Denver Journal of International Law & Policy

Volume 4
Number 1 *Spring*
Symposium - Mexican-Foreign Investment Laws

Article 8

January 1974

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Keywords

Labor, Statistics, Insurance Companies, Insurance Law

IMMIGRATION, IMPORTATION AND LABOR LAW APPLICABLE TO FOREIGN BUSINESSMEN IN MEXICO

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A general understanding of the laws of immigration, importation and labor is essential to a foreign businessman intending to operate in Mexico. For the purposes of this discussion, it will be assumed that the foreign businessman wishes to legally enter Mexico with the intent to manage a business concern. Since he will first encounter the entry requirements of the Mexican Ministry of the Interior (Secretaria de Gobernacion) immigration law will first be considered. Then discussion will focus on the laws regulating imports by the businessman, and finally the labor laws which will affect his business operation.

I. IMMIGRATION LAW

The specific body of law which governs immigration is known as the "Ley General de Poblacion."[1] In January 1974, the Mexican Congress revised the law, and that revised edition will be the focus of this section.[2]

Upon entering Mexico, the foreign businessman must obtain the proper immigration permit. The law divides the categories of the immigration permits generally given to foreigners into three areas: non-immigrant (no inmigrante),[3] immigrant (inmigrante),[4] and permanent alien resident (inmigrado).[5] The basic difference between the three types of permits is that the first is strictly for temporary residence, while the other two permit a residency of greater permanence.

A. *Non-Immigrant Status*

In recent years, the obtaining of immigrant papers of the type which eventually could lead to permanent alien residence status has been difficult since, as a general rule, the Ministry of the Interior prefers that the foreigner wishing to work in Mexico first apply for and work under a non-immigrant permit. This is usually issued in

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1. This literally translates to "Population Law", even though it is commonly known as the "Immigration Law". Possibly the literal title is better understood by explaining that in addition to immigration, the Ministry also is responsible for demographic statistics and control. Ley General de Poblacion art. 3.

2. Diario Oficial, Jan. 7, 1974. The revised government fees to be paid for the issuance of the various immigration permits and documents were published in the Diario Oficial, Dec. 31, 1973. To date there has been no modification to the existing *Reglamento* or "Regulations" to the law, but it can be expected in the future.

3. Ley General de Poblacion art. 42.

4. *Id.* art. 44.

5. *Id.* art. 52.

form of a visitor's (visitante) permit, which is a sub-category similar to "tourist," "student," "board member," "political exile" and "distinguished visitor." All of these sub-categories are temporary in nature and require a special permit.

The visitor's permit is of two general types depending on the purpose for which it is to be used. One type is sometimes referred to as a "business visa" and is issued by a Mexican Consul abroad by express authorization of the Ministry of the Interior. It permits the holder to engage in business conferences, conduct market surveys and other related, but certainly limited, activities.[6] The holder's salary, however, must come from outside Mexico. Allied with this type of visa is a 30 day permit for technicians to enter Mexico to install, repair or service specialized equipment and machinery.[7]

The second type of visitor's permit entitles its holder to more latitude and must always be requested and processed in Mexico City at the Ministry of the Interior by the sponsoring company.[8] In contrast to the first type, this permit allows the holder to work directly with the Mexican sponsoring company and to draw a salary therefrom.[9]

Availability of the visitor's permit is important, as it can be obtained fairly easily under present conditions, and the higher capitalization and other requirements for the more coveted immigrant permit do not exist. The requirements for this type of permit will be dealt with later.

Other advantages in holding a visitor's permit are that the foreigner may leave and re-enter as often as necessary, may bring in a car from outside Mexico[10] and, under certain circumstances and with prior permission from Mexican Customs Authorities, may bring in household furnishings. This non-immigrant permit is valid for an initial six months' period and presently may, in most cases, be renewed every six months for a 24 month period.[11] At the end of the 24 month period the person holding a non-immigrant visitor's permit may either apply for another like permit or apply to the Mexican Government for an immigrant permit.

