



Briefing Paper

COMMON WAGE VIOLATIONS IN MEXICO'S GARMENT INDUSTRY

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Maquila Solidarity Network, December 2020

Common Wage Violations in Mexico's Garment Industry was prepared by the Maquila Solidarity Network (MSN) for the Mexico Committee of the Americas Group. The Americas Group (AG) is a multi-stakeholder forum that includes international brands and manufacturers, and labour rights organizations working together to promote and support socially responsible apparel and footwear industries and decent work in the Americas. The research and interviews for this paper were carried out in 2018. Over 2019, Mexico Committee members reviewed and consulted within their organizations on the findings, legal analysis and recommendations of this briefing paper. Any mistakes or misinterpretations of facts are solely the responsibility of MSN. A Spanish version of the Briefing Paper is also available, at <https://www.maquilasolidarity.org/en/common-wage-violations-mexico-s-garment-industry>.

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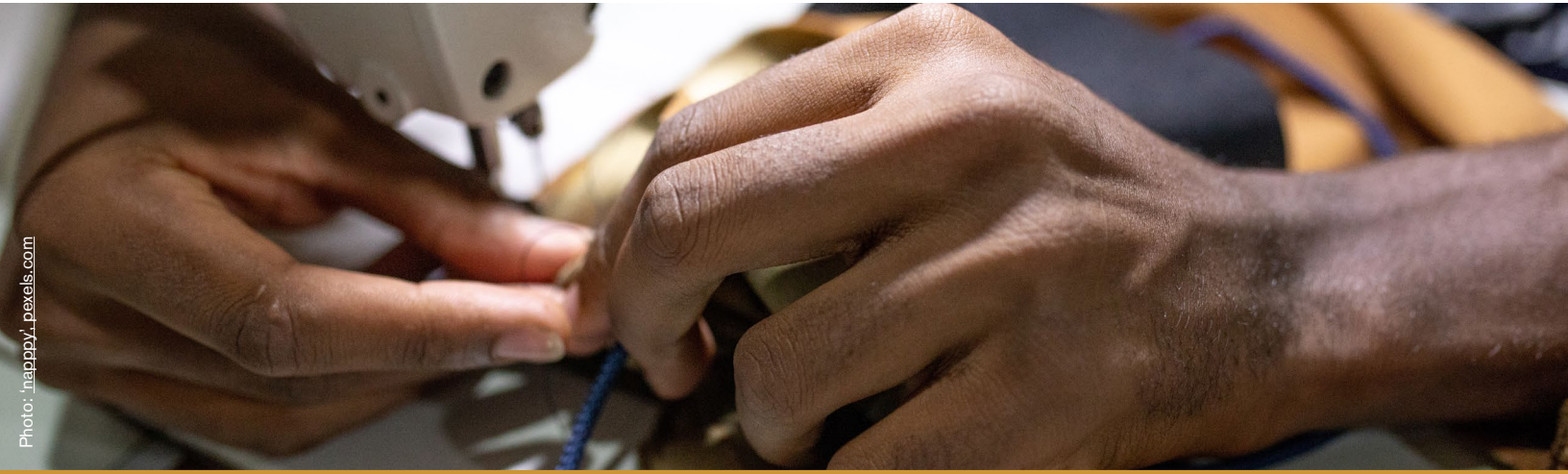
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INTRODUCTION

This Briefing Paper on Wage Violations and Irregularities in Mexico's Garment Industry is based on analysis of relevant articles of Mexico's Federal Labour Law (*Ley Federal del Trabajo – LFT*), interviews with brand and third-party social auditors, and consultation with local labour rights organizations that provide advice, support and training to workers. The overall objective of the Briefing Paper is to provide guidance to international brands and manufacturers in the apparel industry in Mexico on common wage violations in the sector and ways to best address them. The persistence of such violations is often facilitated by the presence of unrepresentative unions that negotiate protection contracts with employers.¹ Reforms to the Federal Labour Law instituted in May 2019 are intended to eliminate employer protection contracts and strengthen workers' rights to freedom of association and collective bargaining on wages and other workplace issues.

