Comparison of Mexico's Federal Labour Law, International Labour Organization (ILO) standards, and FLA Code and Benchmarks

Mexico Committee of the Americas Group, January 2015

Contents

The Mexico Committee of the Americas Group is a multi-stakeholder forum made up of several international apparel brands, labour rights NGOs and the global union IndustriALL that promotes responsible sourcing in the Mexican garment and footwear sectors. The Maquila Solidarity Network coordinated preparation of this document, in collaboration with a small working group of the Committee which included representatives from brand members and the Fair Labor Association (FLA). It is available at: http://www.maquilasolidarity.org/en/comparing-mexican-labour-law-ilo-standards-and-fla-code-and-benchmarks.

Comparison of Mexico's Federal Labour Law, International Labour Organization (ILO) standards, and FLA Code and Benchmarks

Mexico Committee of the Americas Group, January 2015

Issue	Mexican labour law (2012)[1]	International Labour Organization (ILO) standards	FLA Code & Benchmarks[2]	Notes
1. Labour Outsourcing				
Definition	Under **Article 15-A** of the revised Federal Labour Law, subcontracting" (outsourcing) is defined as a contract in which an employer (called "contractor") performs work or renders services through employees under its control in favour of another entity or person who benefits from the contracted services; determines the activities to be performed by such employees; and supervises the carrying out of such services or contracted work.	There is no official international definition. In 2007, the ILO produced a report on the definition included in the national labour laws of 13 countries.[3]	The Fair Labor Association (FLA) defines a "contract worker" as **"**labor supplied by a third-party employment agency." See Glossary of Terms, FLA Code and Benchmarks, p.39.	
Limits on the use of outsourcing	**Article 15-A** sets the following limits on the use of outsourcing: This type of work must comply with the following conditions: a) It cannot cover the totality of the activities, whether equal or similar in totality, undertaken at the workplace. b) It must be justified due to its specialized character. c) It cannot include tasks equal	The ILO has not set out extensive rules regarding the use of outsourcing agencies. **ILO Recommendation No. 198 (Employment Relationship)**[4] states that "national policy should at least include measures to combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment	The FLA Code and Benchmarks stipulate that employers can hire "contract workers" only if such hiring is consistent with the national law of the country of production and one of the following conditions is met: • The permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders **(ER.8.1)**; • Exceptional circumstances may result in great financial loss to the supplier if delivery of goods cannot be met on time **(ER.8.2);** or	Distinguishing between legitimate contracting for a product or service that is not part of the company's core work and illegitimate contracting to avoid employer responsibilities is at the heart of the issue for this section. The ILO Recommendations and Mexican law both look to the facts to determine which is the true employer.

Issue	Mexican labour law (2012)[1]	International Labour Organization (ILO) standards	FLA Code & Benchmarks[2]	Notes
	or similar to the ones carried out by the customer's workers. If it does not comply with all of these conditions, the customer will be deemed to be the employer for all effects and purposes under the Law, including as it applies to obligations related to social security. Under **Article 15-D,** the company can't transfer its workers to an outsourcing company (or "contractor") "for the purpose of undermining any right under the labour law." In cases in which **Article 15-D** is violated, a fine will be issued as established by **Article 1004-C,** of between 250 and 5,000 days remuneration at the basic minimum wage.	relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due." It further states: "For the purposes of the national policy of protection for workers in an employment relationship, the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties." **Recommendation 198** suggests that members "consider the possibility of defining in their laws and regulations …specific indicators of the existence of an employment relationship … which might include: : (a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work;	• Work that needs to be done and is outside the professional expertise of the permanent workforce (**ER.8.3**). In addition, employers shall not: • use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms **(ER.9.1**); or • hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice **(ER.9.2**).	In this instance, Mexican law appears to be clearer than either the FLA Code and Benchmarks or the ILO Recommendation, in that it says that outsourcing cannot be done for tasks which are "similar to the ones carried out by the customer's workers." The FLA Benchmarks set other limits on the use of outsourced workers but stipulates that the use of outsourcing first has to be consistent with national law. Even if the Mexican law is not enforced or interpreted in this way, the FLA Benchmarks also make clear that contract workers are not to be used to support normal business needs on a continuous basis or as a regular employment practice. In practice this should mean that an employer that outsources core parts of its workforce will be in violation of brand codes, since the vast majority of such codes require compliance with national labour laws, and that brands must evaluate a supplier's employment practices to determine the true nature of the supplier's employment relationships. Once that analysis has been concluded,

Issue	Mexican labour law (2012)[1]	International Labour Organization (ILO) standards	FLA Code & Benchmarks[2]	Notes
		(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker." There are two other relevant documents, **Convention 181: Private Employment Agencies Convention**[5] and **Recommendation 188: Private Employment Agencies.**[6] **ILO Convention 181** shows particular concern for the protection of freedom of association, specifically that "Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively." However it does not address the conditions under which agency workers can be hired, nor does it limit the number or proportion of agency workers who may work for a user enterprise. In addition, **Article 11** of the Convention stipulates: **"**A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, paragraph 1(b) above, in relation to:		the brand should ensure that the true employer takes responsibility for benefits and protections legally due to the workers.

