

New Voting Rights of Workers and Obligations of Employers under Reformed Federal Labour Law (LFT)

Maquila Solidarity Network | May 2022



The 2019 reforms to Mexico's Federal Labour Law (LFT) institutionalized a number of new voting rights for workers, as well as obligations for employers. However, there is currently a great deal of confusion among employers, journalists, unions and workers about the rules for and differences between these voting events. Below is a brief description of the various new voting rights of workers and responsibilities of employers.

1. CBA LEGITIMATION VOTES

Legitimation votes on all existing collective bargaining agreements (CBAs) must be held by May 1, 2023. If this one-time-only vote is not held by that date, or if workers vote against the existing CBA, the contract is terminated. The objective of this voting exercise is to eliminate protection contracts signed by employers and unrepresentative unions without workers' knowledge or consent.

Employer Obligations: Although the union that holds title to the CBA holds primary responsibility for organizing and holding the vote and reporting on the results to workers and the labour authorities, the employer is responsible for providing workers a printed copy of the CBA at least three days prior to the vote, and to provide a safe, accessible and neutral location for the legitimation vote to take place.

In addition to these requirements, the employer is also expected to facilitate the posting of the notice of the legitimation vote in prominent locations in the workplace, and to prepare a list of all employees covered by the CBA to be shared with the labour authorities, as well as signed receipts from workers verifying that they have received a copy of the CBA. Aside from these responsibilities, the employer is prohibited from interfering in or attempting to influence the process in any way.

Rights of Workers: Workers have the right to receive a printed copy of the existing CBA at least three days prior to the vote, to participate in a personal, free, direct and secret-ballot vote in a safe, accessible and neutral location, and to file complaints with the labour authorities if there are any irregularities in the process. If they vote against the CBA, they have the right to retain all the benefits that were provided for in the contract.

Example: On August 17-18, 2021, workers at the GM Silao pickup truck plant in Silao, Guanajuato voted NO in a CBA legitimation vote. As a result, the CBA was terminated. The August vote was a redo of an April legitimation vote in which the labour authorities halted the vote half-way through the process after discovering destroyed ballots in the union office. In February 2022, the workers voted overwhelmingly in favour of an independent union, SINTTIA, in a vote in which four unions were contesting the right to represent them in negotiating a new CBA.

See Mexico Committee August 2021 [Guidance on CBA Legitimation](#) and STPS February 2021 [Guía de Acción: Legitimación de Contratos Colectivos de Trabajo](#).

2. VOTE ON AN INITIAL CBA

Prior to negotiating an initial CBA with an employer, a union must now provide evidence to the Federal Centre for Conciliation and Labour Registration (Federal Centre) that it has the support of at least 30% of the workers who will be covered by the agreement in order to receive a certificate of representivity. Once agreement is reached between the union and employer on an initial CBA, it must be subjected to a vote of the workers that will be covered by the agreement.

Employer Obligations: While it is the union's responsibility to organize the vote on the initial CBA and to provide workers a printed or electronic copy of the proposed agreement prior to the vote, the LFT also requires the employer to provide the workers a printed copy of the final agreement within 15 days of its deposit with the Federal Centre. If the vote is held in the workplace, the employer should also ensure that it is held in a safe, neutral and accessible location.

If workers vote against the proposed CBA, the union and the employer could return to the bargaining table to negotiate changes that would be more likely to be supported by the workers. Once workers approve the CBA, it must be filed with the Federal Centre.

Rights of Workers: Workers have the right to receive a printed or electronic copy of the proposed CBA from the union prior to the vote, to participate in a personal, free, direct and secret-ballot vote on the agreement, and to receive a printed copy of the CBA within 15 of its deposit with the Federal Centre. If there are any irregularities in the voting process, workers have the right to register a complaint with the labour authorities.

