Federal Labor and Social Security Laws Provide Mexican Mandates for Leave
By Ernesto Velarde-Danache

Mexico is now one of the most important manufacturing centers in the world and has been, in recent history, among the top 10 nations exporting manufactured goods, primarily to the United States.

Many of the products manufactured in the country are for the automobile, electronic and electrical sectors. The vast majority of the operations in these industries are labor-intensive and therefore require the continuous support of Mexican workers.

Most Mexican manufacturers—often subsidiaries of U.S., European or Asian manufacturers—duly observe and have implemented legally mandated and industry-recommended safety, protective and hygiene measures. But their employees still may have work-related accidents or illnesses. And, of course, Mexican workers become sick from natural, nonwork-related illnesses or are victims of accidents.

Moreover, many light industry manufacturing plants have established operations within Mexico. These plants tend to employ young women of reproductive age. As a result, time off for pregnancies is common.

In Mexico, two pieces of legislation help protect and preserve the health, well-being and lives of Mexican employees who need time off for family or medical reasons—the Federal Labor Law and the Social Security Law.

Federal Labor Law

Article 42 of the Federal Labor Law establishes the different causes giving rights to both employers and employees to temporarily suspend the labor relationship between them without generating any liability.

The first two causes involve medical leave: a contagious disease contracted by an employee and a temporary disability caused by an illness or accident—in either case not work-related.

Article 43 of the Labor Law establishes that the duration of the temporary suspension will be counted from the date the employer becomes aware of the contagious disease or the date the disability occurs until the date established by the Mexican Social Security Institute (or before if the disability ceases to exist at an earlier date). The medical leave period may not exceed the one stipulated by the Social Security Law for the treatment of nonwork-related illnesses.
Social Security Law

To be entitled to time off from work and monetary compensation, the insured (registered employee) that suffers an illness or work-related accident must undergo the necessary medical exams and required treatment as determined by the Mexican Social Security Institute. The institute determines whether the illness or accident is work-related. An employer that registered its employee with the institute is not responsible for providing medical care for the employee. Instead, the institute is responsible for providing medical, surgical and pharmaceutical assistance, as well as hospitalization services, prosthesis and orthopedic equipment, and rehabilitation, as needed.

In addition, the institute will pay 100 percent of the injured/sick employee’s salary as long as he or she is not able to work. If the disability ends up being permanent and total, the institute will pay 70 percent of the employee’s salary at the time of the accident. Other rules apply when the disability is only temporary and/or partial.

If the illness is not work-related, the institute still will be liable for the payment of the above-mentioned services for up to 52 weeks, renewable for a similar period. The institute will pay a subsidy of 60 percent to the sick employee as of the fourth day of disability. Often, collective labor agreements may establish the obligation for an employer to pay the subsidy for the first three days of the disability and/or contribute to bring the subsidy up to 100 percent of the employee’s salary. We regularly advise our clients to not agree to make any payments of this type of subsidy to employees because historically this has caused some irresponsible employees to abuse the system. Too often, employees who are receiving 100 percent of their salary without working will not feel the urgency to return to work.

Pregnancy Leave

According to Article 170 of the Labor Law, working mothers have certain special rights that protect the mother and child. They are to enjoy (this is the term used) six weeks of rest prior to delivery and six weeks thereafter—leave that may be extended depending on the specific health-related circumstances.

Mothers will receive 100 percent of their salary from the institute if they are current with their obligations toward the institute. If they are not, their employers are responsible for this payment. Mothers also are entitled to two additional breaks of 30 minutes each to feed their babies. The employer must provide the appropriate place for these breaks.

Other Leaves

According to the Mexican Federal Constitution and Article 42 of the Labor Law, employers must let their employees take time off to participate in public endeavors. As a result, the labor relationship is suspended without pay while employees participate in such activities. Among those functions that are covered by this legislation are service in the armed forces and jury duty, even though Mexico does not have that system
contemplated in its judiciary. A labor relationship also may be suspended to allow employees to run for public office—and, if they win, to serve in the respective capacity—or to assist during the election process when requested by the respective electoral authorities.

Some collective labor agreements, particularly those negotiated with the export industry, often contemplate additional rights that employees may enjoy and that are not considered in any of the existing Mexican laws. For example, a permit for three days with pay and even with an additional bonus may be available to employees in case of the death of an immediate family member.

It also is customary for an employee to be entitled to three to five days of time off in case of marriage, although in our practice we generally advise our clients to condition this right to only one marriage and only after one year of uninterrupted labor services. As a condition for eligibility for these benefits, a death or marriage certificate is required.

Delegates or union stewards who are regular employees also may request the right for time off to take care of union-related activities or to attend meetings at the union hall. Employers must be very astute when negotiating and agreeing to these rights in order to limit them to very special circumstances.

The longer a company has been in operation and under a negotiated collective bargaining agreement, the more rights typically have been generated and made available for medical or other types of leaves. Historically, public utility companies or companies operated by the federal government, or those in industries where there are strong labor unions, will assert additional employee rights to leaves of absence. These additional rights unfortunately are often abused by unions or union employees.

Reduce Exposure

Since the Labor Law mandates that Mexican employers must have medical personnel at the workplace on a permanent basis, many employers will have injured or sick employees treated or medicated on-site. If appropriate, employers will return employees to work after treatment to avoid having to send them to the local office of the Mexican Social Security Institute, where, as a general rule, a long line of patients will exist and the employee may end up spending half a workday—or even the whole day—waiting for treatment or medication. When employees finally are seen by a doctor or nurse at an office of the institute, they often get several days off even for minor cold symptoms, a headache or a simple bruise.

Minor accidents are often treated at the workplace by the employer’s medical personnel to avoid the waiting time at the institute and the three or more days off an employee/patient would get by the very generous bureaucratic personnel working for the institute. Taking care of minor health issues and minor injuries at the workplace, or even in a private sanatorium with which an employer may have a service agreement, will not
increase the risk premium associated with the incidence of accidents or work-related illnesses or diseases.

Conclusion

Mexican employers need to make sure that their human resource professionals and associated staff pay due regard to the applicable rules and regulations established by the Federal Labor Law and the Social Security Law.

In addition, they must take into consideration and frequently review the commitments undertaken by the employer that are contained in collective labor agreements and potentially in the shop rules the employer may have executed with a union. Due regard must be paid to those recommendations that might have been issued by the safety and hygiene commission that by law must be formed by representatives of the employer and employees to improve the health and safety conditions in the workplace.

Finally, be sure to review and observe the applicable Mexican official norms that stipulate the necessary measures to be implemented to avoid accidents and illnesses, to ensure a safer workplace, and to shield your organization from unnecessary trouble and expense.

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