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6. Instructivo Conjunto, based on Ley General de Poblacion art. 42, issued jointly by the Secretaria de Gobernacion and the Secretaria de Relacciones Exteriores on Oct. 30, 1953.

7. Circular 30-A, Nov. 18, 1965, issued by the Secretaria de Gobernacion. However, the Circular specifically lists fifteen nationalities whose technicians can come into Mexico under the Circular.

8. Reglamento de la Ley General de Poblacion, art. 71, para. 3.

9. *Supra* note 6.

10. Codigo Aduanero art. 369, § 2.

11. Ley General de Poblacion art. 42, § 3 and Reglamento de la Ley General de Poblacion art. 71, § 1.

B. *Immigrant Status*

Although it has been indicated that the non-immigrant permit is, in practice, easier to obtain than the immigrant, it should not be concluded that the immigrant permit is impossible to obtain. Its issuance, however, does require the applicant to show sufficient need.[12]

In addition, there are special requirements imposed on the Mexican company applying for the permit. The company, first of all, must have been in existence at least two years and must employ at least ten Mexican citizens for every foreign immigrant employee.[13] If the corporate domicile is within the Federal District or any contiguous area, the company must have a paid in minimum capitalization of 600,000 Mex. Cy. ($48,000 U.S.). If the corporate domicile is in any other area, the company must have a paid in minimum capitalization of 200,000 Mex. Cy. ($16,000 U.S.).[14] It is exceedingly difficult to obtain the immigrant permit, even if all the previously mentioned requisites are met, if the applying or sponsoring company is a "service" company, as opposed to a "manufacturing" company.

Once the immigrant permit is obtained, the foreigner is lawfully entitled to work in Mexico, but only within the terms of the permit which must be renewed every year for five years.[15] Even though the renewal is discretionary with the Mexican Government, it is nearly always granted. At the end of the five year period, the holder of an immigrant permit can apply for a permanent alien resident status (inmigrado),[16] and the time accumulated under the immigrant permit may be counted toward permanent alien residence status. The immigrant permit, unlike the visitor's permit which allows multiple entries, restricts its holder on the time he may be outside Mexico to 90 days in each of the first two years. The days may not be credited or accumulated for use in the next year.[17] During the remaining three years there is no restriction as long as he is not outside Mexico for more than eighteen months during the whole five year period.[18]

Presently, it appears that most foreigners enter Mexico under the justification that they are to either discharge duties of high responsi-

12. There are seven categories of immigrant status, these include retiree, investor, professional, executive, scientist, technician and next of kin.

13. Ley Federal del Trabajo ("Federal Labor Law") art. 7.

14. Reglamento de la Ley General de Poblacion art. 51, § 1, 2 and art. 56, § 2.

15. Ley General de Poblacion art. 45 and Reglamento de la Ley General de Poblacion art. 52.

16. Ley General de Poblacion art. 53.

17. Ley General de Poblacion art. 47 and Reglamento de la Ley General de Poblacion art. 50.

18. *Id.*

bility or that they possess special skills, or both, and thus are needed by the Mexican company offering them employment which must always apply for their permit. The person holding the immigrant permit can change employment only if he can find a succeeding sponsoring company to request the authorization to change employer.

In recent years when it has become increasingly difficult to routinely obtain immigrant permits, the Mexican Government has indicated that the reason for this difficulty has been the desire to implement the policy that such permits would be for persons who in fact expected to permanently stay in Mexico.[19] Non-immigrant permits would be for persons most probably not intending to acquire permanent residence in Mexico, such as officers with multinational companies assigned to Mexico for a relatively short period and then transferred to a subsidiary in another country.