3. NEGOTIATIONS ON REVISIONS TO THE CBA

Under the LFT, employers and unions are required to negotiate revisions to the CBA every two years and revisions to the salary scale every year. With the 2019 labour reform, revisions negotiated every two years must be approved by workers in a personal, free, direct and secret-ballot vote. However, there are some contradictions in the law as to whether a vote must also be held on annual revisions to the salary scale, which will likely be resolved in future legal cases. It is important to note that this is a separate and different voting process than the one-time-only vote on the legitimation of existing CBAs.

Employer Obligations: As with an initial CBA, it is the union's responsibility to organize votes on revisions to the CBA and to provide workers a printed or electronic copy of the revised provisions to the CBA (*convenio de revisión*) prior to the vote. However, the LFT also requires the employer to provide workers a printed copy of the revised CBA within 15 days of its deposit with the Federal Centre. If the vote is held in the workplace, the employer should also ensure that it is held in a safe, neutral and accessible location. The Mexico Committee's FOA Guidance document also encourages employers to give prior notice to workers of upcoming negotiations for revisions to the CBA, so that workers have some input in what the union proposes to management.

If workers vote against the proposed revisions to the CBA, the union and the employer could return to the bargaining table to negotiate additional changes that would be more likely to be supported by the workers. Once workers approve the revised CBA, it must then be filed with the Federal Centre.

Rights of Workers: Workers have the right to receive a printed or electronic copy of the *convenio de revisión* from the union prior to the vote, to participate in a personal, free, direct and secret-ballot vote, to receive a printed copy of the approved version of the *convenio de revisión* within 15 of its deposit with the Federal Centre, and to file complaints with the labour authorities if there are any irregularities in the process.

Example: On March 2-3, 2022, workers at a Mazda auto parts plant in Salamanca, Guanajuato voted against revisions to the CBA negotiated by the CTM-affiliated union at the factory and their employer. The union has since announced its intention to return to the bargaining table to negotiate improved revisions to the CBA, which the workers will also have the right to vote on.

See: [El Nuevo Modelo Laboral para Empleadores](#) and [Employer Guidance: Ensuring Respect for Freedom of Association and the Right to Bargain Collectively](#).

4. VOTES ON UNION LEADERS AND REVISIONS OF UNION BYLAWS

Under the reformed LFT, union leaders must be elected by a personal, free, direct and secret-ballot vote of their members. Unions are also required to revise their bylaws to comply with new regulations regarding gender representation in their leadership and to make financial records accessible to union members.

Employer Obligations: Although the organization of votes on union leaders is the sole responsibility of the union, failure to organize votes that are personal, free, direct and secret (by ballot box or electronic) could have negative implications for company management, since one or more workers could file complaints with the labour authorities if there are irregularities in such votes, which could result in an investigation.

Employers are responsible for facilitating the posting of union notices of the vote in prominent locations in the workplace, as well as the location of the vote if it is held in the workplace. Beyond these minimal requirements, the employer must not interfere in any way in these internal union votes, including attempting to influence how union members vote.

Rights of Workers: Union members have the right to elect their leaders in personal, free, direct and secret-ballot votes, and to file complaints with the labour authorities if there are any irregularities in the process by the union and/or employer.

Example: On January 31, 2022, 63,700 employees of Mexico's national petroleum company, PEMEX, voted electronically for the leaders of their union, STPRM. Although the vast majority of the votes were in favour of the candidate for General Secretary supported by the traditional leadership of this notoriously corrupt union, this was the first time its members were able to elect their leaders by a personal, direct and secret-ballot vote. However, the Federal Centre reports receiving 191 complaints about irregularities prior to or during the vote.

5. EMPLOYER OBLIGATIONS AND WORKER RIGHTS REGARDING MINORITY UNIONS

In 2011, the Supreme Court ruled on the rights of minority unions and their members where another union holds title to the CBA in the same workplace. The ruling addressed the rights of workers in minority unions regarding deduction of union dues, no retaliation based on union membership, proportional representation on Mixed Commissions, and the right of members of minority unions to be represented by their union in defense of their individual rights.