Issue	Mexican labour law (2012)[1]	International Labour Organization (ILO) standards	FLA Code & Benchmarks[2]	Notes
		(a) freedom of association; (b) collective bargaining; (c) minimum wages; (d) working time and other working conditions; (e) statutory social security benefits; (f) access to training; (g) occupational safety and health; (h) compensation in case of occupational accidents or diseases; (i) compensation in case of insolvency and protection of workers claims; (j) maternity protection and benefits, and parental protection and benefits."		
	Article 15-B requires that the outsourcing agreement be in writing.		**ER.7.2** Employers shall have in place written policies and procedures regulating the recruitment and hiring of contract/contingent/temporary workers.	Because agreements are meant to be in writing, brand auditors should ask to examine any agreement to determine the nature of the employment relationship, as above.
Liability for wages and social security obligations of outsourced workers	Mexico's Federal Labour Law treats the two types of entities providing labour to an employer (subcontractors and employment agencies) differently, whereas in ILO Convention No. 181, both entities are included under the same Article.[7] Under Mexico's Federal Labour Law, **Articles 13 and 14** regulate intermediation (employment agencies), **Articles 15 A, B, C y D**, regulate subcontracting or outsourcing. In the case of subcontracting, the new law adds	**Article 12** of **ILO Convention 181** states: **"**A Member shall determine and allocate, in accordance with national law and practice, the respective responsibilities of private employment agencies providing the services referred to in paragraph 1(b) of Article 1 and of user enterprises in relation to: (a) collective bargaining; (b) minimum wages; (c) working time and other working conditions; (d) statutory social security benefits; (e) access to training; (f) protection in the field of occupational safety and health; (g) compensation in case of occupational accidents or diseases;	The FLA Benchmarks require that employers pay contract workers directly and that they pay the same compensation to contract workers as is paid to regular workers, including all legally-mandated fringe benefits. Specifically: • **ER.6.1** Employers shall use standard contract language with employment agencies that specifically imparts power to employers to directly pay wages to migrant/contract/ contingent/temporary workers and ensures equality of compensation and workplace standards as set under the FLA Workplace Code and national laws and regulations. • **ER.11.2** contract/contingent/temporary workers receive at least the minimum wage or the prevailing industry wage, whichever is higher,	Under the Federal Labour Law, outsourcing is prohibited when the activities performed are identical to those carried out by direct employees of the company. Workers who are hired through a placement agency or an intermediary enjoy the same rights as those contracted directly by the company. The FLA's Code provision #1 Employment Relationship and compliance Benchmarks are similar, but make clear that there also should be equivalency in

Issue	Mexican labour law (2012)[1]	International Labour Organization (ILO) standards	FLA Code & Benchmarks[2]	Notes
	an obligation on the beneficiary company to ensure employer obligations are met by the contractor company. Failure to meet the obligation may cause joint liability, although it is unclear how this obligation must be met. **Article 15D** prohibits an employer from transferring workers to a subcontractor for the purpose of diminishing their labour rights. **Article 1004-C** defines the monetary penalties for doing so.	(h) compensation in case of insolvency and protection of workers claims; (i) maternity protection and benefits, and parental protection and benefits.”	and all legally mandated fringe benefits; • **ER.11.2.1** contract/contingent workers receive at least the same compensation as regular workers performing the same job functions or tasks with similar levels of experience or seniority • **ER.22.1** Employers shall provide all legally mandated fringe benefits, including holiday, leave, bonuses, severance payments and 13th month payments to all eligible workers within legally defined time periods.	compensation and benefits between contract and regular workers. At minimum, auditors will need to ensure that all social security and other legal obligations are being met (either by the factory or the outsourcing company) and workers are receiving equal treatment (including ensuring there are no deductions or other costs faced by outsourced workers). For FLA-affiliated brands auditors will also need to ensure that wages and other compensation are also equal between workers doing similar work; other brands should aspire to this higher standard.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
2. Temporary, probationary and seasonal work				
Short-term contracts [specified period vs continuous]	Article 37 sets out legal limits on the use of short-term contracts. Short-term contracts may only be used in the following cases: I. When it is required by the nature of the work to be carried out; II. In the event that the worker is temporarily replacing another employee; and III. In all other cases as stipulated by Mexican Federal Labour Law. According to **Article 39,** upon completion of the specified time period, the employment relationship will continue automatically as long as there is work to be effected and for the duration of the time there is work to be effected; with no need to renew contracts for a specified period of time. The repeated renewal of contracts for a specified period of time is considered to be in violation of the law. According to a 2003 ruling of the Third Collegiate of the Nineteenth Circuit Court, the existence of successive short-term employment contracts over a long	To date, there is no international Convention specifically on temporary work. However companies should pay attention to related articles in other Conventions, such as **ILO Convention 158: Termination of Employment Convention**.[9] **Article 2 (3)** of the Convention says "Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention. Although **Convention 158** has not been ratified by Mexico the above article makes clear that the use of short-term contracts to avoid employer obligations is contrary to the spirit if not the letter of international conventions. UN's Committee on Economic, Social and Cultural Rights has interpreted that a violation of stability in employment as stated by Convention 158 is a violation of the International Covenant on Economic, Social and Cultural Rights (ratified by Mexico) whether or not the country has ratified the ILO's convention. **Recommendation No. 166**[10] accompanying this Convention also gives examples of provisions that States could make in this regard: (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under	The FLA defines "temporary worker" as "a person with a labor contract of limited or unspecified duration with no guarantee of continuation." See Glossary and Definitions, FLA Code and Benchmarks, p. 40. The FLA Code and Benchmarks stipulate that employers can hire "temporary workers" only if such hiring is consistent with the national law of the country of production and one of the following conditions is met: • **ER.8.1** the permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders; • **ER.8.2** exceptional circumstances may result in great financial loss to the supplier if delivery of goods cannot be met on time; or • **ER.8.3** work that needs to be done and is outside the professional expertise of the permanent workforce. In addition, Employers shall not: • **ER.9.1** use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms; or • **ER.9.2** hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice.	Mexican law says essentially that short-term contracts can only be used for work that is by its nature short-term, or where there is a temporary need to substitute for a regular worker. The FLA Code and Benchmarks make clear that using short-term contracts on regular basis or for normal business needs is not allowed. The FLA Code and Benchmarks represent a higher standard here in that they disallow hiring "contingent/temporary" workers for multiple terms, as a regular practice, or for normal business needs. To comply with both the law and FLA Code a company must examine the nature of the work being contracted as well as the historical use of temporary contracts to ensure that their use is limited in the types of work that is being contracted and that short-term contracts are not being used repetitively or to support normal business needs. While the FLA Benchmarks do not

