



## The new US-Mexico-Canada trade agreement goes live today

### Employment Alert

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The new US, Mexico and Canada trade agreement (referred to as the USMCA), which replaces and improves on the 25+-year-old NAFTA, enters into force today, July 1, 2020.

Pursuant to USMCA, Mexico has reformed its labor laws. Significantly, Mexico's labor laws now protect employees' rights to freedom of association (including the right to engage in or refrain from union activity) and collective bargaining, similar to the protections afforded workers in the US.

USMCA includes a groundbreaking and innovative enforcement process, pursuant to which complaints (referred to as "petitions") of noncompliance with Mexico's new protections of employees' rights to freedom of association and collective bargaining may be filed with a new US government agency, called the US Interagency Labor Committee.

The Interagency Labor Committee, co-chaired by the US Trade Representative and the US Secretary of Labor, will investigate the complaints, may direct on-site visits, and, if it determines that the facility has violated Mexican labor law, may impose sanctions, including tariffs and preclusion orders. However, before doing so, the US Interagency Labor Committee will involve and seek input from the Mexican government; may invoke a Rapid

Response Labor Panel, composed of representatives of Mexico, the US and a third-party neutral nation; and may notify the US Congress. The complaint, investigation and disposition process includes many steps and will involve representatives of the US, Mexico and possibly other neutral nations.

USMCA is the first treaty in which complaints of noncompliance by a Mexican facility may be reported to a US government agency for the purpose of investigation and, if appropriate, remediation.

The complaints may be filed against any facility operating in Mexico and subject to USMCA, whether owned by an entity located in Mexico, the US or another nation. And the complaints may be filed by anyone with a good-faith belief that the facility is in noncompliance with Mexican labor law. The US Interagency Labor Committee will establish a hotline to accept complaints from Mexican workers. In addition, it is anticipated that US labor unions will file complaints alleging noncompliance.

US labor unions supported the passage of USMCA. It has been reported that US unions are poised to file hundreds of complaints. The AFL-CIO claims that more than 850,000 US jobs were transferred to Mexico due to NAFTA. US unions assert that “the surest way to improve wages and working conditions” is through collective bargaining. The effect of USMCA, Mexican labor law reforms, collective bargaining, and any “improved wages and working conditions” may be significant.

The US has identified the following industries for priority labor enforcement: auto assembly; auto parts; aerospace; steel and aluminum; electronics; industrial bakeries; call centers; and mining.

Facilities operating in Mexico and subject to USMCA are encouraged to audit their compliance with Mexico's labor law reforms, and address any shortcomings. In addition, companies reliant upon facilities operating in Mexico for their supply chain may encourage their supply chain partners to do the same. **Because USMCA becomes effective today**, prudent companies are paying prompt attention to compliance with Mexico's new labor laws. For your convenience, please see this labor compliance checklist. In addition, now is the time to consider, develop and/or revise a labor relations and government affairs strategy.

The mandate of the US Interagency Labor Committee is to ensure that facilities operating in Mexico achieve compliance with Mexico's labor law reforms. Consequently, upon remediation of alleged noncompliance, any sanctions that may have been imposed should be lifted.

On June 30, 2020, the US Trade Representative published the interim final Guidelines for Petitions Pursuant to USMCA in the Federal Register. The interim final guidelines are effective as of the USMCA's July 1, 2020 effective date, but may be revised based on public comments, which must be submitted by August 15, 2020.

DLA Piper has assembled a US/Mexico cross-border, multi-disciplinary working group, led by US government affairs attorney Ignacio Sanchez; US labor and employment attorney Harriet Lipkin; and attorneys Eduardo Gallastegui and Maria Rios in Mexico City, to counsel and assist with USMCA labor issues. Learn more by contacting any of them.

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