Section 388 of the LFT focuses on the rights of craft unions, but doesn't address cases where majority and minority unions represent the same category of workers in the same workplace. However, changes to the LFT in 2012 prohibited exclusion clauses for dismissal in CBAs, which were used to require the employer to dismiss workers that resigned from, or were expelled by, the union that held title to the CBA. Although the May 2019 reformed LFT does not explicitly prohibit an inclusion clause for hiring in a CBA, requiring new employees to be members of the union holding title to the CBA, Article 133, IV prohibits employers or their representatives from forcing workers by coercion or by any other means to join a union or withdraw from the union to which they are affiliated.

Jurisprudence and the above changes to the LFT have reinforced the rights of minority unions and their members, and have made clearer the responsibilities of employers in cases where there is more than one union in a workplace. However, further changes are needed in the LFT to more clearly define the rights of minority unions and members of such unions and the obligations of employers where such unions exist. It is worth noting, that the presence of more than one union in a workplace could, at some point, lead to a *recuento* to determine which union holds title to the CBA.

Obligations of Employers: Where there is more than one union in the workplace, employer are obligated to remain neutral and not favour one union over the other, and to not retaliate against workers based on their union membership or sympathies. They should also respect the rights of minority unions and their members regarding deduction of union dues, proportional representation on mixed commissions, and representation of workers by the union of their choice in defense of their individual rights. At the same time, employers must respect the right of the majority union that holds title to the CBA to negotiate revisions to the CBA and other terms and conditions of employment.

Rights of Workers: Workers have the right to join a union of their free choice or to refrain from joining a union. They also have the right to resign from the union to which they are affiliated and to inform management in writing that they no longer want union dues to be deducted from their pay. Changes in the LFT open the door to the possibility that workers could request that such payroll deductions go to a minority union rather than the union that holds title to the CBA.

Example: At the time of this writing, a group of workers at the Mex Mode garment factory in Atlixco, Puebla are seeking to gain employer recognition of their independent union, the *Liga Sindical Obrera Mexicana*, as a minority union in a workplace where another union, supported by a campesino organization with a violent history, holds title to the CBA.

The Puebla State Labour Tribunal has ruled that the employer must recognize the right of the minority union to represent its members, provide the necessary facilities for that union to carry on its functions in the workplace, respect the principle of neutrality regarding freedom of association, receive information on the union affiliation of each worker and their willingness to have union dues deducted, and refrain from taking reprisals against workers based on their union affiliation or sympathies. The employer is appealing the ruling.

6. UNION REPRESENTATION ELECTIONS (RECUENTOS)

Union representation elections (*recuentos*) are votes on which of two or more unions will hold title to the collective bargaining agreement and the right to negotiate any revisions to that agreement. In the past, such elections were often not by secret ballot – workers had to verbally state which union they supported in front of management personnel, union leaders and observers. If they voted for a union not supported by management, they were often fired. As well, corrupt and unrepresentative unions often recruited thugs to intimidate the workers before and during the vote.

Rights of Workers and Obligations of Employers: While there have been some improvements over the years in the conditions under which *recuentos* are held, the 2019 labour reform has clarified that *recuentos* must to be held by secret ballot vote and that employers and unions are prohibited from using threats, intimidation or inducements to influence how workers vote. The Mexico Committee’s FOA Guidance document calls on employers to remain neutral in the case of union representation elections.

Example: On February 28, 2022, the independent union SNITIS won 80% of the votes at a *recuento* at the Tridonex auto parts factory in Matamoros, Tamaulipas against a CTM-affiliated union that had held title to the CBA. As a result, SNITIS will have the right to represent the workers in any future negotiations with the employer on revisions to the CBA and on other terms and conditions of their employment.

MSN provides periodic updates on key issues and developments as Mexico implements commitments under its 2019 labour law reform. The outcomes and impacts of this process on the exercise of freedom of association, the right to collective bargaining and improving transparency in the regulation of industrial relations are crucial to gaining justice for workers in Mexico. For a listing of MSN publications on labour justice reform, including others in our Catching Up on the Labour Reform series, see: maquilasolidarity.org/en/msn-publications-analyzing-mexicos-ongoing-constitutional-reform-labour-justice.

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