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	period of time should be considered a long-term employment relationship, even when there are short-term breaks in employment between those contracts.[8]	which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration; (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) to be contracts of employment of indeterminate duration; (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a), to be contracts of employment of indeterminate duration.		address whether a worker hired more than once under such a scheme would accumulate seniority, it could be argued that in order to receive equal benefits seniority should be accrued. However if a worker is being hired multiple times under such a scheme, the brand should evaluate whether this violates the first principle in FLA Benchmark **ER.9** about regular use of contingent workers
Probationary periods	Under **Article 39-A**, workers with either indeterminate contracts or contracts that exceed 180 days may be given a 30-day probationary period – only to verify that the worker complies with the job requirements (in the opinion of the employer). That 30-day period can only be extended to 180 days for managers, executives, or white collar workers, not for production workers.	A 2007 ILO decision provides some guidance on the issue: "The period of employment consolidation could be considered "a qualifying period of employment," namely a specified period of employment that is required for the employees concerned to be able to have a permanent contract." "The period should be "of reasonable duration". This is a question to be determined by each country for which **Convention 158** (Termination of Employment) is in force, having due	FLA Benchmarks stipulate that **"**no workers shall work more than three months cumulatively" in probationary or training categories **(C.3).**	Mexico law is a higher standard than the FLA Benchmarks. Production workers cannot have a probationary period that is longer than 30 days. However, Mexican law has a lower standard for white collar workers, who can work for up to six months in completion of their training. Therefore, for mid-management employees and office workers, it is to their benefit to apply the more favourable FLA Benchmark.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
		regard to the object of the Convention, which is to protect all employees in all branches of economic activity against unjustified dismissal."[11]		
	Article 39-E stipulates that where the work continues after a probationary period, the position is deemed to be an indeterminate contract and seniority is to be calculated from the beginning of the probationary period.		For any contract/contingent/temporary worker who becomes a permanent employee, seniority and other fringe benefits eligibility must be dated from the first date as a contract/contingent/temporary worker and not from the first day of permanent employment **(ER.12)**.	Auditors should check employee records to ensure that any record of employment dates to their first contract rather than first day of permanent employment, if applicable.
	Under **Article 39-D**, workers cannot be hired on simultaneous or successive probationary contracts, or on more than one probationary contract with the same employer.		The FLA Benchmarks say that "employers shall not make excessive use of fixed-term contracts or schemes where there is no real intent to impart skills or provide regular employment." (**ER.9.3)** More specifically, they say that **"**no workers shall work more than three months cumulatively" in probationary or training employment categories. **(C.3)**	Mexican law is clearer than the FLA Benchmarks, prohibiting more than one probationary period with the same employer.
Training periods	Under **Article 39-B**, a worker may also be hired for a training period of not more than 3 months (or six months for managers, executives, or white collar workers). During this time the worker should receive all salaries and benefits normally due to a worker performing that job. However at the end of this period the employer can dismiss the worker		As noted above, the FLA stipulates that "no workers shall work more than three months cumulatively" in probationary or training categories **(C.3).** During the training or probationary period they must receive at least the minimum wage or the prevailing industry wage, whichever is higher **(ER.13.1),** all legally-mandated fringe benefits **(ER.13.2)** and be subject to workplace conditions as set by the FLA Workplace Code and national laws and regulations **(ER.13.3).**	Mexican law's use of "training periods" confuses the issue of a one-month "probationary period". In essence employers have a three-month period in which they can dismiss a worker without consequences. During that period, however, Mexican law is clearer that they must receive all salaries and benefits normally due to a worker

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	without any further obligation on the part of the employer (other than pro-rated portion of mandatory benefits) provided that the employer first consults with the company's Joint Commission on Productivity and Training (*Comisión Mixta de Productividad, Capacitación y Adiestramiento),* a worker/management committee established in the workplace by law. Under **Article 39-D**, workers cannot be hired on simultaneous or successive training contracts, or on more than one training contract with the same employer.			in that position, while the FLA Benchmarks only say they must receive the minimum or prevailing wage. In practice there should be little difference, but compensation should be equal to that of other workers during any training period.
Fixed, discontinuous or seasonal contracts	Under **Article 39-F**, Contracts may be for **"**fixed**"** or **"**discontinuous**"** work under the new law, allowing employers to hire workers seasonally or only require labour for part of a week, month, or year. The same article stipulates that these workers are entitled to the same rights and obligations as permanent workers (pro-rated to time worked).	**ILO Convention 175**[12] on Part-Time Work addresses the question of rights and obligations due to Part Time workers: **Article 4:** Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of: (a) the right to organize, the right to bargain collectively and the right to act as workers' representatives; (b) occupational safety and health; (c) discrimination in employment and occupation. **Article 5:** Measures appropriate to national law and practice shall be taken to ensure that	The FLA defines "temporary worker" as "a person with a labor contract of limited or unspecified duration with no guarantee of continuation." See Glossary and Definitions, p. 40, FLA Code and Benchmarks. The FLA Code and Benchmarks stipulate that Employers can hire "temporary workers" only if such hiring is consistent with the national law of the country of production and one of the following conditions is met: • **ER.8.1** the permanent workforce of the enterprise is not sufficient to meet unexpected or unusually large volume of orders; • **ER.8.2** exceptional circumstances may result in great financial loss to the supplier if delivery of goods cannot be met on time; or	While this loophole in Mexican law allows employers to categorize work as "discontinuous" or "fixed" and thereby hire them under short-term contracts on a semi-regular basis, the FLA Code is more restrictive: using short-term contracts for foreseeable events is contrary to the code, which only allows the use of temporary workers when the permanent workforce is insufficient to meet "unexpected" or "unusually large" volume of orders. Auditors should ensure that any use of temporary workers is

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
		part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method. **Article 6:** Statutory social security schemes which are based on occupational activity shall be adapted so that part-time workers enjoy conditions equivalent to those of comparable full-time workers; these conditions may be determined in proportion to hours of work, contributions or earnings, or through other methods consistent with national law and practice. **Article 7:** Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of: (a) maternity protection; (b) termination of employment; (c) paid annual leave and paid public holidays; and (d) sick leave, It being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.	• **ER.8.3** work that needs to be done and is outside the professional expertise of the permanent workforce. In addition, Employers shall not: • **ER.9.1** use contract/contingent/temporary workers on a regular basis for the long-term or multiple short-terms; or • **ER.9.2** hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice. Other relevant benchmarks: • **ER.11.6** contract/contingent/temporary workers who are hired on more than one occasion for seasonal production and specialization sign a separate contract for each new hire event. The workplace retains the same identification number and all relevant information in each worker's personnel file; and • **ER.11.7** contract/contingent/temporary workers are given priority when the enterprise is seeking 'new' permanent employees. • **ER.12:** For any contract/contingent/ temporary worker who becomes a permanent employee, seniority and other fringe benefits eligibility must be dated from the first date as a contract/contingent/temporary worker and not from the first day of permanent employment.	investigated to ensure that this is not a) a mis-categorization of what are really regular work positions, and b) that large or seasonal volumes that required the use of temporary workers was truly "unexpected" or "unusual".
Work by the hour	Under **Article 83**, workers' wages may now also be calculated by the hour, so long as the legal maximum of hours worked per	See protections regarding equal treatment in **ILO Convention 175**, above	The FLA defines a "contingent worker" (also known as casual worker) as "a person who works occasionally and intermittently. Such workers are employed for a specific number of hours, days or	The FLA Code and Benchmarks represent a higher standard here in that they disallow hiring "contingent" workers for multiple

