreements are void. The time for U.S. manufacturers operating in Mexico to start planning legally compliant and effective labor strategies is now. Strategies also can be developed to contest claims against U.S. companies filed in front of the U.S. Trade Representative. The penalties for serious violations can be severe.

Jackson Lewis is part of L&E Global, with affiliates in Mexico. Please contact your Jackson Lewis attorney, the authors of this article, the International Employment or Labor Relations Practice Groups, or the Manufacturing Industry Group if you have questions about these matters and, in particular, what steps you might consider taking now.

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