

Manufacturing in Mexico: Major Changes in Mexican Federal Labor Law

Effective December 01, 2012, Mexico's Federal Labor Law (FLL) underwent the most comprehensive reform in over 40 years. Many of the new laws will impact companies manufacturing in Mexico, especially those who are uninformed and/or unprepared to address the more than 300 changes in the decree. Below are three key changes employers can expect under the new decree.

Outsourcing

The reform heightens the regulations on employee outsourcing (subcontracting) with potentially serious implications to many employers. The type of work performed by "outsourced" employees must comply with the following conditions:

- It cannot cover the totality of the activities, whether equal or similar in totality, undertaken at the center of the workplace.
- It is justified due to its specialized character.
- It cannot include tasks equal or similar to the ones carried out by the customer's workers. If these conditions are not met, the customer will be deemed to be the employer for purposes and effects under the Law, including as it applies to obligations related to social security, benefits, severance and all labor-related compliance.

What this means is that "employers ([manufacturing in Mexico](#)) may only hire temporary workers and independent contractors if those individuals will not be performing work similar to the work already performed by other employees of the company. " The reform also requires that the contract must be in writing and that the customer (beneficiary of the services) must ensure that the contractor comply with its obligations under the new labor laws. To this extent, it appears under the new decree that ONLY the beneficiary of such services (not the contractor) will be liable for any penalties or fines for unlawful circumvention of the law.

Profit Sharing

The new labor decree expressly prohibits the outsourcing of employees for the sole purpose of evading legal labor obligations, specifically the payment of profit sharing. Many companies manufacturing in Mexico, Maquiladoras and Mexican national's alike, for years have established multiple corporations to isolate their labor from other operating activities and company assets, thereby limiting or completely eliminating the profit sharing obligation. This practice is no longer legal under the new reform and will likely present significant challenges for many companies. [Gloria Madrid](#), The Director of Operations at North American Production Sharing, Inc. ([NAPS](#)), the leading company that specializes in outsourced administrative and compliance management services in Mexico commented, "The new labor laws add yet another level of complexity to the administrative compliance of running a factory in Mexico and we feel that proper and clear documentation throughout each functional department will be more critical now than ever before in Mexico. Because this is already a common practice at NAPS, we are well-positioned and prepared to address all the changes in the decree for our current and future clients."

Employment Relationship

To the benefit of the employer, the reform adds "Initial Training," "Probationary" and "Seasonal Employment" as new types of employment contracts, in addition to those already accepted under the statute. (i.e., employment contracts for specific work and for definite and indefinite periods.) The Initial Training and Probationary agreements must establish a time period of no more than three (3) months for direct, hourly employees and six (6) months for salaried positions. Additionally, a general probationary period of 30 days (180 days for executives) will apply to employment agreements for an indefinite term or those exceeding 180 days. Under the new decree, the opinion of the Joint Commission for Productivity and Training must be taken into consideration before the termination of an "Initial Training Employment Agreement" to avoid employer liability. An important nuance to consider is that for most of these "non-permanent" agreements, they can only be used once and for the specific time agreed by both employee and employer. Proper documentation is critical to avoid complications and fines with the Mexican Labor Board.

Summary

The new Mexico Labor Decree will certainly impact many foreign and domestic companies manufacturing in Mexico. With the addition of over 300 changes, companies must take the necessary steps to understand how these changes will effect their operations and adjust their business practices to remain compliant and avoid potentially large penalties and labor disputes. For further questions or assistance about the new labor decree or for more information about [manufacturing in Mexico](#), please [contact](#) North American Production Sharing, Inc. (NAPS) at www.napsintl.com or email Scott Stanley at sstanley@napsmexico.com.

About NAPS

With over 20 years of experience doing business in Mexico, NAPS can provide expert commentary on trends and changes in the industry. NAPS offers administrative support services for companies manufacturing in Mexico. Administrative services include: Site Selection, HR, Recruitment, Accounting, Payroll, Customs, Environmental and Corporate Compliance. For more information contact NAPS at 858.794-7947 or visit our [website](#).