Under no circumstance is a tourist card ever acceptable as a legal entry document into Mexico for the foreigner employed in Mexico. The proper working papers must be obtained in each case. For example, a foreign executive wishing to attend and vote in a board meeting of his company's Mexican operation must obtain a special permit—a tourist card is simply not proper.[20] One should also remember that whether the permit obtained is immigrant or non-immigrant, the authorization must specify the work to be performed by the holder and under no circumstance should the person engage in another type of endeavor, remunerative or not, without authorization.[21]

C. *Permanent Alien Resident Status*

Reference has been made to the permanent alien resident status (inmigrado), so let us consider briefly that authorization. This permit is granted only after the foreigner has resided in Mexico as an immigrant for five years, requires no renewals and its holder may freely change employment or even go into business for himself. That business is not restricted as it is for the immigrant, i.e., no minimum number of Mexican employees or capital. The permanent resident alien, however, may not be out of the country for all of any two consecutive years or more than five out of any ten year period.[22] He generally has all the rights of a Mexican citizen, except those of voting, engaging in political activities and owning land in certain areas of Mexico.[23]

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19. This in fact is exactly what Article 64 of the Ley de Poblacion states.

20. Several years ago, the Secretaria de Gobernacion ruled that a mere "businessman's visa" is not sufficient for such purposes, and that the second type visitor's permit (no inmigrante) is the proper document. In the new law the situation is specifically covered by art. 42, § 4.

21. Ley General de Poblacion art. 60.

22. *Id.* art. 56.

23. The law does require all "foreigners" to obtain a permit to acquire real prop-

II. IMPORTATION BY FOREIGN EXECUTIVES

If the business executive has secured his proper entry documents, his next concern will be with the import laws which will affect his business as well as his personal belongings. Thus, the next section will deal with the pertinent laws regulating imports, beginning with the importation of personal belongings.

A. *Personal Belongings, Machinery and Equipment*

In the previous section it was indicated that foreign executives may come to Mexico as either a "visitor" or "immigrant" and that there are specific importation regulations which apply to each immigration status. If the party is coming to work in Mexico under a visitor permit and is classified as a "technician," then he may bring in a car, but must post a bond at the border to guarantee that the car will be taken out of Mexico when the visitor papers expire. The bond posted is usually based on a value assigned the corresponding model, make and year of the car by the Mexican Government and is usually considerably higher than the market value in the United States. Mexico does have its own automobile production plants set up by the principal manufacturers of the world, but unfortunately the prices are from 50 to 80 percent higher than the prices in the United States, and thus strict vigilance is required to avoid contraband of automobiles.

It should also be pointed out that a person immigrating to Mexico with immigrant entry papers, as defined in the previous section, is entitled to bring in his household goods, not including an automobile, within one year of his arrival in Mexico.[24] Such household goods and personal effects must be *used goods*, and the importing party should have invoices to so verify. All electrical appliances, especially, must be accompanied by their invoices or sales slips, and such appliances less than six months old are subject to duty charges of up to 150 percent of their value on the Mexican market or denial of entry.

Most international moving companies or large Mexican law firms are acquainted with the documentation which must be prepared and filed before the goods enter Mexico, such as an "inventory" in Spanish, a "certificate of residence" and a notarized photo copy of the shipper's immigration papers. Any fire arms included in the household goods require a permit from the Ministry of National Defense, and this permit must be applied for and obtained before the

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erty and shares. Ley General de Poblacion art. 66. *See* Reglamento de la Ley General de Poblacion art. 53, to the effect that the Secretaria de Gobernacion is authorized to determine place of residence of immigrants.

24. Codigo Aduanero de los Estados Unidos Mexicanos arts. 299, 300, 301 Diario Oficial, Dec. 31, 1951.

guns enter Mexico.[25] It is important to note that the Mexican Government issues these permits only for sporting guns.

