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## Mexico: It's the Law! Mexico Employers Must Implement Training Programs for Employees or Risk Steep Fines

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On June 14, 2013, Mexico's Department of Labor and Social Welfare ("STPS")<sup>1</sup> published final rules outlining an employer's obligation to develop and implement detailed employee training programs that will foster productivity.<sup>2</sup> Pursuant to these rules, covered employers have a three-month window, until September 15, 2013, to come into full compliance with the law. Given the penalties for noncompliance, employers should immediately implement changes to their practices to comply fully with the law.

### Background

On November 30, 2012, Mexico significantly amended its Federal Labor Law (FLL), which had not been substantially modified since 1970. A product of the political environment at the time, the FLL as originally enacted overtly privileged the workforce, promoting the principles of "job stability" and "employment protectionism," while making it very difficult and, at times, even impossible, for an employer to terminate an employment relationship on the basis of poor performance without risking significant liability. With the benefit of hindsight, it became evident that upholding job stability over productivity harmed Mexico's economy.

With Mexico becoming an emerging market, labor law reform seeks to give the country's economy a much needed boost by mandating that covered employers train their employees to improve the skills and competence of the workforce, thereby increasing productivity and improving the country's economy.

In interpreting the newly amended FLL, the STPS rules require employers to comply with the following mandates:

1. **Create a Joint Commission on Productivity and Training.** Employers of 50 or more employees (covered employers) are required to create a joint commission on productivity and training that consists of an equal number of employer and employee representatives.

<sup>1</sup> Mexico's Department of Labor is known as "Secretaría del Trabajo y Previsión Social" (STPS).

<sup>2</sup> The STPS published the final rules in the Federal Official Gazette ("Diario Oficial de la Federación"), on June 14, 2013. With their publication, the rules became effective the following day.

While the employer may create several joint commissions across the organization (for example, for different installations or business units), all covered employers must establish at least one within the organization.

Employers must identify the joint commission in Form DC-1,<sup>3</sup> retain the form and supporting documentation, and make them available for inspection upon demand by the STPS. The STPS rules require the joint commissions on productivity and training to comply with the following mandates:

- Promote training by monitoring, implementing, operating and improving the organization's training programs and systems;
- Propose any necessary changes to the organization's machinery, equipment and labor relations that will improve productivity;
- Measure productivity;
- Guarantee the equitable distribution of the organization's increased productivity and resolve workers' objections over the same;
- Confirm the authenticity of the skills and competence training certificates; and
- Provide advisory opinions on the retention or termination of employment of workers whose employment contract is subject to a probationary period or who were hired under an initial training employment agreement.

2. **Develop an elaborate skills and competency training plan.** All employers, including those employing fewer than 50 employees, must develop an elaborate skills and competency training plan. In Form DC-2,<sup>4</sup> employers must describe the training plan in detail by identifying the name, objective and content of the program; the positions that will receive the training; and the procedure by which workers within the same position and area will receive the training.

In developing the training plan, employers must take into account the training needs of all positions at every existing organizational level or area, including those identified by the joint commission, and provide skills and technical training that will directly impact the organization's productivity. The plan must set forth:

- the number of stages by which each training course will be provided to the workforce;
- the instructional method that will be used (for example, whether the training will be in person or via webinars);
- whether the training will be provided by instructors from the organization or a specialized instructor or educational institution that has been accredited by the STPS; and
- whether the workforce will receive the training within Mexico or at an international location.

Under the STPS rules, the plan must cover a period of two years and will automatically expire at the end of such period. Employers must complete DC-2 within 90 calendar days from the date of publication of the rules (by September 15, 2013) or within 60 days from initiation of operations.

Prior to the labor law reform, various employers were required to create training plans and file them with the STPS. Under the new STPS rules, training plans that had been registered with the STPS prior to the labor law reform will not be invalidated, but must be updated by September 15, to fully comply with the new requirements.

The Form DC-2 must be made available for inspection upon request by the STPS.

3. **Issue certificates of skills and competency training.** Within 20 days of providing the training course, the employer is required to issue to the employee a completed Form DC-3<sup>5</sup> which provides key information about the course, including the topic, the area (for example, whether it covered administration, services, security, maintenance, production, etc.), the number of hours, the instructor, and location of the training.

3 Form DC-1, known as "Formato DC-1, Informe sobre la constitución de la comisión mixta de capacitación y adiestramiento", is issued by the STPS.

4 Form DC-2, known as "Formato DC-2, Elaboración del plan y programas de capacitación, adiestramiento y productividad", is issued by the STPS.

5 Form DC-3, known as "Formato DC-3, Constancia de Habilidades Laborales", is issued by the STPS.

4. **Maintain a list of the employment-related skills and competencies acquired through the training plan.** All employers, including those employing fewer than 50 employees, must complete Form DC-4<sup>6</sup> as proof of compliance. Completing Form DC-4 will require employers to attach documents used to complete Forms DC-2 and DC-3, as well as provide additional detailed information about the employees, including their academic level.

## Inspections and Penalties for Non-Compliance and Record Keeping Violations

The STPS has announced it will conduct inspections at the local and national levels to monitor employer compliance with the rules. While employers are not required to file Forms DC-1, DC-2, DC-3 or DC-4 and their supporting documentation with the STPS, employers must complete these forms, retain them as part of their records, and make them available for immediate inspection upon request by the STPS.

Failure to comply with this mandate may subject an employer to a fine in the amount of 250 to 5,000 times the general minimum salary in effect at the time of the fine. At the time of this publication, the fine would range from \$1,250 to \$24,985 in U.S. dollars.

For purposes of an STPS inspection, employers of 50 or more employees will be allowed to present the forms and supporting documentation in electronic form.

## Recommendation

Under recent changes to the FLL and the new STPS rules, employers are required to seek the advisory opinion of the joint commission on productivity and training before terminating various employment agreements. Likewise, under this new framework, employers are required to develop detailed training programs that fully comply with the requirements of the law in order to avoid steep fines.

Once the 90-day implementation window closes on September 15, 2013, employers should expect an increase in STPS inspections at a local and national level, as announced by that agency. Therefore, employers should seek assistance immediately from counsel with extensive experience helping domestic and multinational corporations implement policies and training programs that are in full compliance with Mexico law.

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6 Form DC-4, known as "Formato DC-4, Lista de Constancia de Habilidades Laborales", is issued by the STPS.