

BIPO TIMES



Understanding Mexico's Employment Laws & Labour Regulations

Mexico in Brief

A developing country which counts the United States as its largest economic partner, Mexico is also considered an emerging power due to its large economy and population. Services (financial services and tourism) contribute 63% to the economy, followed by industry (automotive, oil, electronics) at 33% and agriculture at 4%.

Overview

1. Business Culture in Mexico

Mexico's proximity to the United States has helped to shape its business culture. While the business culture may differ depending on the type of business (eg: MNCs, US branch offices or family businesses), personal relationships and trust feature strongly in Mexico and the Latin American countries. Agreements are generally reached over face-to-face communication and punctuality is often not a concern.

2. Minimum Wage and payment periods

MXN\$141.70 per day	MXN\$213.39 per day
Mexico	Northern Border States Baja California, Sonora, Chihuahua, Coahuila, Nuevo Leon, and Tamaulipas

Capital Mexico City	Population 126 mil (as at 2020 est)
Currency Mexican Peso (MXN)	GDP Per Capita USD21,362 (PPP, 2020 est)

Mexico

3. Working Hours & Overtime

- i. The average workweek in Mexico is 45.1 hours, Monday to Friday from 9 am to 6 pm.
- ii. Mexico has three different working shifts

Day Shift	Night Shift	Mixed Shift
<ul style="list-style-type: none">• 8 hours long• Usually for office employees – 48 hours/week• Entitled one rest day, with 6 working days• Some companies choose to condense 48 hours from Monday to Friday, or require employees to work fewer than 48 hours/week	<ul style="list-style-type: none">• 7 hours long• Full time night shift workers – 42 hours/week	<ul style="list-style-type: none">• 7.5 hours long• Full time mixed shift workers – 45 hours/week

iii. Overtime

- Such pay applies as long as an employee works more than 48 hours over the 6 workdays
- OT hours are capped at no more than 3 extra hours per day, no more than 3 times per week, and limited to 9 hours per week
- OT should also be paid in reason of 200% of the normal hourly rate, any hours exceeding 9 to be paid at 300%
- Working on a rest day (Sunday, 7th day or holiday) is paid with 200% of the day's rate

4. Employment Contracts

At-will employment does not exist in Mexico and employment agreements in the local language, detailing the employee's compensation, benefits and termination are legally required. Employment contracts should state the salary in Mexican Pesos rather than foreign currencies such as USD.

5. Contract Durations

There are three types of contract durations:

i. Initial training

- Usually used with new employees, they can go on for 90 days at the most or 3 periods of 30 days
- Thereafter, employers need to decide whether to end the contract, grant an open-ended or a project contract (subject to job requirements)
- Failure to review an initial training contract, with work and payment of the employee resuming, is understood that employer has granted an open-ended contract and employee therefore acquires seniority

ii. Indefinite (Open-ended)

- Most contracts in Mexico belong in this category, meaning employers do not set an end date for the job
- Indefinite contracts are granted to 3 types of employees:
 - Employees that have successfully completed the initial training period
 - Senior-level employees that will not accept an initial training contract since they are resigning from another company
 - Employees moving from outsourcing to company payroll, granting them seniority tied to payments in case of no reason terminations

iii. Project / Seasonal

- Project or seasonal contracts must demonstrate that the nature of the job is related either to a project or to a specific season
- As with the initial training contracts, failure in notifying employee that their contract will not be extended after the agreed dates generally means employers are granting these employees an open-ended contract

Thus, it is important to keep closely monitor / manage contract completion (end) dates in Mexico.

Mexican workers are entitled to their rights under the Mexican Labour Law, so any terms in your contract that violate these rights will be invalid. Employment contracts are extremely important in Mexico as there is no unemployment insurance. The contractual agreement between employer and employee provides some stability to employees.

6. Termination & Severance in Mexico

- i. If not expressed otherwise, all employment contracts in Mexico are assumed to be for an indefinite term-length.
- ii. Employment agreements in Mexico may be terminated by a mutual agreement between employee and employer, the death of the employee, or a physical or mental disability that renders the employee no longer capable of performing the required work duties.