After he has arranged for the importation of his personal belongings, the newly arrived foreign businessman will want to know about the laws which will control his importation of machinery and equipment. One of the first things he must consider is the permit requirement.[26]

If the law indicates that a permit is required, then the procedure is to file a petition with the Ministry of Industry and Commerce requesting an import permit. Within the Ministry of Industry and Commerce are a multitude of committees composed of representatives of private business usually connected with the type of operation for which the equipment is needed. If a committee feels that the equipment or goods whose importation is requested is available in Mexico, the permit will be denied, and a list of such suppliers provided, with the suggestion that they be contacted for the purpose of acquiring the product locally. If, due to technical requirements, the equipment, goods or machinery available locally in fact is not the same as that desired to be imported, it is possible to appeal to that committee for a review of the situation, and attach letters from the Mexican manufacturers or suppliers indicating that they cannot produce the equipment or material in the form required by the proposed operation. In such case, an import permit is then usually issued, but only for that equipment or material which may not be obtained locally. At times, this means importing only a part of the equipment.

This same *modus operandi* is also used in the importing of raw or finished materials which are used to make another product. Unless it is shown that the material desired to be imported is extremely unique, and at times it is necessary to disclose the chemical composition of the material to prove the point, an import permit will be denied if the same materials, in the committee's opinion, are available locally.

B. *Rules 8 and 14*

There are also regulations of the Mexican Customs legislation which are of more than routine importance to the importer of machinery and equipment.

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25. Reglamento de la Ley de Armas de Fuego y Explosivos Diario Oficial, May 6, 1972; Ley de Armas de Fuego y Explosivos Diario Oficial, Jan. 11, 1972, and the Circular de la Secretaria de Hacienda y Credito Publico No. 301-11-72, Aug. 29, 1953, clause five.

26. Most of such information is found in the Tarifa del Impuesto General de Importaciones Reestructurada por Decreto de 3 de noviembre de 1964.

The first of these is known as Rule 8 (Regla 8).[27] As a general rule, the import duties are higher for individual parts of a unit when individually imported than when they are imported already assembled or incorporated into a unit. This rule, aimed at such a situation, provides that any importation of machinery and equipment under the rule will be taxed as if it were the whole unit and not on the basis of being separate parts of the machinery or equipment. However, a special permit is required from the Mexican Treasury. Such permits are granted only to importers who will use the parts directly themselves and who have submitted and have had approved an "integration plan." This type of plan states that over a specific period of time, usually ten years, the Mexican company doing the importing will obtain a high percentage of the raw materials and finished materials used in the production from Mexican sources. Integration plans usually provide for a low percentage of integration in the initial years of manufacturing and from 75 to 100 percent in later years, depending on the market conditions in Mexico.

A second important rule for importers is known as Rule 14.[28] This rule provides a 65 percent import tax reduction on the importation of manufacturing machinery and equipment which may not be acquired in Mexico. The imported machinery and equipment may neither be moved from its location, rented, nor sold for three years following importation, without prior authorization from the Mexican Treasury. Violation of the law causes payment of the 65 percent tax benefit, plus a fine equal to twice the tax. One year is permitted to install the machinery and equipment, but extension is possible.

C. *Plan de Decentralizacion Industrial*

Mention should also be made of certain legislation[29] permitting a reduction of 50 to 100 percent in the importation and stamp tax, depending on the zone in Mexico where the plant is located. However, this law requires that 51 percent of the equity of any Mexican company availing itself of this law be in Mexican hands. In July 1972, the Government indicated zones where industry could be established in order to avail itself of these tax benefits, as the location of the plant would determine the amount of exemption available to the operation.[30]

As the previous discussion indicates, a number of resrictions on importing into Mexico do exist. One must be especially careful to

27. Reglas para la Aplicacion de la Tarifa de Importacion. Diario Oficial, Nov. 10, 1964.

28. *Id.*

29. This can be translated as "Plan to Decentralize Industry". Diario Oficial, Nov. 21, 1971.

30. Presidential Decree published in the Diario Oficial, July 20, 1972.

import all goods or equipment under the proper import classification provided in the Customs Code in order to ensure minimum import duties. Of course, as in any area of law, competent counsel may at times be needed and will prove to be most valuable.

