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THE NEW MEXICAN FEDERAL LABOR LAW: AN ANALYSIS*

JOSE SANDOVAL**

PART II

EMPLOYMENT CONDITIONS

1. *Work Shifts.* The new law, Article 58, adopts the following definition: "The work shift is the period of time during which the employee is at the disposal of the employer to render services." Even though this provision is in accord with judicial precedents and current doctrine, it is contrary to the practice followed in Mexico, as set forth in union contracts and internal employment regulations. In effect, the common practice is to consider the work shift as beginning at the time the employee actually begins his task at the place where he renders his services.

The definition of the work shift adopted by the new law could be interpreted to mean that the beginning of the work shift commences at the moment the employee leaves his domicile to travel to his place of employment, since it might be construed that from that moment on he is at the disposal of the employer. This interpretation is extreme and perhaps incorrect. However, the true interpretation must be established in practice and before the courts.

It appears, that in accordance with the definition as set forth in the new law, the work shift should begin at the moment the employee arrives at the place of work and should end when he leaves that place. When the employee does not work continuously at the same place, and has to be transported to the job site by his employer, the work shift should in-

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clude transportation time since he is considered to be at the "disposal" of his employer.

It should be noted that despite the pressures exerted by certain labor organizations, the forty-hour week was not adopted. The new law maintains the same maximum hours for the work shift as the law of 1931: eight hours for the day shift, between 6 a.m. and 8 p.m.; seven hours for the night shift, between 8 p.m. and 6 a.m., and seven and one half hours for the mixed shift, provided that night work does not exceed three and one half hours.

2. *Rest period during a continuous work shift.* As an additional benefit, the new law grants employees the right to at least a one half hour rest period in case of a continuous uninterrupted work shift. This benefit does not affect the provision which establishes that when the employee cannot leave his place of employment during rest hours or lunch hours, the time required for such purposes is computed as time worked within the work shift.

3. *Overtime.* As in the case of the previous statute, the new law allows for overtime, provided the overtime does not exceed nine hours per week. Overtime shall be paid at a rate of one hundred per cent in excess of the salary due to the employee for normal working hours.

As an additional protection afforded to the employee, the new law states that if overtime exceeds nine hours per week, the employer must pay two hundred per cent over the salary due for normal working hours, without prejudice to the application of the sanctions established by the law.

Although it is established that overtime cannot exceed three hours per day, and three times per week, the payment of triple salary for overtime previously mentioned is only applicable when the employee works overtime more than nine hours per week, regardless of the manner in which the number of hours worked overtime are distributed. For example, if an employee works overtime more than three times in a given week, but such overtime does not exceed nine hours in that week, triple salary would not have to be paid. However, the employer would be subject to certain sanctions (fine for violation of the provision which determines that no employee should work overtime more than three times per week).

4. *Rest days*

a. *Obligatory holidays* — Two additional obligatory holidays are added, 1 January and 5 February of each year.

b. Triple salary — Work performed on obligatory holidays, as in the case of excessive overtime, obligates the employer to pay triple salary (two hundred per cent over the normal salary).

c. Additional bonus for work performed on Sundays — The new law provides that the weekly rest day will be Sunday, but that if the employees must work on Sunday and have their weekly rest day on another day, they will be entitled to an additional bonus of twenty-five per cent of their normal salary.

5. *Vacations*

a. Additional vacation time — The new law has retained the same vacation periods as established in the 1931 statute. However, it does provide for an increase in the number of vacation days after the fourth year of employment. In this instance, two days of vacation are added for each five years of employment after the fourth year.

b. Proportionate part of vacation time — An employee has the right to enjoy the proportionate part of the vacation period to which he is entitled, based on the number of days he has worked during the year or, if he leaves his employment, to receive proportionate payment for unused vacation days to which he is entitled. It should be recalled that while the employment relationship lasts the employee has the right to take his vacation and not simply to receive compensation therefor. If the employment relationship is terminated prior to the end of the first year of employment or during the following year, the employee will have the right to receive compensation for vacation time earned in proportion to the length of time he has rendered services.

c. Continuous vacations — It is established that employees shall enjoy at least six days of vacation, at any one time. This provision modifies the former statute which established that the minimum legal vacation periods should be granted uninterruptedly. The law of 1970 provides that six days of the vacation period must be taken uninterruptedly. Accordingly, the minimum legal vacation periods of eight, ten and twelve days which should be granted for the second, third and fourth years of employment need not be granted uninterruptedly, although the employee should enjoy at least six full days of vacation at any one time.

d. Additional bonus — During vacation periods, employees have the right to receive a bonus of not less than twenty-five per cent of their salaries.

e. Period within which vacations must be granted — It is established that vacations to employees must be granted within six months following each full year of employment. Violation of this obligation will be sanctioned by the imposition of a fine.