- iii. An employer may dismiss an employee only where the latter gives cause for dismissal. Under Mexican labour law, “integrity at work” is mandatory behaviour for the employee. An employee is deemed to act with integrity when the work is carried out with intense effort, care, and attention, in the agreed-upon time, place, and manner. “Lack of integrity” is a generic cause for dismissal.
- iv. Additionally, Article 47 of the Federal Labour Law specifies various conduct that are causes for dismissal:
 - use of false documentation to gain employment
 - dishonest or violent behaviour against the employer or the employer’s family
 - dishonest or violent behaviour against co-workers that disrupts work discipline
 - acts of harassment or sexual harassment directed toward any person in the workplace
 - sabotage of the workplace
 - carelessness that threatens the safety of the workplace and of other workers
 - immoral acts in the workplace
 - disclosure of trade secrets
 - more than three unexcused absences in a 30-day period
 - insubordination
 - failure to adopt preventive measures or to follow procedures to avoid accidents or illnesses
 - reporting to work under the influence of alcohol or narcotic drugs
 - incarceration

If the employer can prove any of the above as a cause for termination, they will then be required to issue a written statement indicating to the employee why they are being terminated. Lawyers also usually advise employers to register the termination stating the reasons, with the local employment government office to avoid lawsuits. Employers are also responsible to compensate on acquired benefits and worked days.

- v. Should the employer wish to terminate an employee on an open-ended contract with none of the reasons listed above, they should provide written notice to the employee (on day of termination). Additionally, it is also required of the employer to pay a severance penalty (3 months of salary + 20 days of salary for each full year worked, benefits inclusive – Aguinaldo, Vacations, and vacations premium/prima). These 3 benefits are acquired by the employee as soon as you onboard them, so if they are terminated or if they resign you must pay at least the proportional part of these 3.

7. Voluntary Resignation

- i. Should an employee wish to resign, they may do so on the day they wish to leave the company. There is no specification of notice period stated in the law. However, employees usually give a week/two’s notice.
- ii. The main difference affecting an employer between a resignation and a termination (dismissal, firing an employee) is the monetary penalties. No penalties will be imposed on employer should their employee resign; however, penalties will be incurred if they are being terminated without lawful reason.

8. Payment Periods

- i. Depending on conditions agreed upon in the employment contract, employee wages can be paid weekly, biweekly, or monthly. General practice is biweekly payment on 15th and 30th of the month. If these two days fall on weekends or holidays, the payment is done the Friday before. The net pay, which includes salary and cash benefits in kind, must be received in official Mexican banks, paid in Pesos.
- ii. Employees are also entitled to an “Aguinaldo” – a Christmas Bonus or 13th-month salary. The “Aguinaldo” typically equals 15 days of salary (this is the minimum by law) but can be up to 6 weeks (40 days) in large companies. This Aguinaldo has to be paid to the employee no later than 20th December each year, failure to do so could result in extremely high penalties.

9. Paid Time Off (Vacations) and Holidays

- i. Every employee is guaranteed certain benefits in addition to the compensation laws listed above. For example, employees earn an annual vacation entitlement of 6 days after their first full year of employment as part of Mexico benefit management. They receive an additional 2 vacation days for each additional year that they continue to work for the organization as seen below:

Paid vacation days

Length of service	1 year	2 year	3 year	4 year	5-9 year	10-14 year	15-19 year	20-24 year	25-29 year	30-34 year
Paid Days off	6 days	8 days	10 days	12 days	14 days	16 days	18 days	20 days	22 days	24 days

- ii. Employees are also guaranteed a vacation bonus, which is at minimum 25% and can go up to 100%.
 - iii. This percentage is granted based on the annual leave entitlement days and paid on the anniversary of the employee with the company.
 - iv. Mexico's benefit management includes understanding their festivals, civic holidays, and statutory holidays. The country's eight national public holidays include:
 - New Year's Day (Jan 1st)
 - Constitution Day (Feb 5th, Observed first Monday in February)
 - President's Day / Benito Juarez's Day (March 21st, observed third Monday in March)
 - Labor Day (May 1st)
 - Independence Day (September 16th)
 - Revolution Day (Nov 20th, Observed third Monday in November)
 - President Inauguration Day (Dec 1st, every six years)
 - Christmas Day (Dec 25th)
- On top of these, there are other unofficial holidays where most employers allow time off for other religious or national celebrations: Holy Thursday and Friday, May 10th (Mother's Day), November 2nd (Day of the Dead).