The paper documents seven common employer practices that violate Mexican labour law and/or company codes of conduct: Opaque Payslips; Irregularities regarding Bonuses and Piece Rates; False Reporting of Social Security Contributions; Improper Use and Payment for Time Off; Improper Use and Payment of Overtime; Failure to Pay Legally-Mandated Annual Bonuses on Time and Correctly; and Failure to Pay Full Severance. Each section provides examples of violations, legal requirements and recommendations to ensure corrective action and future compliance. In the final section, we group together the recommendations to address all issues documented in the Briefing Paper. Although the Paper focuses exclusively on Mexico's garment industry, the wage violations profiled are very likely common practices in other related sectors in the country.

¹ Protection contracts are simulated collective bargaining agreements signed by official unions, or sometimes labour lawyers, without the knowledge or consent of the affected workers, but with the complicity of the employer. Often such contracts are signed, and an initial payment is made by the employer to the union, before any worker is hired. In some cases, a contract has been signed by a lawyer without the presence of a union. These contracts are commonplace in Mexico, representing an estimated 80% of all collective agreements signed.

Publication of this paper was delayed by the Covid-19 pandemic, which not only brought issues related to worker safety to the forefront, but also raised new issues concerning workers' entitlements to wages and benefits during temporary factory closures, as well as workers' rights to severance and long-term disability payments in the event of permanent closures.

The pandemic has also resulted in delays in the implementation of reforms to Mexico's Federal Labour Law (LFT), which were adopted to overcome some of Mexico's institutional barriers to freedom of association and the right to collective bargaining, including the use of protection contracts, and labour tribunals that lack independence and neutrality.² Without authentic union representation and collective bargaining, Mexican workers have been denied the ability to negotiate improvements in wages and other monetary benefits or to hold their employers accountable for wage violations. Once implemented, the labour reforms will provide a new legal framework in which common wage violations described in this paper can be challenged by workers, democratic unions and labour rights organizations.

In this new context, international companies that source apparel products from Mexico can play a positive role in ensuring that their suppliers fully comply with their new obligations under the reformed labour law and eliminate wage violations described in this paper.

1. OPAQUE PAYSLEIPS

In Mexico's garment sector, payslips generally do not provide workers with the information they need to verify their pay against hours worked and benefits accrued. The problem has been exacerbated in recent years as increasingly workers receive electronic rather than paper payslips. Although not a formal violation of Mexican labour law, opaque payslips can both mask and enable wage violations.

Payslips, whether paper or electronic versions, are typically unclear regarding hours worked during a pay period, grouping hours into "days worked", mentioning overtime without detailing the number of overtime hours worked, and providing total figures for the amount of pay received. The result is that workers cannot verify their pay against hours worked and benefits accrued and with that, assess whether employers, intentionally or unintentionally, have made errors in payment that need addressing.

² Under Mexico's reformed Federal Labour Law (LFT), the tripartite Conciliation and Arbitration Boards (CABs) will be replaced by the Federal Centre for Conciliation and Labour Registration and local conciliation centres and labour courts.

ARTICLE 101 OF THE 2019 FEDERAL LABOUR LAW (LFT) obliges employers to provide workers a written record every 14 days of the number of days worked and amount of salary earned.³ This article is an improvement over the previous law, which only required proof of employment, but did not require detail on earnings and deductions. The revised labour law allows employers to provide workers with electronic SAT⁴ payment receipts, instead of payslips. However, this does not prevent employers from providing workers paper payslips with additional information beyond that required by law.

VOLUNTARY STANDARDS: Recognizing that many workers do not understand how their wages, benefits and deductions are calculated, some brands and multi-stakeholder initiatives (MSIs) have adopted clearer requirements in their **codes of conduct** and **guidance documents**. For example:

The Fair Labor Association (FLA) Benchmarks on Pay Statements (C.13) and Workers Awareness and Understanding of Compensation (C.17) require employers to:

- Provide clear and understandable pay statements and all relevant information on compensation, including earned wages, wage calculations, total number of hours worked, regular and overtime pay, bonuses, all deductions, and final total wage;
- Refrain from using hidden or multiple payroll records; make every reasonable effort to ensure workers understand their compensation;
- Communicate orally and in writing to all workers all relevant information; and
- Establish a system through which workers can dispute compensation and receive clarifications in this respect in a timely manner.

