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Employment Litigation and Timelines: Checklist (Mexico)

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Status: **Law stated as of 01 Mar 2022** | Jurisdiction: **Mexico**

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A Checklist setting out the crucial steps, and associated timeframes, that occur when running, managing, and defending, an employment litigation matter in Mexico.

A dispute between an employee and an employer may result in employment-related legal proceedings. When bringing and defending an employment litigation matter, the parties must comply with the mandatory procedural steps, including submitting pleadings within the required timeframes.

This Checklist sets out the steps involved in an employee bringing, and an employer defending, an employment litigation claim in Mexico.

This Checklist concerns claims relating to non-unionized employees only.

Forum of Employment Litigation

The Mexican Federal Labor Law (*Ley Federal del Trabajo*) (FLL) was amended on 1 May 2019. This amendment is partially in force and is not expected to be fully in force until around November 2023. Prior to that amendment, all employment litigation had to be filed with the Local or Federal Labor Boards, which operate at state and federal level respectively. Jurisdiction is determined by Article 527 of the FLL (see Jurisdiction), which provides a list of the industries falling under the Federal Labor Boards' jurisdiction, and those falling under the Local Labor Boards' jurisdiction. The Labor Boards are administrative bodies of the Executive Branch of the Federal or State administrations. The 2019 amendment to the FLL introduced judicial State and Federal Labor Courts to govern employment litigation, rather than Labor Boards. Federal Labor Boards have not been replaced nationwide and will continue receiving cases until all the Federal Labor Courts are in full operation, which is scheduled to occur in November 2023.

Currently, 20 out of the 32 States have Labor Courts. The Labor Boards are continuing to deal with cases already submitted to them according to the administrative process. Where a complaint is to be filed in a State that has not yet introduced a Labor Court, the complaint must still be filed with the Labor Board. Where a complaint is to be filed in a State in which a Labor Court is already operating, the complaint must be filed with the Labor Court according to the amended FLL.

The Labor Boards will not close until all employment complaints submitted to them have been resolved. Transitory Article 8 of the amended FLL provides that Labor Boards will continue to operate until the conclusion of all cases initiated before them, which is estimated to be at least five more years after they stop receiving new employment complaints (approximately 2027). After that point, the Labor Boards will cease to operate and the Labor Courts will be the only authority with jurisdiction to consider employment claims.

This checklist considers the employment litigation process in both the administrative Labor Boards and the Labor Courts.

Jurisdiction

The Federal Labor Boards and Federal Labor Courts are competent to examine conflicts arising from employment relationships in the following industries: textile; electric; movie industry; rubber; sugar industry; mining; metallurgy; oil industry (including hydrocarbon); cement; automotive; chemical, including pharmaceutical; paper and its production; vegetal fats and oils; food and beverage production; railways; wood industry; tobacco industry; glass industry; banking and credit services; and companies owned by the Government, or needing a federal license concession to operate (Article 527, FLL).

The Local Labor Boards and Local Labor Courts of each State are competent over conflicts deriving from employment relationships in any industry or activity not expressly mentioned above.

Limitation Date

General Limitation Period

An employee that alleges their employment has been unlawfully terminated has 60 calendar days to file a complaint with the Labor Board or, where relevant, with one of the new Federal or Local Labor Courts (Article 518, FLL). This limitation period runs from the day of the dismissal, rather than (where applicable) from the date notice of the dismissal is served on the employee. The deadline is suspended by the filing of a pre-trial conciliation request, which is mandatory in cases governed by the Local or Federal Labor Courts (see Labor Court Procedure).