6. *Salary*

a. Various methods for determining salary — The new law states that the payment of salary can be based upon a unit of time, a unit of work, commissions, a lump sum of money or in any other manner. This has special significance because it explicitly recognizes that the method used for the payment of salaries is of little consequence. The important principle is not to violate the protective measures relating to a specific salary.

It should be emphasized that the compensation to be paid to the employee, if his salary is based on a unit of work, on commissions, etc., must be at least, equivalent to the minimum salary established for a normal employee on an eight-hour work shift.

b. Composition of salary — It is established that salary will be composed of the following:

- i. Daily wages
- ii. Bonuses
- iii. Income from employment
- iv. Housing
- v. Authorizations
- vi. Commissions
- vii. Compensation in kind
- viii. Any other amount or benefit given to the employee by reason of his work.

In accordance with the interpretation of the law of 1931, it is to be assumed that the last item (viii) refers to any *ordinary* amount or benefit.

c. Determination of the amount of employee indemnification —

- i. For indemnification purposes, the base salary is that which corresponds to one day's work at the time the indemni-

fication arises. Salary will include the daily wage and the proportionate part of the benefits mentioned in paragraph (b) above, i.e., the items which constitute salary.

ii. When compensation varies, the daily wage will be computed on the basis of the average of the benefits accrued during the thirty working days prior to the day upon which the right to indemnification arises.

iii. When the salary is paid weekly or monthly, the daily wage is determined by dividing the salary by one seventh or one thirtieth respectively.

d. Minimum wage — The provisions on minimum wage were not modified except to establish that the minimum wage is not subject to any discount or reduction. The following are exceptions:

i. Allowance for support (alimony) decreed by a competent authority (the same as in the law of 1931).

ii. Payment of rent for housing, provided the deduction is accepted by the employee and that it does not exceed 10% of the minimum wage (nor 6% of the appraised value of the housing).

e. Protections and privileges relating to salary —

i. The law confirms that the employee cannot waive the right to receive a salary nor any provision protecting such right.

ii. The former statute made it possible for the salary to be paid to the person designated by the employee as his representative, by means of a power of attorney, signed before two witnesses. The new law is more strict on this point, since it only permits the designation of a representative in cases where the employee cannot personally collect his salary. It is further established that any payment of salary made in violation of the foregoing does not relieve the employer of his responsibility to pay such salary.

Since it will not always be possible to prove that an employee cannot personally collect his salary (except in the case of a certificate of incapacity issued by the Mexican Social Security Institute) special care should be taken so as to make payment to a representative of an employee only within the limits of the requirement set forth above.

iii. Payment of salary must be made at the place where the employee renders his services, on a working day determined by agreement between the employee and the employer, and during working hours or at the exact moment when the working day ends.

iv. Salary discounts and the requirements to make such discounts were broadened to cover the following: debts owed to the employer by reason of advances in salaries, overpayments, errors, losses, damages or acquisition of articles produced by the company. These deductions cannot exceed 30% of the amount by which the employee's salary exceeds the minimum wage (the same rule was included in the former law). In addition, the employee can never be indebted to his employer in excess of an amount equivalent to one month's salary.

Furthermore, deductions by reason of the payment of rent for housing cannot exceed 15% of the salary (and as stated above, deductions cannot exceed 10% of the minimum wage nor, as will be discussed subsequently, 6% of the appraised value of the housing). This 15% limitation on deductions from salary is also applicable to payments for the acquisition of said housing. Both the aforementioned deductions must be, in each case, accepted by the employee voluntarily.

Salary deductions for the establishment of cooperatives and the creation of savings accounts can never exceed 30% of the amount of the salary in excess of the minimum wage.

7. *Warehouses and stores.* The new law permits the establishment of warehouses and stores which sell clothes, food and articles for the home. Said warehouses and stores will be established by agreement between the employees and the employers, in accordance with the following provisions:

- a. The employees must be free to acquire the merchandise without any coercion on the part of the employer.
- b. The sales price of the products shall be established by agreement between the employees and the employer and in no case can it ever exceed the official price nor, can it be higher than the market price, if no official price has been established.

c. Changes in price shall be subject to the provisions of the preceding paragraph.

d. Participation of the employees in the administration and supervision of the warehouse or store will be specified in the agreement between the employees and the employer.