*Levi's Terms of Engagement*⁵ states that factories “must provide payslips with complete payroll information, so that workers understand how their pay is calculated” and “[p]rovide education and include it in handbook/posters, and provide payroll slips to include the details of calculation.”

New Balance's Supplier Standards Manual⁶ states that employees “must be provided with detailed wage statements with each wage payment. . . showing their total wages and detailing hours worked, rate of pay and all deductions. Suppliers must also ensure that employees are aware of their benefits and understand how their wages are calculated. All benefits and wages must be explained to employees during the hiring process.” Where employees are compensated on a piece-rate basis or with other production-based incentives, they must receive a “written description of the payment calculations and examples in the employee manual.”

³ Article 101 of the reformed LFT refers to payslips, but it does not strictly mention opaque payslips as violations. It refers to detailed information on rates and concepts (payment items): “In all cases workers shall have access to detailed information on the earnings and deductions in the pay period. Payslips shall be distributed in print or by any other means, maintaining the right of the workers to demand a printed copy from their employer.”

⁴ Tax Administration Service (SAT).

⁵ <http://levistrauss.com/wp-content/uploads/2017/12/TOE.pdf>, p. 33.

⁶ https://www.newbalance.com/on/demandware.static/-/Sites-newbalance_us2-Library/default/dw84cece2f/pdf/New_Balance_Supplier_Standards_Manual.pdf, p.16.

Company social auditors interviewed as part of our wage research noted that while employers are no longer legally required to provide workers hard copies of their payslips, electronic versions of payslips are often based on the reporting requirements of the Tax Administration Service (SAT), and these SAT-compliant electronic payslips do not provide workers all the information they need to monitor and verify their pay against hours worked and benefits accrued. They also reported that during audits oftentimes management and workers were unable to explain how wages, overtime, vacation pay and other benefits are calculated.

The problem was encapsulated well by one social auditor interviewed for this report: “Bonuses aren’t clear on payslips. The situation has worsened as more factories have moved to the electronic system required of the SAT, although that system doesn’t prohibit giving workers a hard copy of their payslip, or in a format that provides more information to the worker. In my experience, older workers are least likely to want to see the details of their pay, and are least likely to access electronic versions... so long as they make more or less the same amount each week, they don’t complain.”

See **Appendix A** for examples of three payslips, two providing workers minimal information, and one that is more complete.

In Mexico, it is also common for workers not to have access to their collective bargaining agreement (CBA) that should include a salary scale as an appendix to be revised on an annual basis. However, even when workers do have access to the core text of the CBA, they often don’t receive the annual salary scale.

A 2019 FLA audit of a participating company’s owned facility documented a number of related legal and/or code violations, including: information on the weekly payslips and on the SAT receipts being different; the factory not providing workers copies of their SAT receipts; and payslips not referencing the Integrated Salary (Daily Integrated Wage).⁷

RECOMMENDATIONS: Opaque Payslips

- 1. Whether or not workers receive an electronic version of their payslip, they should also receive a printed version for each pay period that provides workers sufficient information to verify their pay against hours worked, deductions made and benefits accrued.**
- 2. The SAT receipt should not replace a detailed printed payslip.**
- 3. The employer should provide verbal explanations, training and educational materials to workers to ensure they understand how their pay, bonuses and deductions are calculated.**
- 4. An appropriate and effectively functioning grievance process should be established or upgraded to allow workers to dispute compensation and receive clarifications in a timely manner, without fear of retaliation.**

⁷ Gildan Activewear, Mexico, FLA Independent External Assessment Report, 01/15/19, p. 4. Accessible at: <https://www.fairlabor.org/transparency/workplace-monitoring-reports> [Gildan Activewear Inc, 2019, FA0000140-0743, Mexico.]