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	day is not exceeded, other labor laws are not violated, and the worker is not paid for less than a day's work.[13] This allows the employer to pay the general minimum wage per day, which is considerably lower than the officially mandated professional minimum wage for sewers in the garment industry.[14] It also allows the employer to keep a worker underemployed (working hours according to the employer's needs) and without payment for the 7th day. As with the expansion of short term contracts in **Article 39**, this form of hiring is also problematic because the worker is 'liquidated' at the end of each contract, meaning that the worker cannot accumulate seniority related rights.		weeks." See Glossary and Definitions, FLA Code and Benchmarks, p. 39. • **ER.11.2** contract/contingent/temporary workers receive at least the mínimum wage or the prevailing industry wage, whichever is higher, and all legally mandated fringe benefits. Workers should also be informed about the legal minimum wage. (C.2) Other relevant benchmarks: • **ER.11.6** contract/contingent/temporary workers who are hired on more than one occasion for seasonal production and specialization sign a separate contract for each new hire event. The workplace retains the same identification number and all relevant information in each worker's personnel file; and • **ER.11.7** contract/contingent/temporary workers are given priority when the enterprise is seeking 'new' permanent employees. • **ER.12:** For any contract/contingent/ temporary worker who becomes a permanent employee, seniority and other fringe benefits eligibility must be dated from the first date as a contract/contingent/temporary worker and not from the first day of permanent employment. • **ER.11.2.1** contract/contingent workers receive at least the same compensation as regular workers performing the same job functions or tasks with similar levels of experience or seniority.	terms, as a regular practice, or for normal business needs. Also, while Mexican law allows the payment of a "general minimum wage" for hourly workers, the FLA Benchmarks say that workers must receive at least the legal minimum or prevailing industry wage, whichever is higher, and in any event should receive the same compensation and benefits as a regular worker.
Seniority	**Article 159.** Aptitude and productivity have been introduced as criteria for determining		There is specific requirement in FLA Benchmarks for seniority: • **ER 11.2.1 C**ontract/contingent workers receive	Mexican law allows employers considerable discretion for promotion and training, so the

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	promotion. Seniority, while still one of the criteria for promotion, is no longer a defining criterion for a worker to access training or promotion. This means that the employer can exclude some workers from training, and permits an arbitrary evaluation of productivity and/or aptitude for the job.		at least the same compensation as regular workers performing the same job functions or tasks with similar levels of experience or seniority • **ER.12** For any contract/contingent/temporary worker who becomes a permanent employee, seniority and other fringe benefits eligibility must be dated from the first date as a contract/contingent /temporary worker and not from the first day of permanent employment. • **ND.7.1** Employers shall not, on the basis of a woman's pregnancy, make any employment decisions that negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages. Other relevant FLA Benchmarks: • **ER.28.2** Trainings shall be documented and workers shall clearly understand what is required of them in order to advance to the next level within the factory. • **ER.30.1** Employers shall have written policies and procedures with regard to promotion, demotion, and job reassignment that are transparent and fair in their implementation. • **ER.30.1.1** Policies and procedures should outline the criteria for promotion, demotion, and job reassignment scheme, demonstrate linkages to job grading, and prohibit discrimination or use of demotion or job reassignment as a form of penalty or punishment. • **ER.30.1.2** Outcomes should be provided in writing and seek feedback and agreement/ disagreement from employees in writing.	employer's practice in this regard should be examined closely. Although the FLA's Benchmarks are not fully spelled out, the requirement for written policy and procedures as well as fairness and transparency (to workers) provides a basis for ensuring that the employer is not using access to training and promotion as a discriminatory measure (for example against union members).

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
			• **ER.30.1.3** Processes should follow local legal requirements. • **ER.30.2** Policies and procedures should be communicated to the workforce and reviewed regularly. • **ND.2.1** Recruitment and employment policies and practices, including job advertisements, job descriptions, and job performance/ evaluation policies and practices shall be free from any type of discriminatory bias. • **ND.2.2** If not provided by law, employers must provide protection to workers who allege discrimination in recruitment and employment practices.	