8. *Employee participation in the profits of the company.* As already stated in connection with the additional benefits established by the new law, employee profit participation has only been modified as follows:

a. Profits not claimed during the year when they may be applied for, shall be added to the distributable profits of the following year.

b. The periods of time during which companies are exempt from the distribution of profits to employees have been reduced as follows: newly formed companies need not pay employee profit participation during the first year of operation (previously two years) and companies which produce new products shall be exempt during the first two years of operation (previously four years).

c. In order that high salaried employees of trust will not receive a substantial percentage of the profits to be distributed to the employees, the salary of such employees of trust will be established at 20% over the highest salary paid to "regular" employees.

TRAINING OF EMPLOYEES AND SCHOLARSHIPS

Included in the section concerning the obligations of the employees and the employers, the following special obligations are imposed on the employers:

1. *Training of employees.* Employers are compelled to provide permanent or periodic training programs for their employees. These should be developed in accordance with the mutual agreement entered into between employers, employees or labor unions. Labor officials should be notified accordingly.

The new law identifies the training programs as follows:

a. Periodic or permanent.

b. Those including one or more companies and one or more divisions or departments of a particular company.

c. Those carried out by company personnel, by technicians especially engaged for the purpose, by specialized schools or institutions or in any other way.

Labor officials are authorized to supervise and to inspect the training programs.

2. *Scholarships to children of employees.* Employers are also obligated to grant scholarships to the children of employees, such children to be selected by the employees and the employer. These scholarships should cover tuition for technical, industrial or practical studies at specialized centers in Mexico or abroad, and afford the students a decent standard of living.

An employer must grant one scholarship when his company employs more than 100 but less than 1,000 employees, and three scholarships if it employs more than 1,000 employees.

EMPLOYEE HOUSING

1. *Employers who must provide housing:*

a. Employers located more than three kilometers from the town or city limits, or, closer, if no regular transportation service is available. Such employers are obligated to furnish housing regardless of the number of employees in their employ.

b. All employers, located in town or cities, who employ more than 100 employees. In estimating the number of employees, it is submitted that employees of trust should be included since several of the provisions of this section affect such employees and grant them the right to request housing. This matter will be discussed subsequently.

2. *Employees entitled to housing:*

a. Permanent employees who, in addition to having signed a permanent employment contract are required to render their services in a permanent manner.

b. Employees who have rendered services for at least one year.

As stated above, the new law covers all employees, including employees of trust, although preference is given to employees not classified "of trust".

3. *Extent of the obligation.* The employer is obligated to supply

housing either by renting houses to the employees or by furnishing housing which may be acquired by the employees.

a. *Rental of housing*— If the employer constructs a sufficient number of units, *he can charge up to 6% per year of the appraised value of each housing unit.*

b. *Housing to be acquired by employees*— In this case the following provisions apply:

i. *The agreement between the employer and the employees will determine the investment of the employer in the construction of the housing units.*

ii. *Such agreement will also determine the payments to be made by the employees toward financing the housing unit (salary deductions cannot exceed the limits established by the law).*

4. *Period of time for complying with the housing obligation.* The transitory articles in the new law provide that labor unions and employers will have a maximum period of three years to execute the agreement which will establish the conditions under which the obligations to provide housing will be complied with. Employees of trust must also agree with the employer within the said three-year period as to the terms entitling them to housing.

The new law provides that “until they are given housing employees will be entitled to receive monthly compensation”. The amount of such compensation will be set forth in the agreements between the employer and his employees. However, if no agreement is entered into, such compensation will amount to the difference between the rent the employer would charge for the type of housing he must supply, and the rent paid by the employees for similar housing.

The obligation to provide housing is based on the following provisions:

a. *The agreement which establishes the terms and conditions under which housing must be furnished, should be executed within three years from the date the new law becomes effective, i.e., May 1, 1970.*

b. *Companies formed after the aforementioned three-year period, will have one year, from the date they begin operations, within which to execute the pertinent agreement. If a new company is formed during the three-year period and prior to 31 May 1973,*

it will not be obligated to execute the agreement until 31 May 1973, provided that, in every case, there is at least a one-year period within which to execute the agreement.

c. The obligation to pay compensation until housing is furnished shall arise from the execution of the pertinent agreement, within the three-year period after May 1, 1970. The foregoing provision is not clearly set forth in the new law. However, its interpretation is based on the following: the amount of compensation "shall be established in the agreements referred to in this chapter", such agreements to be executed within the three-year period referred to above. If no agreement has been entered into, the amount of compensation will be determined by taking into account "the type of housing which the employer should furnish and the difference between the rent that could be charged and the rent that the employees have to pay for similar housing". It is evident that the "type" of housing cannot be determined until an agreement, to be signed within the three-year period, has been executed.