Claims Arising from Employee-Initiated Termination With Justified Cause

Employees who claim to have a justified cause to terminate the employment relationship and claim severance payment have 30 calendar days to file a complaint with the Labor Board or Labor Court as applicable, seeking remedies from the employer (Articles 51 and 52, FLL), without the need for any mandatory conciliation procedure. The following are the potential justified reasons for employee-initiated termination of employment. The employer (or its representatives, as applicable):

- Deceives the employee regarding the employment conditions, including (without limitation) a lower salary than offered, different work duties, or different workplace.
- Engages in or tolerates violence, harassment or sexual harassment, which directly affects the employee who is terminating the employment.
- Unilaterally reduces salary.
- Does not pay the salary on the agreed date and to the agreed place.
- Due to the workplace conditions, causes an imminent hazard to the employee's health and safety.
- Compromises health and safety at the workplace.
- Requests that the employee carry out a humiliating act.

(*FLL.*)

The limitation period starts one day after the employee is reasonably aware of the potential justified cause for termination.

Claims for Payment of Accrued Benefits/ Salaries

Employees have a one-year limitation period to claim payment of accrued benefits, salaries, or both. The limitation period starts one day after the salary or benefit should have been paid (Article 516, FLL).

Within this limitation period the Labor Court or Labor Board must admit any complaint, after which the defendant can argue to the Labor Court or Labor Board that the complaint is time barred.

Awards from Employment Litigation Rulings

If the employee is successful, the defendant has 15 working days to comply with the final ruling and make the payment of whatever award was granted (see Final Ruling). Afterwards, the claimant could request the Labor Court or Labor Board to seize the defendant's property to secure the payment of the award.

However, the employee must receive any awards granted by an employment litigation within two years of the final ruling, following which they will no longer be able to enforce the award. The limitation period starts one day after the ruling is final (Article 519, FLL).

Termination of Employees for Cause

Employers have a 30 calendar-day limitation period to terminate an employee for cause and without the payment of severance where the employer alleges the employee has engaged in any of the following justified causes for termination:

- Dishonest conduct, or violent acts.
- Intentionally or negligently causing damage to the employer's property.
- Engaging in immoral conduct at the workplace.
- Divulging confidential information or trade secrets (note that an employer cannot seek damages against an employee before the Labor Board or Labor Court. In the event there is a breach of a confidentiality obligation, the employer could file a termination for cause and without payment of severance and seek damages in a Civil Court or even a criminal action depending on the kind of confidential information divulged).
- Disobeying the employer's instructions.
- Refusing to take health and safety preventive measures.
- Showing up to work drunk or under the influence of any other intoxicants.
- Prison sentence.
- Loss of confidence (only for white collar employees).
- Harassment, including sexual harassment.
- Harmful treatment against the employer's clients and suppliers.

- Not complying with formal requirements for the provision of the service.

(Article 47, FLL)

The limitation period starts one day after the employer is reasonably aware of the potential justified cause for termination. The employer should file a termination notice before the Labor Court or Labor Board within the following five working days after the dismissal takes place.

Pre-Litigation/Prior to Formal Employment Litigation Claim

Administrative Labor Board Procedure

The administrative process is held before the Labor Board, as provided in the FLL prior to the 2019 amendments. Under this process, there is no mandatory pre-trial conciliation or action to be taken by the employee, regardless of the nature of the claim. The employee must submit the initial complaint to the relevant Labor Board within the applicable limitation period.

Labor Court Procedure

This process was incorporated in the FLL by the amendments enacted on 1 May 2019. Prior to submitting the complaint before the Labor Court, the employee must request a pre-trial conciliation before the Federal or Local Conciliation Center. The Conciliation Center must notify the employer of the pre-trial conciliation and schedule the necessary meetings to attempt settlement. If settlement is not possible, the Conciliation Center will issue a certificate that must be attached to the initial complaint when it is presented before the Labor Court (Article 684-B of the FLL).

The pre-trial conciliation process must be concluded within 45 calendar days following the filing of the request. During this period, the parties can have as many conciliatory meetings as they request to reach a settlement. The limitation period (60 calendar days after the dismissal) is suspended during the process and continues when it is concluded.

