INTERNATIONAL

What's new in employment law in North America?

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KEY NEW DEVELOPMENTS IN THE US AND MEXICO. A *REPORT ON SIGNIFICANT EMPLOYMENT LAW DEVELOPMENTS IN THEIR JURISDICTIONS: THE US AND MEXICO. CONTRIBUTOR IUS LABORIS.*

US: proposed minimum salary increase

The US has proposed new higher thresholds for overtime payments

The US Department of Labour (DOL) recently issued proposed wage overtime regulations to replace the current regulations, which have remained unchanged since 2004. Under the federal Fair Labour Standards Act, U.S. 'non-exempt' employees are entitled to be paid overtime at a rate of one and a half times their regular hourly rate of pay for all hours worked over 40 in a week, subject to certain exemptions. Among those exempt from the overtime requirements are so-called 'white collar' exempt

employees who have certain professional, managerial or discretionary authority (the 'duties test'), combined with a minimum annual salary. This category of workers is known as 'exempt employees.'

The DOL proposed raising the minimum annual salary threshold for workers to qualify for the white-collar exemptions from the current USD 23,660 to USD 35,308 (or USD 679, up from USD 455 per week). For so-called 'highly compensated employees' (employees who do not have to be paid overtime if they meet just one of the duties of one of the white collar exemptions), DOL proposed raising the annual salary threshold from USD100,000 to USD 147,414.

Following initial public comment, the DOL also proposed regular increases to the minimum annual salary threshold every four years, which will be determined after additional public notice-and-comment periods for each subsequent increase. The proposed regulation may have a significant impact on employers, as it is purported to make more than one million additional US workers eligible for overtime.

In 2016, the Obama Administration promulgated a rule to increase the minimum salary for exempt employees to USD 47,892 annually (or USD 921 per week). That rule would have also increased the salary threshold for highly compensated employees to USD 147,414, the amount of the current proposal. Before the Obama Administration's rule could go into effect, however, it was blocked by the federal District Court in the Eastern District of Texas, on the grounds that DOL had exceeded its rulemaking authority.

In the current proposal, the DOL, in an attempt to align overtime regulations with modern pay practices, has also proposed allowing employers to count nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the standard salary test, provided such bonuses are paid at least annually. The DOL stated that it believes the proposed update to the standard salary level test will maintain its traditional purpose and help employers more readily identify exempt employees. The DOL did not propose any changes to the duties test of each of the white-collar exemptions.

Employers should also examine state requirements, which in some cases apply different salary thresholds than those required under federal law. Employers with operations in New York, for example, cannot treat a New York employee as exempt from the overtime provisions of the New York Labor Law unless the employee is paid between USD 832-USD 1,125 per week (depending on the employer's size and location), in addition to meeting the applicable duties test. Similarly, employers with California operations can only treat employees in California as exempt if they perform exempt duties and are paid an annual salary of at least USD 45,760 (for those with 25 or fewer employees) or at least USD 49,920 (for those with 26 or more employees).

The DOL set a 60-day public comment period, which expired on 21 May 2019. During that time, nearly 60,000 people submitted a torrent of criticism, largely arguing that the proposed increase was too low. Although the DOL will first review the comments before implementing any change, employers should take steps now to ensure they will comply with the final rule when it does take effect, which is projected to be January 2020.

Mexico: reform of labour law dispute resolution

With a recent amendment to the Federal Labour Law, Mexico has introduced changes to its system of employment law justice, intended to create a more streamlined and expedited procedure for resolving employment law disputes. Further changes relate to the organisation of union registration, membership and strikes.

On 1 May 2019, coinciding with International Labour Day, an executive decree enacting changes to Mexico's Federal Labor Law was published in the Federal Official Gazette.

What do the amendments involve?
The amendments will transform Mexico's employment law justice system as set out below.

The existing Conciliation and Arbitration Labour Boards that currently deal with employment law disputes are to disappear and will be replaced by labour courts assigned either to the federal or to state (local) judicial branch of government.

All matters that reach these courts will be heard in the presence of a judge and the rulings to be issued resolving disputes will be judgments of law, rather than equity.

The labour law rules of procedure are substantially amended. New sets of rules are introduced, as follows:

> Employers and employees will be subject to a procedural prerequisite to attend and complete a conciliation stage prior to filing any judicial action with a labour court.
> A new, mainly oral, ordinary employment law procedure will be implemented, but it will also involve a written stage.

During the prosecution of all stages of a new proceeding, the labour courts will comply with principle of prioritising oral proceedings. In particular, hearings will respect the principles of:

> Immediacy: the judge will be present at all times during hearings with the parties.
> Continuity: in general hearings and proceedings will not be interrupted, meaning that motions to delay will be limited and very specialised.
> Concentration: documents relating to the merits of the case will be integrated exclusively into one file (in contrast to the previous system, in which different motions could end up in several files).
> Publicity: hearings are open to everyone and unless otherwise provided, files will be available to consult.

As a result, the process of resolving labour disputes is expected to be more efficient and expedited.

A notification and communications system between the authorities and the parties is proposed, using information technology to expedite labour law procedure.

Creation of a Federal Conciliation and Registration Center (the 'Conciliation Center')

At federal level, the Conciliation Center will be in charge of:

> conciliation proceedings;
> registration of union contracts, internal work rules, and labour organisations and their officers.

At a state level, there will be Conciliation Centers that will only be in charge of conciliation proceedings.

Amendments to collective bargaining rights

The bill acknowledges that union members will be entitled to exercise a number of rights of free affiliation and participation in labour organisations. The most important are as follows:

> No one may be forced to join any labour organisation.
> Individuals have the right to be elected as a member of the managing board of a labour organisation through the exercise of the personal, free and secret vote of each member.

The execution, filing and registration of a union contract will be conditional upon the securing of a so-called 'union certification record', in which the union must provide evidence that it represents at least 30% of the majority interest of the employees and that these employees have expressed to the union their intention of taking up membership.

All existing union contracts should be reviewed according to the procedure set out for this purpose within a maximum term of four years following the effective entry into force date of the Law.

Any notice of intention to strike for the purpose of entering into a Collective Bargaining Agreement or salary or benefit adjustment revision must be filed accompanied by a union certification record; otherwise, the strike notice will be null and void. The purpose of this procedure is to terminate any notice of strike that is not supported by or representative of the employees of the workplace

No change or amendment is currently made to the current employment outsourcing regime, therefore, the provisions contained in the Law relating to outsourcing remain in full force and effect; however, in the event of a future change or amendment, this will be reviewed during subsequent legislative periods.

Timing and transitional provisions
> The Organic Law governing the Conciliation Center will be issued within six months following the effective date of the new Law.
> The registration of Collective Bargaining Agreements and labour organisations with the Conciliation Center will begin within a term not to exceed two years from the effective date of the new Law.
> The Conciliation Center will implement the conciliation stage within a term not to exceed four years following the day after the Law becomes effective.
> The state Conciliation Centers and state labour courts must be open for operation within three years from the effective date of these amendments.
> The Labour Boards, at federal and state level, as well as the Ministry of Labour, will continue to hear ordinary and collective proceedings and registry procedures that begin after the Law becomes effective until the labour courts and Conciliation Center are incorporated in accordance with the legal terms set out in the transitional articles.

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The online link to the article can be found here.