III. LABOR LAW

Assuming that the foreign executive has been established in his post as either a technical supervisor or even the general manager of a Mexican company, it will be advantageous for him to know something of the general principles of Mexican labor law to which he will be subject.

First of all, the employees of any concern in Mexico are granted an individual employment contract by law,[31] though not always in writing, whereas unionized employees will usually be given a written collective labor agreement. Thus, a non-union worker who does not have a written contract still has a contract under law and is protected.

Most authorities will agree that Mexican labor law is definitely employee oriented, however there is protection which a written employment agreement does provide the employer. The agreement should show exactly how long the person has been an employee, a factor of importance in the event of compensated severance. Furthermore, if the employment contract indicates that the employment shall be at the plant domicile without specifying the precise address, and the company decides to change its plant domicile, the employee must follow. His refusal will result in less severance pay for the worker.

So all employees do have an employment contract, either written or unwritten, and are entitled to vacations, annual bonus, minimum wage, regulated work shifts, profit sharing, benefits under the National Fund for Workers' Housing, the right to unionize and contest discharge.

A. *Vacation*

The Labor Law provides that employees with more than one year of employment shall be entitled to an annual paid vacation, which under no circumstance will be less than six working days.[32] Six of these days must be permitted to be taken consecutively[33] and shall be increased two working days, up to twelve, for each subsequent year of employment. After the fourth year, the vacation period is increased by two working days for every five years of service.[34]

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31. Ley Federal del Trabajo art. 21.
32. *Id.* art. 76.
33. *Id.* art. 78.
34. *Id.* art. 76.

The annual vacation period is mandatory and may not be exchanged for remuneration.[35] Furthermore, all employees are entitled to a premium payment equal to 25 percent of the salary payable during the time they are on vacation.[36] Accordingly, should the employer ask the employee to stay on the job and pay him double, he will still be entitled to take his vacation at a later date and receive the 25 percent additional pay.

The days of vacation required by law refer to working days, not calendar days.[37] In other words, since Sundays are never working days, if a person with four years service takes all of his 12 days together, it could mean, under the right calendar arrangement, as many as 16 or 17 days actually away from the job. Should the employer-employee relationship terminate prior to the time that the employee has actually worked one year, then he is entitled to the *pro rata* days of vacation for the time worked.[38]

Having completed one year of employment, the vacation period should be granted to the employee within the following six months. The employers are also required to annually provide the employees with a communication indicating the number of years of service and the number of days of vacation to which they are entitled, as well as the dates on which the vacation should be taken.[39]

B. *Annual Bonus*

Employees are entitled to a minimum annual bonus, equivalent to 15 days' salary, which must be paid prior to December 20 of each year. Employees who have not completed one year of employment are entitled to receive the *pro rata* part of the bonus.[40]

C. *Minimum Wage*

A minimum wage plan is provided under Mexican law[41] and varies according to the region of the country.[42] In Mexico City, Federal District, the minumum wage for unskilled employees up through December 31, 1973, was 44.85 Mex. Cy per day net to the employee, but as of January 1, 1974, the minimum wage became 52.00 Mex. Cy ($4.16 U.S.).[43] When an employee receives only the minimum wage,

35. *Id.* art. 79.
36. *Id.* art. 80.
37. *Id.* art. 76.
38. *Id.* art. 79.
39. *Id.* art. 81.
40. *Id.* art. 87.
41. *Id.* art. 90.
42. Art. 564 of the Ley Federal del Trabajo provides for regional minimum salary commissions which have the responsibility of convening every four years and examining the economic situation prevailing in the 111 "economic zones" of Mexico. Each commission also has the responsibility of setting the minimum salary for its zone.
43. There are also minimum professional wages fixed for each zone. By "profes-

the employer may neither withhold income taxes nor his Social Security quota, but instead is required to pay from his own funds the Social Security quota of the employer and the employee.[44] The minimum wage is not subject to income tax, thus no payment is required.[45]