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
3. Freedom of Association				
Union certification	The authorities have the right to deny registration of a union seeking legal certification in some limited cases. See **Article 366.** However, the labour authorities regularly use this right to deny registration of independent unions,	**ILO Convention 87, Freedom of Association and Protection of the Right to Organise,**[15] states the following: **Article 2:** The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. **Article 7:** The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof. Paragraphs 294 to 308 of the June 15, 2012 reports of the Freedom of Association Committee of the ILO provide a summary of the criteria for union registration.[16] **ILO Convention 98, Right to Organize and Collective Bargaining**,[17] which Mexico has not ratified, states: "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration."	Although the registration of unions is outside of the employer's control, the FLA's Benchmarks are clear that "workers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing, subject only to the rules of the organization concerned, without previous authorization." **(FOA.2)** Also, "when the right to freedom of association and collective bargaining is restricted under law, employers shall not obstruct legal alternative means of workers association." **(FOA.3)** Other relevant Benchmarks: • **FOA.11** Employers shall not interfere with the right of workers to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programs. • **FOA.12** Employers shall not attempt to influence or interfere in any way, to the detriment of workers' organizations, with government registration decisions, procedures and requirements regarding the formation of workers' organizations. • **FOA.13.1** Employers shall not interfere with the right to freedom of association by favoring one workers' organization over another. • **FOA.13.1.1** In cases where a single union represents workers, employers shall not attempt to influence or interfere in any way in workers' ability to form other organizations that represent workers. • **FOA.20.1** Collective bargaining agreements	The main problem is not the registration process per se, but rather, that the registration of a union is not merely administrative in nature, as should be the case according to Convention No. 87. Instead, proof of registration ("*toma de nota*" or legal recognition) is the only legal document which permits the union and its leadership to act before authorities and third parties (Articles 368 and 692 Section V). Denial of registration of an independent union is something that should be fully investigated in order to determine if the workers' right to freedom of association is being violated. Such cases should be brought to the attention of the members of the Mexico Committee for discussion and guidance. Employers should recognize and negotiate with workers' organizations, even if they have not completed the administrative registration process.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
		It goes on to say, “acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference within the meaning of this Article.” The Convention also calls for “the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organiations, with a view to the regulation of terms and conditions of employment by means of collective agreements.”	that have not been negotiated freely, voluntarily and in good faith shall be considered not applicable. • **FOA.20.2** Provisions in collective bargaining agreements that contradict national laws, rules and procedures or offer less protection to workers than provisions of the FLA Workplace Code shall also be considered not applicable.	
Exclusion clauses	Exclusion clauses may continue to be used with regard to new workers (union membership as a condition of hiring), however an exclusion clause will not apply to workers who are already employed prior to the signing or revision of a collective bargaining agreement with an exclusion clause.[18] This change in the Law reinforces the 2001 Supreme Court decision that exclusion clauses for dismissal were unconstitutional.[19]	The criteria set out by the Freedom of Association Committee of the ILO are as follows: “While it may generally be to the advantage of workers to avoid a multiplicity of trade union organizations, unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in **Articles 2 and 11** of **Convention No. 87**. Exclusion clauses for hiring constitute a legislative intervention to promote union unification.”[20]	**The FLA Benchmarks are clear that “**Employment decisions shall not be made on the basis of union affiliation or sympathy” **(ER.3.2).** In addition, “Employers shall not engage in any acts of anti-union discrimination or retaliation, i.e. shall not make any employment decisions which negatively affect workers based wholly or in part on a workers’ union membership or participation in union activity, including the formation of a union, previous employment in a unionized facility, participation in collective bargaining efforts or participation in a legal strike.” **(FOA.5.1)**	Mexico’s Federal Labour Law now forbids the dismissal of workers who cease to be members of a union prior to the signing or revision of a CBA that contains an exclusion clause, however it still allows exclusion from hiring on the basis that a worker does not join the union. The FLA has made clear in its Benchmarks that this practice is not in compliance with the FLA Code. **Article 2** of Mexico’s Federal Labour Law reinforces these benchmarks by stating that “decent work includes unrestricted respect for the collective rights of

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
				workers, such as freedom of association, autonomy, and the right to strike and to bargain collectively." Hiring and firing practices should be examined – not only in policy, but also in practice – to ensure that workers are not discriminated against.
Transparency	Under **Article 365 bis**, workers are allowed to request access to union registration documents which must include union bylaws, names of the executive committee, and financial statements including information on the use of union dues. Under **Article 373**, workers cannot be expelled from the union or fired for requesting this information. Under **Article 391 bis**, a public version of the Collective Bargaining Agreement must be made available on the Conciliation and Arbitration Board's (*Junta de Conciliación y Arbitraje)* website – although it is unclear what is to be included in the "public version" and how it is distinguished from an ordinary copy of the CBA.	**Article 3** of **ILO Convention 87** states that "Workers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programs. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."	The FLA requires that "where a union exists in the workplace, employers shall make available a copy of the collective bargaining agreement to all workers and other interested parties" (**ER.16.2)**. There can be no discrimination or retaliation for participating in union activity, which could be interpreted to include requesting a copy of the CBA **(FOA.5.1)**. Employers and worker representatives shall bargain in good faith, i.e. engage in genuine and constructive negotiations and make every effort to reach an agreement **(FOA.16.2).**	Although Mexican law allows workers to request a copy of their CBA without retaliation, the better practice is to make the CBA available to them so that workers don't have to individually request a copy, removing that risk for workers. Also, as the "public" version of the CBA that Juntas are supposed to post online is not necessarily the full copy, brands should not currently rely on the Juntas as a means of meeting this standard.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	Article 365 stipulates that when registering a union, the union is required to provide the Conciliation and Arbitration Board with the names and addresses of all of its members.		The danger of retribution for members of an independent union who are named in these documents is high. The FLA Benchmarks forbid any acts of anti-union discrimination or retaliation. **(FOA.5.1)**	Forbidding retaliation against workers for union membership is a general principle in codes and ILO Conventions. Auditors should be on the lookout for any potential discrimination. If lists of members are made public in any way, the auditors should pay attention to the employment records of workers listed to look for any signs of discrimination or retaliation.
Election of union representatives	**Article 371 (VII and XI)** requires that there be fixed periods for elections set out in the union bylaws, and that these elections, whether direct or indirect, be by secret ballot.	**ILO Convention 135**, **Workers' Representatives Convention**,[21] defines the rights of worker representatives and prohibits discrimination against them, but does not define how they shall be selected.	**FOA.11** Employers shall not interfere with the right of workers to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programs.	In theory at least, these changes in the Law could give workers a greater opportunity to select their union representatives. Whether worker representatives that sign the CBA are elected by the workers is also an indication for auditors as to whether the CBA is a protection contract.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
4. Firings and reinstatement				
	The revised Law adds a new "just cause" for termination, which now allows termination for mistreatment of management or of the company's clients or suppliers.[22]	**Article 5** of **ILO Convention 158**[23] forbids termination on any of the following grounds: (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours; (b) seeking office as, or acting or having acted in the capacity of, a workers' representative; (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities; (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; (e) absence from work during maternity leave.	The FLA Benchmarks include numerous safeguards for whistleblowers, most worded in the following manner: • **ND.2.2** If not provided by law, employers must provide protection to workers who allege discrimination in recruitment and employment practices. Similar whistleblower protections specific to other types of allegations are contained in Benchmarks **ER.23.6, ND.3.2, ND.4.2, ND.7.2, ND.8.2, H/A.8.3, FOA.19.2, HSE.11.2, HSE.12.2, HOW.4.2, HOW.5.2.**	The interpretation of this provision of the Law is unclear and could potentially be used by employers as a pretext to punish whistleblowers. The FLA code clearly protects workers that allege problems in the factory. For non-FLA brands**, ILO Convention 158** forbids termination for filing complaints. While this may only protect workers who file official complaints, the spirit of the convention should also be interpreted to protect workers who also raise problems with brands or their representatives.
	The range of causes for termination has been expanded to include failure of the worker to provide all necessary documents relating to their work. Further, the employer may now give written notice of cause for discharge to the Labor Board within a period of five working days, rather than immediately and directly to the worker. This makes it easier to terminate workers and, by	**Article 7** of **ILO Convention 158** states: "The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity."	The FLA Benchmarks require a fair and non-discriminatory system of progressive discipline which is clearly communicated to workers. Specifically, • **ER.27.1** Employers shall have written disciplinary rules, procedures and practices that embody a system of progressive discipline (e.g. a system of maintaining discipline through the application of escalating disciplinary action moving from verbal warnings to written warnings to suspension and finally to termination).	Again, **ILO Convention 158** suggests that there needs to be procedural fairness in terminating employment, including providing notice and reasons to the workers to be laid off or fired. The FLA Code and Benchmarks are quite specific that written policies and practise must be in place, which should outline a fair and transparent practice. Auditors