5. *Housing Agreements.* The agreement referred to in item "c" must contain:

- a. The number of employees entitled to housing and the number of employees who have expressed a desire to receive housing.
- b. The manner and the terms under which the employer will fulfill his obligation of furnishing housing to his employees. Accordingly, it may be possible, in practice, to extend, by agreement, the period of three years previously stated.
- c. The characteristics and specifications of the housing to be constructed, such as floor space, number and size of rooms, etc.
- d. Whether the housing units are to be rented or to be acquired by the employees.
- e. The number of housing units to be constructed annually or within the period of time agreed upon and the dates when the construction of new housing units will begin, until the needs of the employees are met.

Employers who expand their installations or increase the number of employees shall agree with the labor unions or with their employees as to the manner and terms under which the housing obligation will be fulfilled.

6. *Assignment of housing.* Housing is assigned to employees who request it, in accordance with the following:

- a. Employees with the highest seniority will have priority.
- b. In case of employees with equal seniority, priority will be given to heads of family and union members.

7. *Termination of the right to housing.*

- a. When housing is rented, the employee will be obliged to vacate the housing unit within forty-five days after the termination of the employment relationship.
- b. There is no provision which requires that an employee who has purchased a house must return the house upon the termination of the employment relationship. Accordingly, return of housing should be a subject covered in the agreement between the employer and the union or his employees.

SENIORITY RIGHTS

The new law recognizes a practice observed in union contracts by creating certain rights by virtue of seniority.

Permanent vacancies or vacancies which last more than thirty days when a new job is created, will be filled by the employee having the highest seniority in the job category preceding the one in which the vacancy exists. This provision will restrict the employer to select his best employees for promotion.

In the case of employees with more than 20 years seniority, the employer may rescind the employment relationship for reasons of a grave and serious nature.

“Seniority bonuses” are granted as follows:

1. The seniority bonus consists of an amount equivalent to 12 days salary for each year of service.
2. The seniority bonus will be paid to:
 - a. Employees who have voluntarily left their employment after having been employed for 15 years.
 - b. Employees who leave their employment for justifiable cause (attributed to the employer).

- c. Employees who are discharged from their employment, *regardless whether or not they are discharged for justifiable cause.*
3. In the event of the death of an employee, regardless of his seniority, the seniority bonus will be paid to his heirs or beneficiaries.
The seniority bonus is a labor benefit granted to employees, their heirs or beneficiaries, independently of any other labor benefit.
4. Transitory Article V of the new law limits the application of the foregoing provisions as follows:
 - a. Employees with less than ten year seniority who voluntarily leave their employment within one year following the promulgation of the new law will be entitled to receive twelve days salary.
 - b. Employees with more than ten but less than twenty years seniority who voluntarily leave their employment within two years following the promulgation of the new law will be entitled to receive twenty-four days salary.
 - c. Employees with over twenty years seniority who voluntarily leave their employment within three years following the promulgation of the new law will be entitled to receive thirty-six days salary.
 - d. Once the aforementioned periods of time have expired, the normal provision of the new law (Article 162) will be in effect.
 - e. Employees who are discharged or who leave their employment for justifiable cause within one year following the date of the promulgation of the new law will be entitled to twelve days salary. Under the same circumstances, at the end of the one-year period, the employee will be entitled to the seniority bonus due him in accordance with the years he has been employed since the promulgation of the new law.

INVENTIONS OF EMPLOYEES

The general principle in such cases is that the employee is the owner of his inventions. Nevertheless, when the employee, on behalf of the employer, investigates or improves procedures utilized by the employer the rights to the invention will belong to the employer. Independently of the salary he receives, the employee will be entitled to additional compensation to be determined by agreement between the parties.

In all other cases, the invention shall be owned by the inventor or inventors, but the employer shall have priority in the exclusive use or acquisition of the invention and the corresponding patents.

The fact that the new law regulates fields such as patents, covered by the Law of Industrial Property, could create problems insofar as the application of the pertinent law is concerned. A conflict arising between an employer and one of his employees relating to an invention, could be settled by a Labor Board, by administrative procedure before the General Offices of Industrial Property of the Ministry of Industry and Commerce, and, if subsequently appealed, by the civil courts.