Litigation

Administrative Labor Board Procedure

Employee Submission of Claim

An employee must file the initial complaint before the Labor Board office in hard copy with a wet signature (that is, a handwritten (in pen) signature) of the employee or the employee's legal representative. If signed by the legal representative, a proxy letter authorizing the representative to represent the employee must be attached to the initial complaint writ.

The initial complaint must:

- Describe the main action sought or the request made by the employee (either compensation or reinstatement) and the benefits and payments claimed, such as vacations, vacations premium, 90 days' salary, 20 days' salary per year of service, end of service benefit, seniority premium, or any other compensation.
- Detail the employment conditions, including:
  - the hiring date, salary, work position, main activities, benefits and work schedule.
  - any other data necessary for the Labor Board to calculate the employee's losses and the award requested by the employee, such as, additional benefits received during the last year of service.
- Include a description of how the actual dismissal occurred, including details of where, when, who was involved, and how it happened.

(Article 872, FLL)

Employer Receipt of Claim

The Labor Board must admit the initial complaint within 24 hours following its submission, schedule an initial hearing within 15 working days, and order that the employer be formally served (Article 873, FLL).

Service is performed by the Labor Board's clerk. The clerk must physically serve the employer at the workplace at least ten working days before the initial hearing date with:

- A copy of the initial complaint.
- The official admission of the complaint.

Defense Deadline

It is not necessary to submit a defense before the initial hearing (see Initial Hearing).

Initial Hearing

In theory, the initial hearing must be scheduled within 15 working days following the initial complaint's admission. In practice, however, due to the workload of the Labor Boards, before the Covid-19 pandemic the initial hearing was generally scheduled at least two months after the initial complaint had been submitted. Following the pandemic, the Labor Boards are now scheduling initial hearings more than six months after the initial complaint was filed.

The initial hearing must be attended physically at the Labor Board's facilities, where a legal representative must

present the public deed that contains the appropriate power of attorney to represent the employer. Once the legal representative's authority is certified by the Labor Board, the conciliatory stage of the hearing will begin in the presence of a conciliatory official of the Labor Board. If a settlement is reached, the hearing is closed at that stage. If there is no settlement, then the second stage of the initial hearing begins immediately after the conclusion of the conciliatory stage (same date).

During the second stage of the initial hearing, the employee must ratify or amend their initial complaint. If the complaint is amended, the employer can request an adjournment to study the amendments to the complaint. If the complaint is ratified, then the employer must present a written (or verbal, which is not recommended, since there is a higher possibility of missing out specific details or arguments, as opposed to when a written response is prepared in advance) answer to the complaint. Both parties then have the opportunity to make additional arguments to support their allegations during the final stage of the hearing. These additional allegations will have to be made verbally.

If the employee does not appear at the initial hearing, the initial complaint is ratified, and the employer must present their written answer to the complaint. If the employer is absent at the initial hearing, then it will be assumed that the employer has accepted all the facts of the initial complaint, which in most cases will result in an adverse ruling against the employer. There is no summary judgment, and the Labor Board must continue the trial procedure at all stages. After the hearing is concluded, the Labor Board schedules an evidentiary hearing within the following ten working days (see Administrative Labor Board Procedure).

All hearings can be suspended at any stage if there is a justified reason, such as a delay in the commencement of the hearing or the employee amending their complaint. In such case, the hearing is adjourned and the Labor Board should schedule a continuance within the following ten working days. However, in practice, whenever a hearing is suspended, the continuance is scheduled no earlier than two months later.

Evidentiary Hearing

At the evidentiary hearing, both parties must present their evidence, lists of witnesses and any objections to their counterparty's evidence. At the end of the evidentiary hearing the Labor Board:

- Rules on the admissibility of the evidence.
- Schedules hearings within the following ten working days after the evidentiary hearing, for questioning witnesses, expert witnesses, and each party (see Administrative Labor Board Procedure).
- Analyzes any evidence that requires special treatment (such as a video or audio recording), which must take place within ten working days following the evidentiary hearing.