What would a fully transparent payslip include?

- **Employer information**, including full company name, federal taxpayer reference number (RFC), IMSS Employer Registration number, company and workplace addresses.
- **Worker information**, including their Unique Population Registry (CURP), Federal Taxpayer's Register Reference (RFC) and Social Security (IMSS) numbers, as well as date of initial hire, years of seniority, and type of employment contract. .
- **Union information—if applicable**, including union name, national affiliation, contact information and name of union the representative, plus date of when the CBA was ratified, and the date of the next contract revision.
- **Base-line information**, including job category, shift hours, lunch break pay, time of paid breaks, annual vacation entitlement and vacation balance, daily integrated wage (SDI), daily base wage, and contribution base wage (SBC).
- **Earnings**, including workdays, seventh day, rest days, overtime pay, extraordinary overtime, productivity bonus, attendance bonus, punctuality bonus.
- **Other income for the pay-period** (vacation days, vacation bonus, national holiday pay, bonus for national holiday, Aguinaldo, profit-sharing bonus, company and union funds).
- **Deductions** (cafeteria; IMSS, INFONAVIT, FONACOT deductions; union dues, union funds; company saving funds).
- **Daily clock-in and clock-out times** (including total hours worked per shift).
- **Fiscal File number** (to compare amounts declared to tax authorities).

See **Appendix B** for a full template.

2. IRREGULARITIES REGARDING BONUSES AND PIECE RATES

Lack of transparency on how bonuses are determined and calculated and the arbitrary allocation of bonuses not only keep workers in the dark regarding the compensation to which they are entitled, but can also be used to hide wage violations.

THE FEDERAL LABOUR LAW (LFT) defines workers' earnings as their daily wage, and any other compensation workers receive, monetary or non-monetary.⁸ The same law obliges employers to inform all workers in writing of their conditions of work, including rates of pay per hour, day or piece.⁹ It also stipulates that all workers, regardless of whether they are paid hourly, daily, or by the piece, must earn at least the minimum legal daily rate for an 8-hour shift.¹⁰

⁸ LFT, Art. 84.

⁹ LFT, Art. 24.

¹⁰ LFT, Art. 85.

The FLA Benchmark on Workers' Awareness and Understanding of Compensation (C.17.1.4) requires employers to ensure workers understand the bonuses they are entitled to in the workplace and under applicable laws.

Bonuses of various kinds (the most common are for productivity, punctuality and attendance) can together double a worker's base wage. This means that if a worker is discriminated against and paid less than the full bonuses due to her, she may end up receiving little more than the legal minimum wage for her profession, keeping her and her family in poverty.

Auditors interviewed pointed to a lack of clarity on payslips as to whether workers are being paid the base rate for hours worked, or strictly on a piece-rate basis. In some factories where workers receive bonuses for meeting individual or group production targets, targets are raised without an explanation of the reasons for the increases, or the basis for determining the targets.

In some cases, workers are paid different amounts for the same type of bonus. In other cases, the amount of a bonus paid to a worker varies over time, with no explanation. Often workers are only given verbal explanations about bonuses, but nothing in writing. In some cases, no formal mention of a piece rate is made, although this is effectively how workers are being paid.

Arbitrary allocation and withholding of bonuses can be linked to sexual harassment or anti-union discrimination, while team production bonuses can generate group pressure on individual workers to meet the production target, creating situations in which workers labour through break periods in order to meet the target. Workers report that as they become proficient in a certain operation, they have to produce more in order to earn the same production bonus.

RECOMMENDATIONS:

Irregularities regarding Bonuses and Piece Rates

1. **Workers should receive clear communications, in writing, on piece rates and the criteria for calculating their payment. These need to be updated as rates change.**
2. **Workers should receive clear communications, in writing, on all bonuses and the criteria for determining and allocating them.**
3. **Bonuses should be allocated based on objectively verifiable criteria, applied equally to all workers.**
4. **Workers should have recourse to file complaints through an appropriate and effectively functioning grievance process to dispute irregularities regarding piece rates and bonuses.**

3. FALSE REPORTING OF SOCIAL SECURITY CONTRIBUTIONS

When employers fail to report actual pay rates to the Mexican Social Security Institute (IMSS), workers' right to adequate Social Security benefits is eroded. Too often, workers only find out that they have been defrauded of their benefits when they are at their most vulnerable and need to claim them. Sometimes workers are informed about – and even consent to – fraudulent under-reporting. Employers justify this practice by arguing that reducing the IMSS deduction increases workers' take-home pay. Given workers' low wages, reducing deductions can seem attractive.