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	removing the right of the worker to know why s/he was fired, makes it harder to challenge the dismissal.		• **ER.27.2** Employers shall ensure managers and supervisors are fully familiar with the workplace disciplinary system and in applying appropriate disciplinary practices. • **ER.27.2.1** The disciplinary system shall be applied in a fair and non-discriminatory manner and include a management review of the actions by someone senior to the manager who imposed the disciplinary action. • **ER.27.2.2** Employers shall maintain written records of all disciplinary actions taken. • **ER.27.3** Disciplinary rules, procedures and practices shall be clearly communicated to all workers. Any exceptions to this system (e.g. immediate termination for gross misconduct, such as theft or assault) shall also be in writing and clearly communicated to workers. • **ER.27.3.1** Workers must be informed when a disciplinary procedure has been initiated against them. • **ER.27.3.2** Workers have the right to participate and be heard in any disciplinary procedure against them. • **ER.27.3.3** Workers must sign all written records of disciplinary action against them. • **ER.27.3.4** Records of disciplinary action must be maintained in the worker's personnel file. • **ER.27.4** The disciplinary system shall include a third party witness during imposition, and an appeal process. • **ER.32.1** Employers shall have in place a formal written policy governing all aspects and modes of termination and retrenchment. • **ER.32.2** Employers shall maintain proper and accurate records in relation to termination and retrenchment.	should examine any terminations to ensure that they met this requirement.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	Although the worker may still request reinstatement,[24] back pay in proven cases of unjust termination is capped at 12 months. This, despite evidence that employers often delay back pay cases for years to pressure employees to accept less than their legal entitlement in out-of-court settlements, and despite the reform to **Article 875** which prolongs rather than shortens cases. If the case goes beyond 12 months, the worker is only entitled to 12 months back-pay plus interest of 2% per month (on the value of the salary) for up to 15 months.	The **ILO Convention on Termination (C158)** does not specify any limits on back pay or compensation.	When workers are unjustly dismissed due to an act of union discrimination, the FLA Benchmarks state: • **FOA.6** Workers who have been unjustly dismissed, demoted or otherwise suffered a loss of rights and privileges at work due to an act of union discrimination shall, subject to national laws, be entitled to restoration of all the rights and privileges lost, including reinstatement, if they so desire.	The FLA Benchmarks are the higher standard here – they require (at least in the case of FOA discrimination) that "all" rights and privileges be restored, which should include any back pay beyond the 12 month period, with interest.

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
5. Women's rights and gender and other forms of discrimination				
Parental leave	**Article 170** allows shifting of four of the six weeks of legally-mandated maternity leave from before the birth to after the birth (to total 10 weeks maternity leave after the birth and two weeks prior to birth, at full pay), if the worker requests it with approval of her doctor. Post-partum leave may be extended by 2 weeks if the child is born requiring medical attention. Women will receive 6 weeks paid maternity leave after adopting a child. Men will be able to take up to 5 days paternity leave, whereas previously they would have had to use their annual vacation for this purpose.	**Article 4** of **Convention 183, Maternity Protection,**[25] says that "a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks" and that "with due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers." .	The Benchmarks do not specify any times for parental leave and/or nursing breaks, but do include the following general provisions: • **ER.14** Employers shall ensure that all legally mandated requirements for the protection or management of special categories of workers, including migrant, juvenile, contract/contingent/temporary, home workers, pregnant or disabled workers, are implemented. • **ND.7.1** Employers shall not, on the basis of a woman's pregnancy, make any employment decisions that negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages. • **ND.8.1** Employers shall abide by all protective provisions in national laws and regulations benefitting pregnant workers and new mothers, including provisions concerning maternity leave and other benefits; prohibitions regarding night work, temporary reassignments away from work stations and work environments that may pose a risk to the health of pregnant women and their unborn children or new mothers and their new born children, temporary adjustment of working hours during and after pregnancy, and the provision of breast-feeding breaks and facilities. • **ND.8.1.1** Where such legal protective provisions are lacking, employers shall take reasonable measures to ensure the safety and health of pregnant women and their unborn children. •	Mexican law is the most specific standard on these two practices.
Nursing breaks	Nursing breaks (two half-hour breaks per day) are now limited to a six month period after birth, whereas previously they were unlimited. The employer may reduce the work day by one hour instead of providing two half-hour breaks.**(Article 170-IV)**	**Article 10** of **ILO Convention 183** says "A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child" and that "The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly."		