Timeline

The FLL provides that a labor complaint should be resolved within 60 calendar days after the initial complaint's submission. In practice, due to the Labor Boards' workload, employment litigation generally takes about three years from the filing of the initial complaint until final ruling.

Labor Court Procedure

Employee Submission of Claim

The initial complaint must be filed before the Labor Court office in hard copy with wet signature (that is, a handwritten (in pen) signature) of the employee or the employee's legal representative. If the document is filed by the legal representative a proxy letter is necessary. In accordance with Article 872 of the Federal Labor Law (FLL), the complaint must also include:

- The certificate granted by the Conciliation Center after the pre-trial conciliation's conclusion.
- The details of the main action and remedies claimed.
- The details of the employment and description of the dismissal, where applicable.
- The details of the evidence that the employee is submitting to prove the allegations in the initial complaint.

Employer Receipt of Claim

The Labor Court must admit the initial complaint within three working days following its submission and serve the employer within five working days after its admission.

The Labor Court must serve the parties. Service must be effected physically at the employer's workplace. The employer must be served with:

- A copy of the initial complaint.
- The admission document issued by the Court.
- The parties to the matter are private and confidential.

Defense Deadline

The employer must file a written answer to the complaint, along with any evidence to support its defense, within 15 working days following it being notified of the complaint. The FLL does not provide any extension to this deadline. This can be done electronically, if this is permitted by the relevant State, or physically at the facilities of the Labor Court (Article 905, FLL).

If the employer fails to present a written defense within the 15-working day period, then the Labor Court will assume that the employer has admitted all the facts alleged in the complaint and that the employer is unable to present any evidence in its defense. In this case, the Court will schedule a hearing within the following ten working days, during which the final ruling will be issued. If the defendant files its written arguments on time, the Labor Court will appoint a preliminary hearing (described below).

Preliminary Hearing

Preliminary hearings can be virtual if this is agreed by the parties. Any party can object to a virtual hearing, however, in this case the objecting party can appear at the Labor Court physically, allowing the other party to participate via video conference. At the preliminary hearing, the Judge:

- Rules on the admissibility of the evidence presented by the parties.
- Analyzes any evidence that requires special treatment (such as a video or audio recording).
- Schedules a trial hearing for the questioning of witnesses, expert witnesses and both parties (see Labor Court Procedure).
- Parties are allowed to make interventions verbally during the hearing.

Hearing

The Labor Court procedure culminates with a trial hearing and the judgment being issued at that hearing (see Labor Court Procedure). In contrast, after the evidentiary hearing, the Labor Board procedure potentially consists of a number of hearings (questioning witnesses, expert witnesses, and the parties) with the judgment only issued after the parties have submitted their written closing arguments, after the conclusion of the last hearing.

Administrative Labor Board Procedure

Virtual Hearing

The employment litigation process before the Labor Board cannot be virtual, since the physical presence of the parties at the Labor Board's facilities is required (Article 875, FLL).

Decision Maker

Labor Boards are integrated by a panel of three:

- Representative of Workers.
- Representative of Employers.
- Representative of the Government.

In contrast to a judicial process, under the Labor Board procedure there is no judge, therefore, for a final ruling to be valid, it must be approved by this panel.

The Labor Board's ruling is presented by a Labor Board official to a panel of three, consisting of the Labor Board's President, and two other members who vote on the ruling. To be final, the Labor Board's ruling must be accepted by at least two of the members of the panel. If the ruling is not approved, the Labor Board must issue a new one and present it again to the panel.

To be valid, the final ruling must be signed by the three members of the panel.

Legal Representative

To appear on behalf of either an employer or an employee in employment litigation, the legal representative must be an attorney with a valid license to practice law in Mexico. In addition, the following representation rules must be followed:

- To represent an individual, either claimant or defendant, a simple proxy letter signed by the client and two witnesses must be presented before the Labor Board.
- To represent a legal entity, its representative must be granted with a formal power of attorney formalized before a notary public.