SPECIAL EMPLOYMENT CATEGORIES

The new law includes various chapters on specialized jobs and establishes special provisions thereon. The specialized employees who perform these jobs follow:

- Workers of trust
- Ship workers
- Airline crews
- Railroad workers
- Autotransport workers
- Public service workers in federal departments
- Farm workers
- Commercial agents
- Professional athletes
- Actors and musicians
- Workers in the home
- Domestic workers
- Hotel, restaurant, bar workers and others in similar establishments
- Workers in a family industry

Only the provisions which affect the workers of trust, agents and domestics will be the subject of discussion, since the remaining categories are only of interest to a limited number of companies.

1. *Workers of trust.* The following requirements will apply to workers of trust:

- a. They cannot belong to a union, nor their numbers be taken into account in determining the number of employees required to call a strike, nor may they represent the employees on committees or boards established by law.

b. The employment conditions stipulated in a union contract will apply to workers of trust, unless otherwise specified in the said contract.

c. The employer may rescind the employment relationship with the worker of trust if he has reasonable grounds for losing such trust, even if such grounds are not in accord with the justifiable causes for rescission applicable to other employees and referred to in Article 47 of the law.

2. *Commercial agents.* The law of 1970 clarifies the legal concept of the employee known in the business community as the sales agent.

The new law states that "commercial agents, insurance agents, salesmen, travelling salesmen, sales promoters and similar employees, are employees of the company or companies in which they render services on a permanent basis, unless they do not perform the work personally or unless they are employed on an independent basis."

Accordingly, in order to create the employment relationship with regard to "commercial agents", the following should be noted:

a. Their work, with one or more companies, must be of a permanent nature and they must render other than part-time services.

b. They must personally perform the job. The individual who has established an organization formed by capital and labor for the performance of this type of work shall not be considered a commercial agent.

c. The practice — followed specially by the Mexican Social Security Institute — of not recognizing as "workers" persons who are agents of more than one employer, has been modified in the law of 1970 by stipulating that, provided the foregoing requirements are complied with, an employment relationship exists even though the agent may render services to several companies.

d. The existence of the employment relationship does not depend on the manner in which the salary is paid, since the new law allows for the salary to be paid in the form of a commission which "can include a commission on the value of the merchandise sold or placed, a commission on the initial payment (down payment), or on periodic payments (installments) or any two or three of the aforementioned commissions.

3. *Domestic workers.* Domestic workers are defined as those whose services include cleaning, helping, etc., in the home of a person or family. It is clearly stated that the following are not to be considered domestics:

- a. Persons whose services include cleaning, serving, attending customers, etc., in hotels, boarding houses, restaurants, cafes, bars, hospitals, sanitariums, colleges and similar establishments.
- b. Janitors and watchmen of the aforementioned establishments.

In addition to the payment of a cash sum, the salary of domestics shall include room and board, this to be estimated as equivalent to 50% of the salary paid in cash (the same compensation formula stipulated in the law of 1931). The compensation formula for domestics is important in estimating the minimum wage of these employees; both the cash payment and the room and board can be taken into account.

The present law permits the employment of domestics for a trial period. The employer can terminate the employment relationship of domestics, without any responsibility whatsoever, within thirty days following the date of employment. Once that period of time has expired, domestics are protected by the labor provisions applicable to all employees.

THE RIGHT TO STRIKE IN RELATION TO EMPLOYEE PROFIT PARTICIPATION

The present law extends the justifiable reasons for calling a strike to cover the situation where employees "demand compliance with the legal provisions relating to employee profit participation." This may create a serious situation for the employer for the following reasons:

1. The complexity of the regulations and estimates necessary to determine the employee profit participation can lead to confusion regarding the amount of such participation. Therefore, the safest method to be used in estimating profit participation is to follow the present system which allows the Ministry of the Treasury to establish and amend the employee profit participation granted by employers to employees.
2. Because unions tend to abuse the right to strike and employees now have an additional justifiable reason to strike, the position of

the employers is even more unfavorable. The abuse of the right to strike usually arises when a small number of employees calls a strike and stops work without consulting the wishes of the majority. Although this last requirement is subsequently complied with, it may take place after the work stoppage has occurred.

CONCLUSIONS

It should be emphasized, that although from a technical point of view the new law is considered superior to the statute of 1931, it grants additional labor benefits which will considerably increase labor costs and exert inflationary pressures. On the other hand, the new law imposes no additional requirements on the employees as regards their capacity, aptitude, production and performance in general, but maintains the protectionist attitude towards employees long prevalent in Mexico.

This article is not an exhaustive analysis of the new Mexican Federal Labor Law. It is submitted that specific points should be clarified as particular problems arise.