D. *Salaries*

If the employee's salary is the minimum wage and no higher, it may not be subjected to any compensating factors, discount or reduction, except in the case of board allotments decreed by court authority to provide for the family of the employee or to pay the rent required of the employee under the National Fund for Workers' Housing and the corresponding quotas.[46]

If the employee receives more than the minimum salary, then 30 percent of the employee's monthly pay in excess of the minimum wage may be withheld by the employer in order to repay debts owed to the employer by the employee in question.[47]

An employee's salary may be garnisheed in cases of board allotments decreed by court authority in favor of the wife, children, parents and grandchildren; the law emphasizes that employers are not required to comply with any other type of judicial or administrative order of attachment.[48]

E. *Work Shifts*

The day shift, according to law, is from 6:00 a.m. to 8:00 p.m. and the night shift from 8:00 p.m. to 6:00 a.m. The maximum shift duration is 8 hours if day, 7 hours if night and 7½ hours if combination of day and night.[49]

Overtime may not exceed more than three hours daily, nor occur more frequently than three times a week.[50] In the event that the employee does work more than nine hours overtime, the hours in excess thereof shall be paid at triple rate, with the first nine hours at

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sional," the law refers to basically skilled and semi-skilled labor such as a pharmacy clerk, home appliance repairman, parking lot attendant, bartender, seamstress and social worker. The minimum salaries for such employees range from 66.10 Mex. Cy ($5.29 U.S.) to 83.90 Mex. Cy ($6.71 U.S.). The minimum wages presently in effect were published in the Diario Oficial, Dec. 28, 1973.

44. Ley Federal del Trabajo art. 97.

45. *Id.*

46. Ley Federal del Trabajo art. 97.

47. *Id.* art. 110.

48. *Id.* art. 112. Article 113 provides that the wages of an employee earned in his last year of employment and any severance pay are preferred credit over any other including secured debt, fiscal and Social Security.

49. *Id.* arts. 60, 61.

50. *Id.* art. 66.

double rate, independent of sanctions which may be imposed upon the employer for violating the law.[51]

F. *Discharge of Employees*

The employer may discharge an employee without having to pay any severence pay if the cause for the dismissal is justified as defined in the law.[52] It is generally difficult to prove justified cause.

If the employee has at least one year's service in a position which is not one of "trust" in the company and the cause is not justified, then the employee may ask for either reinstatement or the required severance pay through the Board of Conciliation and Arbitration.[53] However, if an employee has less than one year's service, held a position of trust or if there exists the situation described in the following paragraph, he may not ask for reinstatement.[54]

If, in view of the type of work done, the employer and employee are in permanent and direct contact and, as a result, a normal working relationship is not possible, the Board of Conciliation is empowered to rule that the employee not be reinstated. Quite frequently the poor relationship which builds between an employer and a given employee is not one which can justify discharge for cause, therefore management must weigh carefully the probabilities of cost and success should the employee decide to contest the discharge. More frequently, the employer decides to negotiate with the employee for a written resignation, and in exchange pays the employee the required three months' pay plus 20 days' pay for each full year of employment with the employer, calculated on the employee's present salary.[55]

If the employee in question has less than one year of service or held a position of trust, then, as indicated, he is not entitled to reinstatement, and the employer has no choice but to pay the three months and 20 days' settlement unless, of course, justified cause for discharge is proven.

Trial period contracts are not legal, and definite term employment contracts are not valid except in clear cases, such as in the construction industry or in filling a temporary absence.[56] Under definite term contracts, if the period of employment is less than one year, then the employee's severence pay shall be equal to half the salary

51. *Id.* art. 68.

52. *Id.* arts. 46, 47. The latter article lists the causes for justified discharge.

53. Employees of "trust" are, according to article 2 of the Law, generally considered to be ranking staff members such as directors, administrators and managers. However, article 9 provides that such a classification is determined by what the employee does and not by title held. *Also see*, art. 182 of the Law.

