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New Immigration Procedures to Obtain Work Visas for Foreign Nationals Working in Mexico

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In November 2012, Mexico's National Migration Institute ("INM" for "Instituto Nacional de Migración") issued new regulations and guidance to implement immigration laws that were enacted in May 2011. These regulations significantly impact employers that currently employ foreign nationals or that intend to sponsor a foreign worker for a work visa and/or residency in Mexico.

Under the regulations, foreign nationals who intend to work in Mexico must follow new procedures for obtaining a temporary resident card with work authorization (formerly known as "FM3"). The old scheme allowed foreign nationals traveling with the intention to work in Mexico to enter as visitors and apply for an FM3 while physically present in Mexico. This procedure typically allowed companies to undertake an expeditious transfer of employees across international borders. Under the new procedures, however, foreign nationals need to follow a three-step application process to obtain an employer-sponsored temporary resident card with work authorization. As the application must be approved prior to an employee's travel to Mexico, companies no longer have the ability to quickly transfer foreign nationals across international borders to work in Mexico.

The complexity of the procedure will depend on the foreign worker's nationality. Mexico's immigration laws categorize foreign nationals as either "unrestricted" or "restricted." Unrestricted nationals — citizens of countries like the United States, Canada, and most European Union countries — may perform work-like activities in Mexico for up to 180 days without obtaining work authorization as long as they are not being remunerated by a Mexican entity. Restricted nationals — citizens from China, Russia, India, various Latin American countries, and other restricted countries — must obtain authorization in advance before traveling to Mexico for any purpose, including business or pleasure. However, all foreign nationals who perform work-like activities in Mexico for a period exceeding 180 days or are paid by a Mexican entity must obtain a temporary resident visa in advance, through the above-mentioned three-step process, in order to obtain the temporary resident card.¹

The new regulations established a less complex procedure for dependents of non-Mexican employees. Family members from unrestricted countries are admitted in Mexico with FMM

¹ Foreign nationals may be protected under Mexico's Federal Labor Law (FLL) for any period of time they work in Mexico, even when they are remunerated by a non-Mexican entity. Accordingly, they may be entitled to various non-waivable employment benefits under the FLL, even if foreign nationals work without work authorization.

("Forma Migratoria Múltiple") status, which is a temporary tourist/business visa without work authorization. Family members from restricted countries must apply for this visa at a Mexican consulate. Once in Mexico, dependents can obtain a change of status to resident as long as their sponsor (spouse, child, or parent) is a Mexican citizen or holds a temporary or permanent resident card.

Additionally, under the new procedures, all companies employing a foreign national or sponsoring an employment-based temporary residency must be registered with the INM to obtain an Employer Registration Certificate ("Constancia de Inscripción de Empleador"). Such companies are required to provide a list of all employees (including foreign nationals) rendering services in Mexico. Further, these companies are now required to present an Employer Registration Certificate with any immigration application or dealings with immigration authorities.

Additional Considerations for Employers

Despite publication of the new immigration regulations and guidance, immigration officers at regional and field offices are still being trained on their implementation. Accordingly, the law is not being uniformly applied, and employers are experiencing significant application processing delays.

This article provides an abridged summary of the new procedures for obtaining work visas for foreign nationals in Mexico. Before moving employees across international borders to work in Mexico, employers are advised to seek immigration counsel for a comprehensive account of all of the potential immigration obligations and consequences relative to filing an employer-sponsored immigration application.

Littler attorneys specialize in corporate immigration and will keep clients abreast of important changes to Mexico's laws that may impact clients' operations.

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