ALL WORKERS have the constitutional right to social security, as set forth in the Social Security Law (SSL) covering workers in the private sector.¹¹ Employers must register their company and all employees with IMSS, and keep IMSS informed of all workers' salary levels, the number of days they have worked in a year, and any changes in workers' employment status (the latter within five days of any change). They must keep these records on file for at least five years.¹²

When workers are registered with IMSS, they and their families have access to subsidized medical care, including hospitalization, surgery, pharmaceuticals, outpatient services and physiotherapy.¹³ Pregnant workers are entitled to maternity leave and benefits once they have paid IMSS contributions for 30 weeks, and to a leave period of six weeks before the birth of their child, and six weeks after.¹⁴ IMSS also pays 100% of an employees' registered salary for up to one year while they are off work with a *work-related* accident or illness, and a lifetime monthly pension of 70% of their average salary registered at IMSS over the previous year if they are declared permanently and totally disabled. These benefits are transferred to the worker's dependents in the case of work-related death.¹⁵

The employer is responsible for calculating worker and employer contributions to IMSS, and for having appropriate records available to support those calculations.¹⁶ Contributions are calculated based on each worker's daily wage, pay received for overtime within the limits established in the LFT for overtime, bonuses, premiums, and any other monetary or in-kind benefits the worker receives.¹⁷ If employers submit incorrect records, or fail to make correct worker or employer contributions, they are obliged to pay them retroactively for the five previous years,¹⁸ and risk being fined an additional 40% to 100% of total unpaid contributions.¹⁹

¹¹ Constitution, Art 123, A, XXIX.

¹² Social Security Law (SSL), Art. 15.

¹³ SSL, Art. 56.

¹⁴ SSL, Art. 101.

¹⁵ SSL, Art. 58.

¹⁶ SSL, Art. 15.

¹⁷ SSL, Art 27.

¹⁸ SSL, Arts. 54 and 298.

¹⁹ SSL, Art. 304.

Various social auditors interviewed for this study pointed to cases of double bookkeeping and of employers preparing two payslips: one for the worker, listing bonuses and other monetary benefits, and one for IMSS, with various payments not included. Employers under-report workers' daily base wages and Daily Integrated Wage (SDI)²⁰ to IMSS by failing to include all of their workers' eligible bonuses, benefits, and overtime pay, and by failing to update IMSS records on time when workers receive pay raises. In many cases, workers' IMSS registration numbers do not appear on their payslips, making it difficult to control and audit for this practice.

One auditor interviewed for this report noted encountering the practice of issuing double payslips more frequently in recent years. "Workers are given one payslip with their base wage and punctuality bonuses, and another with their production bonus and overtime. Only one payslip is filed with IMSS."

A 2018 FLA audit reported that workers were being paid with two different bank deposits per week, one for the minimum legal wage and the other for any supplementary income earned. Only one of the deposits was declared to social security.²¹

RECOMMENDATIONS: False Reporting of Social Security Contribution

- 1. IMSS registration numbers should be cited on workers' payslips.**
- 2. Auditors and inspectors should cross-reference these records during their visits to the factories.**
- 3. When under-reporting of actual wages and benefits to IMSS is identified, employers should be required to cease this practice immediately.**

²⁰ The Daily Integrated Wage (SDI) includes all compensation received by a worker, with the exception of annual bonuses. For more detail, see Table p. 18.

²¹ The Bradford Exchange, Mexico, FLA Independent External Assessment Report, 17/12/18. Accessible at: <https://www.fairlabor.org/transparency/workplace-monitoring-reports>.