Although it is rare, both parties in an employment litigation can represent themselves.

Hearing Timetable and Process

Due to the Labor Boards' workload, employment litigation generally takes about three years until final ruling.

All parties and witnesses must appear personally at each hearing. The employee, as the claimant, has the opportunity to speak first. At all hearings both parties have the opportunity to intervene when the other is speaking. During witness testimony, the party who offered the witness has the opportunity to examine the witness first, after which the counterparty can cross-examine. Even expert witnesses must appear before the Labor Board to present their written analysis of the relevant matter, and both parties have the opportunity to cross-examine their counterparty's expert witness(es).

Documents presented as evidence are accepted when:

- Issued by an authority (public documents).
- A private document is not objected to by the counterparty.
- The party offering the document proves the authenticity of the private document despite the objection made by its counterparty.

All hearings can be suspended at any stage if there is a justified reason, such as a delay in the commencement of the hearing, in which case, the Labor Board should adjourn the hearing and schedule a continuance within the following ten working days. However, in practice, whenever a hearing is suspended, the continuance is scheduled no earlier than two months later.

Final Arguments

Once all the hearings for questioning witnesses, expert witnesses, and each party have been held, the parties have two working days to file their written closing arguments. Afterwards the docket file will be closed and sent to the Labor Board's official for examination and issuance of the final ruling on the case.

Final Ruling

The Labor Board must prepare the final draft ruling within the following ten working days after the final arguments have been submitted. The draft is delivered to the Labor Board's representatives who must vote on the ruling within the following five working days.

Once the draft final ruling is voted on and approved by a majority (at least two votes), it is considered final and must be notified to the parties immediately. The final ruling must be issued within the following 15 working days after the period for receiving closing arguments has elapsed (namely, two working days after the conclusion of the last hearing).

The final ruling is confidential and only available to the parties and their legal representatives. Third parties cannot have access to the final ruling. It will be personally served on the parties, once it has all the necessary signatures from the Labor Board members (Article 890, FLL).

If the Labor Board rules on behalf of the claimant, the defendant has 15 working days to comply with the final ruling and make the payment of whatever award was granted. Afterwards, the claimant could request the Labor Board to seize the defendant's property to secure the payment of the award.

The defendant can challenge the final ruling by filing a Constitutional complaint (*Amparo*) before a Federal Judge. During this procedure the claimant cannot request the payment of any award granted.

Labor Court Procedure

Virtual Hearing

Unlike preliminary hearings, parties must be physically present throughout trial hearings. This includes witnesses and expert witnesses (Articles 872-F, 873-H, 895, FLL).

Decision Maker

The final ruling is made by the judge, and it is considered final.

Legal Representative

The same rules apply as for Labor Boards (see Legal Representative).

Hearing Timetable and Process

The trial hearing (as described above) must be held in one hearing and can only be split if the Judge considers there is a justified reason for an adjournment, in such an instance the Judge must reconvene the hearing within the following ten working days after the hearing was suspended. A justified reason could be that a considerable number of witnesses and parties have been called to testify, and one day to hear all the evidence is not practically feasible.

General rules regarding the physical attendance of parties and witnesses during the trial hearing are the same as in the Administrative Labor Board procedure. The employee, as the claimant, has the opportunity to speak first. Both parties have the opportunity to intervene when the other is speaking at all hearings. During witness testimony, the party who offered the witness has the opportunity to examine the witness first, after which the counterparty can cross-examine.

The parties cannot present their own expert witnesses before the Labor Court and any expert witness must be Court-appointed. Both parties will be able to question and challenge the conclusions made by the Court-appointed expert witness.

At the end of the trial hearing both parties are able to present their oral closing arguments. Afterwards, and as part of the trial hearing, the Judge must issue the final ruling on the case, and only in special cases can the ruling be issued within the following five working days (see Judgment).