54. Ley Federal del Trabajo arts. 48, 49.

55. Ley Federal del Trabajo art. 50.

56. *Id.* arts. 35, 36 and 37.

earned while an employee, plus an additional three month's pay. If the work period exceeds one year, then it shall be nine months' pay plus an additional twenty days' pay for each year of service afer the first year.[57] On the other hand, if the contract is for an indefinite period, then the severence pay shall be the three months' pay plus twenty days' pay for each full year of service as previously discussed.[58]

In the event of a dispute between employer and employee concerning dismissal for justified cause, if the Board of Conciliation determines that the cause for dismissal was unjustified, the employee has a right to the salary which he would have earned during the time that his case was before the Board.[59]

In addition to the severence computation indicated above, there are other items which must be taken into consideration and paid to the employee in the event of justified and unjustified discharge. One of these is the seniority payment which consists of twelve days' pay for each year employed provided the employee has at least fifteen years of service.[60] This right of the employee became law in May of 1970, and the courts have now ruled that in cases not only of discharge, but resignation as well, the employer pays nothing unless the employee in question has at least fifteen years service.[61] In addition, the new law establishes 1970 as the base year for calculating this severence pay. Thus, in 1974, the employee is entitled to a maximum unit of four in calculating the amount to which he is entitled.[62] In the event of a long time employee, the amount payable will be considerable even though the pay is based on the daily salary, which for this calculation will not exceed double the minimum wage regardless of true earnings.[63] In other words, the minimum salary of 52.00 Mex. Cy presently in force in Mexico City, Federal District, would mean a twelve day payment of 1,248.00 Mex. Cy ($99.84 U.S.) multiplied by the number of years of employment, but not to exceed four (presently), and only if the employee has fifteen years service. This payment is required even for an employee voluntarily resigning, or upon his death.[64]

G. *Employee Living Quarters*

Chapter III of the Federal Labor Law of 1931 provides for em-

57. *Id.* art. 50, §§ 1, 3.

58. *Id.* art. 50, §§ 2, 3.

59. *Id.* art. 48.

60. *Id.* art. 162, § 1.

61. Informe 1973—Suprema Corte de Justicia. Amparo Directo 767 '73. *Jose Diaz Lopez y otros.* (1 Julio 1973).

62. Ley Federal del Trabajo art. 486.

63. *Id.* art. 162, § 3.

64. *Id.* art. 162, § 5. However, in the event of death the payment is calculated for all the years of employment and not just as of May 1970.

ployee housing in accordance with Article 123 of the 1917 Mexican Constitution. However, the provisions on housing were never enforced and remained a dead letter until May 1970.

The amended Federal Labor Law which became effective on May 1, 1970, expanded Chapter III and established a set of procedures and implementing laws to require the provision of housing by employers. However, for practical purposes the law was not put into effect and in April 1972 the Mexican Labor Law was modified to accommodate the prior promulgation of the Law of the Institute of the National Fund for Employee Housing.[65] A consequence of this law is that instead of the employer financing and supervising the construction of employee housing, he now pays monthly five percent of his payroll to the Fund in order to finance such housing. The law also provides that the maximum salary for the calculation for any employee will be the equivalent of ten times the general minimum salary fixed for the zone in question.[66]

Once the housing is available, the employee has the obligation of paying the rent and taking care of the dwelling as if it were his own. In addition, the employee must notify the company of any defect of construction or deterioration and must vacate the dwelling within 45 days following the end of the employment relationship.[67] The employee is further prohibited from sub-leasing the dwelling or using it for any other purpose.[68]

H. *Employee Profit Sharing*

In 1963, the National Commission for Employee Participation in Company Profits published a resolution to provide for the calculation of employee profit sharing,[69] and the first distribution of profits took place in 1964.