4. IMPROPER USE AND PAYMENT FOR TIME OFF

Interviews carried out for this study identified four recurrent issues where employers evade their legal obligations concerning payment for meal and other breaks; management of breaks; time off for doctor's appointments; work during national holidays; and miscalculation of vacation premiums.

i. Failure to Pay Workers for Meal or Rest Breaks

THE FEDERAL LABOUR LAW (LFT)²² establishes that all workers working a full and continuous shift²³ must be provided a rest or meal break of at least 30 minutes each shift. In May 2007, the National Supreme Court of Justice established a mandatory interpretation of the law, declaring that any time taken for a rest or meal break in a continuous shift should be considered work time and be paid, whether workers take breaks inside or outside the workplace.²⁴

If the employer chooses to provide a break of up to one hour, workers should be paid for that time. When the break in the shift is longer than one hour, jurisprudence of the Supreme Court mentioned above does not require that this time be paid or considered work time, because the shift is not continuous.

Failure to pay workers for legally mandated lunch breaks is common practice in Mexico, but is often overlooked by auditors. Some factories evade the obligation by extending lunch breaks to one hour plus one minute, thereby creating two discontinuous shifts. While this practice may be technically legal, it undermines the intent of the law and extends the workday while reducing workers' pay.

In addition, workers often report feeling compelled to work over their lunch breaks in order to meet production targets and receive production bonuses, which raises the question of whether production targets are being set at a level that is impossible to meet during regular working hours.

ii. Denial of Time-off for Medical Appointments

Employers use various tactics to discourage workers from exercising their legal right to receive medical attention at IMSS clinics, and from reporting work-related illnesses and injuries to IMSS.

²² LFT, Arts. 63 and 64.

²³ Eight hours during the day shift, 7 hours during the night shift, or 7.5 hours on the mixed shift.

²⁴ Jurisprudence 2a./J. 84/2007, May 2007. Available in Spanish at: <https://sjf.scjn.gob.mx/sjfsist/Paginas/DetalleGeneralV2.aspx?id=172537&Clase=DetalleTesisBL>.

ALTHOUGH EMPLOYERS do not have a legal obligation to allow workers to attend IMSS clinics during their working hours, except in cases of emergency, when they give workers permission to take time off for medical appointments, it is illegal to reduce their wages.

Workers must provide written verification from IMSS of medical visits and resulting medical leave. All health care-related absences from work that are not approved by IMSS can be deemed unjustified by the employer unless previously agreed upon.²⁵

Article 504 of the LFT states that companies with 100 or more workers are required to establish and maintain an infirmary in the workplace for emergencies, and workplaces with more than 300 workers are required to establish and maintain a hospital in the workplace, with necessary medical and auxiliary staff.²⁶ At the same time, workers have the legal right to refuse, with just cause, to receive medical attention from the employer.²⁷ The Social Security Law (SSL) requires that workers be attended to by IMSS in order to receive monetary benefits for illnesses and work-related accidents.²⁸

Some companies that have established medical clinics in the workplace require workers to use the workplace clinic during working hours, rather than visiting an IMSS clinic, in order to reduce time off work and to discourage reporting of work-related accidents or illnesses. When companies do allow workers to attend IMSS clinics during working hours, they sometimes deduct their pay for the time they were away from work, or for the whole workday.

According to a 2016 report by Colectivo Raiz Aguascalientes (CRA), "*Due to the intensive and continuous work regime in the garment maquila industry, it is challenging to obtain permission for a medical appointment off the company's site. Even appointments made formally with IMSS through the company are scheduled according to production needs.*"²⁹

That same report found that when workers took time off for IMSS medical exams, some employers deducted a full-day's salary and associated bonuses from their pay, imposed disciplinary measures against workers, or demanded that workers make up lost time during overtime hours (without paying overtime rates).³⁰

A 2018 FLA audit reported that pregnant workers were allowed to take time off for medical appointments, but this time was not paid, and was recorded instead as "permission without salary". In this case, the FLA recommended to retroactively pay workers who did not receive payment during their medical appointments.³¹

²⁵ Four unjustified absences in 30 days can be cause for legal dismissal.

