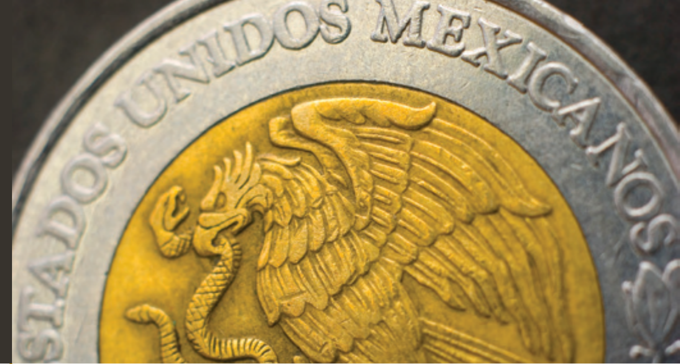
KNOW THE LABOR LAWS BEFORE YOU

Downsize in Mexico



▪ Mexico may not recognize layoffs, nor offer unemployment benefits. But the country's labor laws contain careful procedures for reducing the workforce and cutting production.

Economic hard times aren't confined to the U.S. borders. If you have operations in Mexico, there's a good chance you've had to consider scaling back production and paring employees. Before you do, it's important to know the legal consequences.

In general, Mexican labor law protections are enshrined in the country's constitution, and the Federal Labor Law (FLL) governs labor and employment. Laws are implemented by governmental agencies and tripartite commissions, and enforced by tribunals.

At first glance, the system may seem quite protective of workers. But Mexico has no general system of unemployment insurance as we have in the U.S. Mexican workers who lose their jobs have only severance payments—no unemployment benefits from their government. Moreover, the FLL does not recognize the concept of "lay off." Employees are either employed or terminated.

TERMINATIONS

If you have a "work relationship" with an employee (and the burden of proof is on the employer to prove there is none), three months' severance pay, plus any applicable seniority and indemnification bonuses, are due whenever an employee is terminated "without cause." Dismissals "for cause" can be made for reasons similar to those in the US: chronic absenteeism, drug use, etc. The same rules apply whether terminating an individual or a large number of employees who are represented by a union. However, the notice and approval process differs if a union is involved.

When employees are represented by a union, an employer may not simply suspend a contract, terminate employees, and shut down a plant. A procedure before an arbitration board is required, the union has input, and the board has the authority to prevent plant closure.

If the board finds certain causes are met (lack of orders or lack or materials, for example) it may grant permission to suspend a collective bargaining agreement and idle a plant for up to six months. Should the suspension last longer than six months, workers are terminated and severance must be paid.

TECHNICAL STOPPAGES

Since the financial crisis began last fall, a new phenomenon has appeared. Technical stoppages are outside the law and not addressed in Mexico's FLL. However, the government has provided limited funds to support those companies who declare a technical stoppage in order to retain jobs while they reduce production.

A technical stoppage must be negotiated directly between the company and its union. The agreement specifies how long the stoppage will last, whether employees receive wages during the stoppage—and if so, how much, and whether vacation time must be used during the interim. When a technical stoppage ends, employees return and regular production resumes.

If you are considering a production suspension in your Mexican facilities during this downturn, please call us for additional information and guidance. The international number for our Monterrey office is: +52.81.8335.0011

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Miller Canfield Goes South of the Border


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Olé! We've opened an office in Monterrey, Mexico—the country's automotive manufacturing and business center, and Mexican headquarters to thousands of multinational industries from around the world.

This new office is strategically located to expand services to global clients who must navigate in this increasingly volatile economy, giving us responsive, on-the-ground resources for seamless representation. Services will focus on mergers and acquisitions, joint ventures, corporate and commercial transactions, employment, tax, and litigation.

Led by Mexican attorneys Alberto Murga and Otto Sampogna, and U.S. attorney Michele Compton, the team is supported by numerous Miller Canfield lawyers with expertise in international transactions and disputes.

With the addition of this new office, Miller Canfield's global presence grows to include more than 370 lawyers in four states, as well as Canada, Poland, and China.