As the Labor Court procedure in respect of employment claims is relatively new, it is too early to say whether these courts will face delays such as those encountered by the Labor Boards. So far, pre-trial conciliation and mediation at the beginning of the preliminary hearings have proven to be an effective way to settle employment conflicts without the need to take the case to a Judge for final ruling.

Judgment

The Judge must issue the final ruling on the case at the trial hearing and after receiving the closing arguments from both parties, and only in special cases, such as

a complex situation which requires an exhaustive analysis of evidence (this is decided at the judge's sole discretion), can the ruling be issued within the following five working days (Article 873-J, FLL). The written judgment must be served by a court clerk at each party's domicile, or by email if it was handed down to the parties at the hearing. The final ruling is confidential and only the parties have access to the final ruling.

The transcript of the final ruling must include:

- A description of the initial complaint and the defense arguments.
- A detailed analysis of the evidence presented by the parties.
- An extract of the closing arguments.
- The legal basis of the ruling.
- The detail of the final decision.

Rulings on employment cases must be issued in good faith by the Judge, with a strict analysis of the facts and without having to obey any specific rules or formalities.

Appeal Process

Who Can Appeal and How?

The FLL does not provide for appeal in the context of employment litigation. However, any of the parties can challenge a final ruling issued by the Labor Board or Labor Court by making a Constitutional complaint called *amparo* (similar to the Habeas Corpus process in the United States). This procedure is provided in the Federal Constitution and regulated in the Amparo Law *(Ley de Amparo)*. This is received by the Federal Circuit Court, which examines the complaint and the employment litigation transcripts and issues a final resolution either:

- Confirming the Labor Board or Labor Court ruling.
- Ordering the Labor Board or Labor Court to:
  - modify its ruling due to procedural mistakes made during the litigation process; or
  - schedule additional hearings to amend a procedural mistake, and then issue a new ruling.

A Constitutional complaint can be submitted by any party that considers that the Labor Board or Labor Court has violated the applicable procedural rules or has not undertaken an adequate analysis of the arguments or evidence (or both) presented during the litigation.

Appeal Hearing

As discussed, Mexican employment litigation does not provide the right of appeal. In the event that a Constitutional complaint challenging the final ruling is submitted, the Federal Circuit Court examines the merits of the complaint (along with the transcripts of the employment litigation process) to issue its final resolution of the case, but this process does not involve any hearings.

Final Decision

If the final ruling is not challenged by a Constitutional complaint as described above, within 15 working days of either (as applicable) the parties being formally served the judgment by a clerk of the Labor Board or the issuing of the judgment by the Labor Court, it is considered final and cannot be contested in the future by any of the parties.

If the Federal Circuit Court orders the nullification of the final ruling and the issue of a new one, the Labor Board or Labor Court must issue, within the following 15 working days after the nullification is served, a new ruling in compliance with the resolution of the Federal Court.

If procedural mistakes were made by the Labor Board or Labor Court, the Federal Circuit Court can order a partial or full rehearing and then issue a new ruling (for example, hearings to receive testimony of witnesses that were not previously admitted by the Labor Board or Labor Court, admission of a document which was not admitted before).

Costs

The FLL does not provide for the successful party's costs of employment litigation to be reimbursed by the other party. Also, the FLL does not provide for any costs related to the hearings. Labor justice costs in Mexico are not charged to any of the parties. The parties are to bear their own costs and cannot request the payment of their legal fees by their counterparty if they are successful in bringing or defending a claim. Each party must pay for their own legal representatives.

In the Labor Board procedure, an employer must pay the fees of any expert witness required during the litigation, and the employee can request the Labor Board to appoint an expert witness without cost to the employee.

In the Labor Court, the Court appointed expert witnesses' costs are paid by the Government.

Transition from Labor Boards to Labor Courts

As stated at the beginning of this checklist, the current process of employment litigation is in transition, with two systems running concurrently (see Forum of Employment Litigation). It is estimated that the Labor Boards will not completely close before late 2027.