²⁶ LFT, Article 504 also states that an employer, in agreement with workers, can contract the services of a nearby hospital or clinic. It is worth noting that current Article 504 was instituted as Article 111 in the original LFT of 1931, following the obligation to provide infirmaries mandated in the original article 123 of the Constitution of 1917, before IMSS was created and before its services were available to workers.

²⁷ LFT, Art. 507.

²⁸ SSL, Arts. 8 and 50.

²⁹ Colectivo Raiz (2016), *Mujeres, Trabajo y Salud Laboral*. p. 9. <https://www.maquilasolidarity.org/es/estudio-sobre-salud-de-las-mujeres-trabajadoras>.

³⁰ This can include sending workers back to their homes or even requiring that they "rest" for the full day. Colectivo Raiz (2016), *Op. cit.*, p. 79-81.

³¹ C.R. Gibson, LLC, Mexico, FLA Independent External Assessment Report, 17/11/18. Accessible at: <https://www.fairlabor.org/transparency/workplace-monitoring-reports>.

iii. National Holidays

All workers are entitled to time off during national holidays. If workers choose to work these days, they are entitled to premium overtime pay. Common violations include requiring workers to work on national holidays while failing to pay the double-time premium, and exchanging time off on regular workdays for work on national holidays, at the base rate of pay.

THE FEDERAL LABOUR LAW (LFT)³² protects workers from being obligated to work on any of the seven mandatory national holidays each year, plus any days that the election law designates for voting in federal, state or local elections, and the day of the presidential inauguration every six years. The same law obligates employers to compensate workers by paying twice their daily wage if they agree to work on those days. Employers and workers will determine how many workers must work during mandatory holidays, and if they do not reach an agreement, the appropriate labour tribunal will resolve the dispute.³³ When employees take time off on national holidays, it is illegal for employers to deduct that time from their annual vacation period.

Arguments used by employers to justify the exchange of work on regular days with work on national holidays include: production on national holidays is sometimes necessary to meet clients' order deadlines; they have signed a collective bargaining agreement that allows for this practice;³⁴ workers have provided written consent or sometimes ask to exchange days. Companies that are US-owned sometimes require workers to take US national holidays instead of Mexican national holidays.³⁵

Whether or not workers consent to this practice, they lose double-time pay when they work on national holidays and are compensated with time off at regular pay. Workers also miss participating in important social, cultural and political events, or spending those days with their families.

iv. Vacation Premiums

Employers often fail to pay workers their vacation premium on time, or to provide them with information about their accrued leave. As well, employers regularly discount workers' time off to deal with personal situations or medical appointments from their vacation period, even when authorization was provided in advance. Sometimes employers require workers to labour during their vacation period. The result is that workers lose both time off and their vacation premium. One common practice is to oblige all workers to take their vacations at the same time of the year (Easter Week and Christmas), in order to arrange time off according to the production schedule.

³² LFT, Arts. 73 and 74.

³³ LFT, Art. 75.

³⁴ Due to the fact that most factories in the garment sector have employer protection contracts with unrepresentative unions, these are not legitimate collective bargaining agreements.

³⁵ This practice reportedly takes place on Mexico's northern border.

THE FEDERAL LABOUR LAW (LFT) entitles workers who have worked for an employer for one year to take, within the next six months, a minimum six working days of paid annual vacation. In the second, third and fourth years of employment, workers are entitled to two additional days paid vacation per year. After their fourth year, workers are entitled to two additional days of paid vacation every five years.³⁶ Temporary workers have the right to the pro-rated equivalent number of days of paid vacation.³⁷

By law, all workers must take their annual vacation in at least one block of six days,³⁸ and vacation days must not be exchanged for pay.³⁹ As well as receiving their salary during annual leave, workers are entitled to a vacation premium of at least 25% of their normal salary during that vacation period.⁴⁰

Employers must give workers an annual update on their accrued seniority, the number of vacation days they are due, and the dates by which they must take them.⁴¹

