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Chapter 5

Labor Law

Introduction



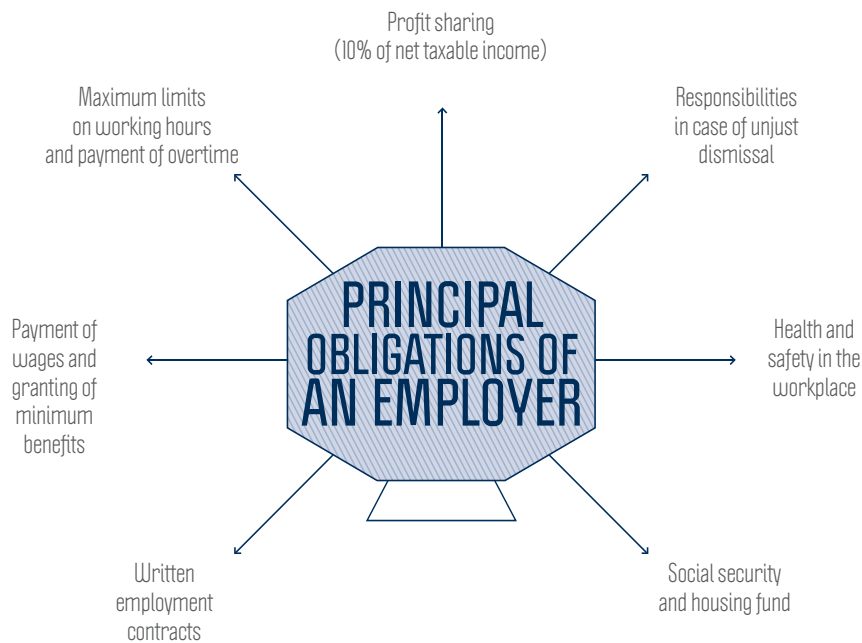
The Federal Labor Law (LFT) regulates all aspects of the relationship between employers and employees, including those related to minimum salary requirements, maximum work hours, overtime rates, minimum benefits for bonuses, holidays and paid vacations, unions, collective bargaining agreements, strikes, and health and safety in the workplace.

The LFT provides rights for employees that go beyond those provided in many industrialized countries. For example, employees are entitled to profit sharing, can only be dismissed in a limited number of cases, and are entitled to seek reinstatement or severance pay if unfairly dismissed.

Employers are required to register with the social security administration and the housing fund. Employers are also required to register all of their employees with these agencies. Employers are obligated to pay tax contributions to these agencies' funds, and lack of payment or untimely payment by an employer will result in surcharges and late payment penalties.

KEY POINTS

- The fundamental element to determining whether an employment relationship exists is whether a party has agreed to provide subordinate services to another party. This type of relationship can exist even if no written contract, or other formality, has been entered into by the parties.
- Employment contracts must be in writing. If a dispute arises, the employer must provide evidence of the amount and duration of wages paid, benefits, and other working conditions.
- A strike involves the complete suspension of all work at a company worksite. Only the labor authority has the power to decide whether the majority of employees support the strike once work has been suspended at the company.
- The government agencies responsible for administering social security and the housing fund are empowered to collect from the employer unpaid contributions, and to seize company assets to secure payment.



QUESTIONS AND ANSWERS

1. Are “at will” employment contracts legal?

No. The general rule is that an employment contract is of indefinite duration. Temporary employment is permitted when there is a cause that justifies the limited duration of employment, such as a specific work project, extraordinary work, or the temporary replacement of employees that are absent because of leave, holiday, or other similar reason.

2. Can an agent be considered an employee?

Yes. An agent can be considered an employee if that individual is a third party who offers subordinate services for the company, or works personally and on permanent basis as a sales agent for the company’s products.

3. Is it permitted to pay bonuses instead of profit sharing payments?

No. Profit sharing is mandatory. However, an employer can set up a performance bonus system which forms part of the profit sharing payment, in which case, any difference will be paid through a bonus. For example, if the worker is entitled to \$100 through profit sharing and his overall bonus is \$120, he would receive his \$100 profit sharing payment plus his \$20 bonus.

4. Is there a minimum number of employees required to form a union?

While the law requires a minimum of twenty employees to form a union, there is the possibility that regardless of the number of employees at a company, the employees can join another union which is already formed and registered, as a means to allow them to strike, and then request from the company that they enter into a collective bargaining agreement.

5. Is it possible to avoid registering for and paying contributions to social security by purchasing private life and health insurance for employees?

No. Participation in the social security system is mandatory and cannot be waived by contracting with private insurers.

CASE STUDY

An employee who has committed fraud against a company is dismissed without the employer giving written notice. The employee makes a complaint against the employer before the labor court alleging that he was the subject of unfair dismissal and asks for payment of lost wages. Calculation of lost wages begins to accrue from the date of termination until the date the court resolves the matter.

Mexican employment law offers ample protection for employees against employers. Fraud committed by an employee is a legal cause for dismissal. However, in a case like this, even when the employer has provided evidence sufficient to establish fraud the court will generally decide in favor of the worker.

The employer is required to personally hand the employee a notice stating the reason for his or her dismissal. If the employee refuses receipt of that notice, the employer must inform the court of the refusal so that the notice can be delivered to the employee at his or her home address.

Failure to comply with this procedure is grounds for considering the dismissal to be unjust, even though the employer demonstrated that the employee committed an act that would result in a legal cause for termination.