The procedure for calculating the employees' share of profits is complicated. Basically it involves calculating a net distributable portion by taking deductions from the gross profits subject to distribution (net profits without deduction for loss carry-forward and reserves). The first is a fixed deduction, for investor equity and reinvestment of capital, of 30 percent from the gross profits subject to distribution. Then, a variable deduction, determined by utilizing the appropriate capital-to-labor ratio of the company in conjunction with

65. Diario Oficial, Apr. 22, 24, 1972.

66. Ley Federal del Trabajo arts. 136, 144.

67. *Id.* art. 151.

68. *Id.*

69. Diario Oficial, Dec. 13, 1963. The National Commission for Employee Participation in Company Profits (Comision Nacional para la Participacion de los trabajadores en las Utilidades de las Empresas) had been previously created by Presidential Decree, *see* Diario Oficial, Nov. 21, 1962).

the table provided in the resolution,[70] is taken, resulting in the net distributable portion. The employees' share in the profits of the company is 20 cent of this net distributable portion. The company's profits is, thus, the result of the gross profits subject to distribution minus the employees' share (20 percent of the net distributable portion).

According to this procedure, under the most optimum conditions, the employees' portion will never exceed 12.6 percent of net profits. After deducting income taxes, the share is divided in half, one half going to all employees based on the number of days worked during the year without taking into consideration their salaries. The other half is distributed in proportion to the employees' total salary for the year.[71] The employees' salary for the sake of this compuation does not include bonuses, overtime and other compensations.[72]

Newly organized companies are exempted from the obligation of sharing profits with employees for the first year. The same is true during the first two years of operation for new companies manufacturing new products in Mexico. Determination of the novelty of the product will be in accordance with the new industries law.[73] Mining companies during the period of exploration are not required to share profits, and there are other exceptions not pertinent to this discussion.[74] Furthermore, corporations whose corporate capital is less than that fixed by the Ministry of Labor for given branches of industry are also exempt.[75] Members of the Board of Directors, the Managing Director and the Manager of the company may not share in profits and the profits shall not be considered as part of the salaries for the purpose of computing severance pay.[76] Part time employees who have not worked at least 60 days during the year are not entitled to profit sharing,[77] but the wages of all personnel not entitled to profit sharing must, notwithstanding, be included in the calculation.[78]

In 1970, when the Labor Law was updated, its *Articulo Septimo Transitorio* stipulated that the resolution could not be reviewed until ten years had passed as of December 13, 1963. That term has now expired and presumably we can now expect modifications to the resolution, even though to date no such proposal has been forthcoming.

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70. Resolucion de la Comision Nacional para la Participacion de los Trabajadores een las Utilidades de las Empresas arts. 1-8 Diario Oficial, Dec. 13, 1963.

71. Ley Federal del Trabajo art. 123.

72. *Id.* art. 124.

73. Ley Fedral del Trabajo art. 126, §§ 1, 2 & 3.

74. *Id.* art. 126, §§ 1, 2, 3 & 4.

75. *Id.* art. 126, § 5.

76. Ley Federal del Trabajo art. 127 § 1, and art. 129.

77. *Id.* art. 127, § 7.

78. Resolucion art. 4.

I. *Right to Unionize*

Prior authorization is not required from any governmental authority in order to organize a union, which may consist of either employees or employers.[79] There must be at least 20 employees to form a union, and once organized it must be registered with the Ministry of Labor and Social Welfare.[80] Employees must be at least 14 years of age to join,[81] but cannot be either forced into or out of any union,[82] and employees of "trust" may not join the employees' union.[83] Employees less than 16 years of age or of foreign nationality may not be on the governing board of the Union.[84]

This article concludes leaving much unsaid in regard to Mexican immigration, importation and labor law. However, it is hoped that it has succeeded in giving an accurate sketch of some of the most significant points as well an indication of when Mexican counsel should be consulted on questions requiring more detailed opinions.

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79. *Id.* art. 357.
80. *Id.* arts. 364, 365.
81. *Id.* art. 362.
82. *Id.* art. 358.
83. *Id.* art. 363.
84. *Id.* art. 372.