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
			• **ND.8.1.2** Such measures shall be taken in a manner that shall not unreasonably affect the employment status, including compensation of pregnant women.	
Harassment	Harassment and sexual harassment, as defined in **Article 3 Bis**, are now just cause for terminating the harasser **(Article 47**). **Article 133** prohibits harassment and sexual harassment in the workplace. Employers are prohibited from sexually harassing any other person in the workplace **(XII)** and are also prohibited from permitting or tolerating such acts **(XIII).**	Although there is not a specific ILO Convention on sexual and other forms of harassment, the ILO points to **Conventions 100 (Equal Remuneration) and 111 (Discrimination, Employment and Occupation)**, and the principle of non-discrimination contained in those conventions, as providing for the right of workers to equal treatment and a conducive work environment.[26]	In general terms, the FLA Code is clear that "every employee shall be treated with respect and dignity. No employee shall be subject to any physical, sexual, psychological or verbal harassment or abuse." **H/A.8.1** Employers shall ensure that the workplace is free from any type of violence, harassment or abuse, be it physical, sexual, psychological, verbal, or otherwise. With respect to specific disciplinary procedures, Benchmark **H/A.11** says that "employers shall have a system to discipline supervisors, managers or workers who engage in any physical, sexual, psychological or verbal violence, harassment or abuse, through measures such as compulsory counseling, warnings, demotions, and terminations or a combination thereof regardless of whether such action was intended as a means to maintain labor discipline." In addition, Benchmark **H/A.9.4** says "employers shall refrain from any action, and shall take all appropriate action to ensure that all workers refrain from any action, that would result in a sexually intimidating, hostile or offensive work environment for workers."	The FLA Code and Benchmarks are more specific and detailed on this issue.
Discrimination	**Article 133 (I)** expands protections against discrimination	**ILO Convention 111** defines discrimination as being "any distinction, exclusion or	The FLA Code and Benchmarks prohibit any discrimination in employment, including hiring,	The FLA Benchmarks are more explicit than either the Federal

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	for workers by expressly prohibiting new categories of discrimination with regard to hiring and to working conditions. The reform expands prohibited bases for discrimination in hiring decisions (which already included age and sex) to also include ethnic or national origin, gender, disability, social status, health conditions, religion, personal views, sexual orientation, and civil status as prohibited bases for discrimination in hiring decisions. The reform, in **Article 56**, expands prohibited bases for discrimination related to working conditions (which already included race, nationality, sex, age, religion, and political views) to also include ethnic origin, gender, disability, social status, health conditions, personal views, sexual orientation, pregnancy, family responsibilities, and civil status.	preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."[27] **ILO Convention 100** enshrines the right of workers to equal remuneration for work of equal value.[28]	compensation, advancement, discipline, termination or retirement on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, social group or ethnic origin. **ND.2** prohibits discrimination in recruitment, including job descriptions and advertisements. **ND.3** requires equal pay for work of equal value. **ND.4** prohibits discrimination on the basis of marital status. **ND.5** prohibits pregnancy testing as a condition of hiring or continuation of employment. **ND.6** prohibits discrimination on the basis of marriage or pregnancy. **ND.9** prohibits discrimination on the basis of health status. **ND.10** prohibits requiring medical tests for any disease or illness, such as HIV/AIDS, that does not have an immediate effect on a person's fitness and is not contagious. **ND.11** requires the employer to respect the confidentiality of workers' health status. **ND.12** requires the employer to take measures to reasonably accommodate workers with (chronic) illnesses, including HIV/AIDS.	Labour Law or ILO Conventions in prohibiting testing for HIV/AIDS and gender-based discrimination in recruitment and job advertisements. The Federal Labour Law goes further than the FLA Benchmarks in prohibiting discrimination on the basis of social status and family responsibilities.
Pregnancy testing	Employers are now prohibited from demanding medical proof that a worker is not pregnant as a condition of employment or promotion **(Article 133, XIV)**.	**Article 8** of **ILO Convention 183** prohibits the dismissal of a woman employee during her pregnancy or maternity leave, except on grounds unrelated to pregnancy or birth of the child and its consequences or nursing.	**ND.5.1** prohibits pregnancy testing or the use of contraception as a condition of hiring or continued employment. **ND.6.1** prohibits threatening female workers with dismissal or any other employment decision that negatively affects their employment status in order	

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
	Employers are also prohibited from dismissing a worker due to her pregnancy or pressuring her, directly or indirectly, to resign **(Article 133, XV)**.	**Article 9** states that each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment.	to prevent them from getting married or becoming pregnant. **ND.7.1** prohibits employers from making employment decisions on the basis of a worker's pregnancy that negatively affect the employment status of the worker, such as dismissal, loss of seniority, or deduction of wages. **ND.8.1** requires employers to take reasonable measures to ensure the health and safety of pregnant women and their unborn children.	

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
6. Wages and profit sharing				

Direct Deposit	Wages can now be paid electronically (e.g. direct deposit) but only with the consent of the worker. **(Article 101**)	**Article 3 (2)** of **ILO Convention 95, Protection of Wages,**[29] says: "The competent authority may permit or prescribe the payment of wages by bank cheque or postal cheque or money order in cases in which payment in this manner is customary or is necessary because of special circumstances, or where a collective agreement or arbitration award so provides, or, where not so provided, with the consent of the worker concerned."
		
		Article 14 says: Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner--
		(a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and
		(b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change.
			There is no specific provision regarding electronic payments in the FLA Benchmarks, provided that the following conditions are still met:
			
			• **C.13 Pay Statement:** Employers shall provide workers a pay statement each pay period and not less frequently than once a month, which shall show:
			  • C.13.1 earned wages,
			  • C.13.2 wage calculations,
			  • C.13.3 total number of hours worked,
			  • C.13.4 regular and overtime pay,
			  • C.13.5 bonuses,
			  • C.13.6 all deductions, and
			  • C.13.7 final total wage.
			
			• **C.14.1** All compensation records, including wages and fringe benefits whether in cash or in-kind, must be properly documented and their receipt and accuracy must be confirmed by the relevant worker in writing (e.g. signature, thumbprint).
			• **C.14.2** No one can receive wages on behalf of a worker, unless the worker concerned has, in full freedom, authorized in writing for another person to do so.
				Direct payment of wages should be accompanied by clear information provided to the worker concerning the pay calculations.

Pay by the hour	As noted above, payment by the hour is now legalized provided the worker is not paid for less than a day's work. **(Article 83)**		• **ER.11.2** Contract/contingent/temporary workers receive at least the minimum wage or the prevailing industry wage, whichever is higher, and all legally mandated fringe benefits. Workers should also be informed about the legal minimum wage **(C.2)**.	