10. Sick Leave

- i. If an employee has an illness not related to work that keeps them out for more than three days, they will receive 60% of their salary. The 60% of their salary is paid by the Social Security Institute. Medical certificates must be provided by the employee who is eligible to claim for such subsidies.
- ii. If the sickness or accident is related to the job or commute, the employee gets 100% of their salary. For both the 60% and 100% salary compensation, the employee will need to go to the Institute to file for sick days and seek approval. In both cases they are required to get a certificate (incapacidad) from IMSS (Public health provider) to be able to collect their salary for those sick days.
- iii. Employers have the right to grant sick leave with or without pay at the discretion of the immediate manager or supervisor of the employee. This agreement should be written as a policy and signed by both the employer and employee.

11. Maternity and Paternity Leave

- i. Women working in Mexico are granted a total of 12 weeks maternity leave – 6 weeks' paid leave before and after the birth of the child.
- ii. Fathers have the right to take up to 5 days of paid paternity leave.
- iii. All maternity and paternity related leave is paid for by Social Security, not the employer.
 - If an employee's salary exceeds 25 times the minimum wage, it is customary for employers to pay the difference of the income that the female employee will not receive from Social Security
 - The 12 weeks is negotiable with the company, so that a Mother can use at least 2 weeks before birth estimated date and the other 10 weeks after the birth of the child. However, this is internal agreement only

12. Retirement Funds

- i. The country's Administrator of Retirement Funds (AFORE) creates retirement savings accounts for employees. All employees can open an AFORE account, consisting of three sub-accounts. Employers contribute to these retirement funds through payment to social security. Companies are required to withhold a percentage regarding IMSS from the employee and pay this withdrawal at the same time they pay the companies contribution.
- ii. You must register employees for social security and insurance on the day you hire them, failure to do will result in significant penalties.

13. Profit Sharing

- i. Employees are also entitled to profit sharing, in which employees are entitled to receive at the latest on May 30 each year, and they receive up to 10% of net profit of the company.
- ii. The profit will be shared in two parts: the first will be split in equal parts amongst all employees, taking into consideration the number of worked days for each employee during the previous year; and the second will be distributed in proportion to the amount of the salaries earned during the year.

14. Paycheck Withholdings

- i. Mexico operates under a progressive income tax that ranges up to 35% based on an employee's salary.

- ii. Mexico requires employers to withhold income tax from employees' paychecks. The company has to determine the proper amount for each employee and then deduct a portion from each paycheck to go to the Mexican Tax Administration Service (SAT) each month.
- iii. Employers must also withhold a certain amount to go toward social security benefits. Employers contribute the majority toward social security, but employees also contribute a portion.

15. Health Care

- i. All employees get public health care coverage through the Mexican Social Security Institute. However, many employers offer their workers supplementary health insurance options.
- ii. If employers opt for private medical insurance on top of public health insurance, they will either need to find insurance for their employees on their own or provide a monthly allowance for them to choose their own private plan. The allowance may not cover all the insurance but will most likely help with the payment.

16. Other Benefits

- i. Mexico benefit management includes optional features that enhance your employee's work life. Many companies offer flexible work hours or job sharing and telecommuting. Some employers also opt for additional contributions to retirement savings, life insurance, saving fund, food coupons, pantry tickets, discounts at gyms, among others.
- ii. Employers must consider the universality of the benefit, and if it can be replicated for (a) employees who belong to the same rank or (b) all employees. If above rule is not followed the benefits cannot be deducted from taxes and might end up in an auditor's office for the company to explain if there is any conflict of interest or illegal activities going on.

Article contributed by

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Around the World with BIPO

Mexico – 22 April 2021

Mariana Alcantara, HR Service Delivery Manager recently hosted BIPO Mexico's first webinar on Understanding Mexico's Employment Laws & Labour Regulations. Attended by a global audience of HR and business professionals, the session included a robust discussion and Q&A session.

About us

At BIPO, we help businesses transform and digitalise, enabling them to thrive and realise their growth ambitions. Around the world, we support over 1,600 clients across 87 countries and regions with a new generation of HR solutions. Our comprehensive suite of service products from our award-winning cloud and mobile-based HR Management System (HRMS), multi-country payroll calculation, overseas landing services, Business Process Outsourcing (BPO) to attendance automation provide clients with a multi-regional, integrated and seamless user experience.

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