Issue	Mexican labour law (2012)	International Labour Organization (ILO) standards	FLA Code & Benchmarks	Notes
Profit sharing	Previously, outsourced workers were entitled only to a share in the profits from the outsourcing company. A common practice was to establish a separate service company that employed the workers but had a much lower profit margin and paid out smaller shares to workers as a result, or to hire the workforce through an outsourcing company. Under the revised Law (Articles 15, 15A), as described above, outsourcing can only be used in certain instances. If the outsourcing relationship fails those tests, the beneficiary company may be liable for payment of a share of its profits to any outsourced workers in the same manner as any direct employee. **(Articles 15, 15-A**)	There are no ILO standards on profit sharing.	The provisions for payment of contracted workers include ensuring that they receive the same compensation as regular workers, and all legally-mandated benefits. Specifically: • **ER.6.1** Employers shall use standard contract language with employment agencies that specifically imparts power to employers to directly pay wages to migrant/contract/ contingent/temporary workers and ensures equality of compensation and workplace standards as set under the FLA Workplace Code and national laws and regulations. • **ER.11.2** Contract/contingent/temporary workers receive at least the minimum wage or the prevailing industry wage, whichever is higher, and all legally mandated fringe benefits. • **ER.11.2.1** contract/contingent workers receive at least the same compensation as regular workers performing the same job functions or tasks with similar levels of experience or seniority • **ER.22.1** Employers shall provide all legally mandated fringe benefits, including holiday leave, bonuses, severance payments and 13th month payments to all eligible workers within legally defined time periods.	Where outsourcing is used legitimately under the law and/or FLA Code, auditors should still examine payments for profit sharing to ensure consistency with the letter and intent of Mexican law. The common use of fake outsourcing companies to avoid profit-sharing is a known risk that should be red-flagged. Companies also often claim that profits were not realized in Mexico in order to decrease their payments. Since failure to pay proper profit sharing benefits often results in worker protests and/or work stoppages, this is also a risk for buyers.

Endnotes

[1] On November 30, 2012, the Mexican government introduced changes to its Federal Labour Law. However, due to the ambiguous language of some of the revisions made to provisions of the Law, it is still unclear how they will be interpreted by the labour authorities and the courts, This document compares changed sections of the Law that will be of particular interest to labour compliance auditors with relevant ILO Conventions and the Code and Benchmarks of the Fair Labor Association. The English translations of the revised provisions of the Federal Labour Law are by MSN; all footnotes reference the official Spanish version. The full revised Labour Law is available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/125.pdf
For a file that shows only the 2012 revisions see: http://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT_ref26_30nov12.pdf . (Where there are quotation marks around sections of the text, it means these sections are unchanged.)

[2] The Fair Labor Association (FLA) is a collaborative effort of companies, universities and civil society organizations working to ensure respect for workers' right in global supply chains. The FLA Code and Benchmarks can be found at: http://www.fairlabor.org/sites/default/files/fla_complete_code_and_benchmarks.pdf Reference numbers for relevant benchmarks are noted in each entry of this text.

[3] National Reports on Outsourcing, 2007. http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@dialogue/documents/meetingdocument/wcms_159885.pdf

[4] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535

[5] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326. Convention 181 has not been ratified by Mexico.

[6] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:SUP,en,R188,/Document

[7] Convention No. 181 Concerning Private Employment Agencies, Article 1- a and b: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312326:NO .

[8] http://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?Epoca=&Apendice=&Expresion=&Dominio=&TA_TJ=&Orden=1&Clase=SistematizacionDetalleTesisBL&NumTE=1&Epp=20&Desde=-100&Hasta=-100&Index=0&ID=184179&Hit=1&IDs=184179&tipoTesis=2&idCto=19&indice=T&origen=T&idEpoca=2003005&idMateria=5&idTcc=268&Semanario=0&tabla=

[9] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C158. Mexico has not ratified Convention 158.

[10] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R166

[11] http://www.eurofound.europa.eu/eiro/2008/01/articles/fr0801029i.htm and http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:2507306,en:NO

[12] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312320:NO. Convention 175 has not been ratified by Mexico.

[13] For example, health care and social security benefits must be provided, as must pro-rated vacation pay and end-of-year-bonus.

[14] For information in Spanish on general and professional minimum wages by region, go to: http://www.conasami.gob.mx/nvos_sal_2014.html
For information in English on general and professional minimum wages by region, see: http://www.wageindicator.org/main/salary/minimum-wage/mexico

[15] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232. Mexico has ratified Convention 87.

[16] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf

[17] http://www.ilocarib.org.tt/projects/cariblex/conventions_3.shtml. Mexico has not ratified Convention 98.

[18] Article 395: "En el contrato colectivo podrá establecerse que el patrón admitirá exclusivamente como trabajadores a quienes sean miembros del sindicato contratante. Esta cláusula y cualesquiera otras que establezcan privilegios en su favor, no podrán aplicarse en perjuicio de los trabajadores que no formen parte del sindicato y que ya presten sus servicios en la empresa o establecimiento con anterioridad a la fecha en que el sindicato solicite la celebración o revisión del contrato colectivo y la inclusión en él de la cláusula de exclusión."

[19] Supreme Court Press Release #385, Inconstitucional, La Cláusula de Exclusión en Los Contratos Colectivos de Trabajo: SCJN, México, D.F., 17 abril 2001. http://www2.scjn.gob.mx/red2/comunicados Type in the number of the release (385), the date (abril, 2001), and the release title.

[20] June 15, 2012 reports of the Freedom of Association Committee of the ILO, paragraph 319.

[21] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312280. Mexico has ratified Convention 135.

[22] Article 47 (II): "Incurrir el trabajador, durante sus labores, en faltas de probidad u honradez, en actos de violencia, amagos, injurias o malos tratamientos en contra del patrón, sus familiares o del personal directivo o administrativo de la empresa o establecimiento, o en contra de clientes y proveedores del patrón, salvo que medie provocación o que obre en defensa propia."

[23] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C158

[24] Reinstatement is not, and has never been, a mandatory remedial measure in cases of unjust firing in Mexico.

[25] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C183. Mexico has not ratified Convention 183.

[26] See Guidelines on Sexual Harassment at the Workplace, April 2011. http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_171329.pdf

[27] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111. Mexico has ratified Convention 111

[28] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C100. Mexico has ratified Convention 110

[29] http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C095. Convention 95 has been ratified by Mexico.