RECOMMENDATIONS: Improper Use and Payment for Time Off

1. Where workers' rest or meal breaks are unpaid in violation of the law, the employer should be required to pay for such breaks in the future, and to provide compensation to workers for unpaid breaks in the past, including overtime pay where the practice has resulted in overtime.
2. Employers should be discouraged from extending breaks beyond one hour in order to create a discontinuous work shift, and therefore evading their legal obligation to pay break time.
3. Where workers are working during lunch or rest breaks to meet production targets, employers should ensure that this practice is discontinued, and that workers are informed of the importance of taking full lunch and rest breaks. In such cases, employers should be encouraged to review the production targets and make any adjustments to make sure they are achievable within the normal workday.
4. Workers should have the right to decide whether to seek medical attention either at the workplace clinic or at an IMSS clinic, and should not be penalized for making medical visits to IMSS clinics during working hours. In cases where workers have suffered financial penalties, they should be compensated in full.
5. Legal requirements regarding national holidays should be respected, and not exchanged and compensated at regular time.

³⁶ LFT, Arts. 76 and 81.

³⁷ LFT, Art. 77.

³⁸ LFT, Art. 78.

³⁹ LFT, Art. 79.

⁴⁰ LFT, Art. 80.

⁴¹ LFT, Art. 81.

6. Workers' seniority and remaining vacation days should be included in their payslip, listing vacation pay and vacation premiums separately.
7. Employers should provide workers with trainings on their legal rights regarding lunch breaks, medical leave and vacations.
8. Employers should refrain from asking workers to work during vacation time to which they are legally entitled, even when additional payments are offered to the workers for doing so. All workers should receive their full time off during vacations.

5. IMPROPER USE AND PAYMENT OF OVERTIME

Because of low base wages in the sector, overtime pay constitutes a crucial source of income for garment workers. At the same time, employers often require excessive overtime and develop a variety of methods to avoid paying workers the overtime premium to which they are legally entitled. The recurrent use of overtime indicates that many employers are not only using overtime in "exceptional circumstances" [as mandated by law and by FLA Hours of Work benchmarks], but rather that overtime is being used to manage regular variations in production and orders.

Employers failing to maintain a transparent record of overtime hours worked is also a problem in the industry. Factories record overtime incorrectly, for example registering overtime pay as productivity bonuses. The result is that employers are able to avoid paying overtime premiums, and workers do not have the information they need to assess whether they are being paid properly, or to make a complaint if they are not.

In this section, we highlight four routine violations of workers right to overtime pay: calculating overtime on the Base Rate rather than the Daily Integrated Wage (SDI); banking overtime hours; compressing the workweek into five days; and 4x4 work shifts.

FOR YEARS, there has been debate about whether overtime pay should be calculated on the base wage or on the Daily Integrated Wage. The Supreme Court came to a definitive decision in 2009, establishing that overtime pay should be based on the Daily Integrated Wage minus annual bonuses, including the end-of-year bonus (*aguinaldo*), profit-sharing bonus, vacation pay and the vacation bonus (*prima vacacional*).⁴² The Daily Integrated Wage includes the base wage and all bonuses and monetary benefits earned in a workday.

⁴² See Analisis Legal: Calculo de Pago de Horas Extras en Mexico, Rodrigo Olvera Briseño, August 2019. <https://www.maquilasolidarity.org/es/analisis-legal-calculo-de-pago-de-horas-extras>.

The Federal Labour Law (LFT) establishes that the regular workweek should be no longer than 48 hours (or 42 hours on the nightshift), distributed over six days.⁴³ It does however permit employers to redistribute weekly working hours, provided that these do not exceed legal limits to daily and weekly maximum hours,⁴⁴ and overtime is paid at the legally established rates.⁴⁵ This means that the only way for employers to institute a 48-hour workweek and not pay overtime is to have a six-day workweek.

When extraordinary circumstances require that working hours must be extended beyond the regular workweek, workers are constitutionally entitled to be paid twice their rate for regular hours.⁴⁶ LFT Art. 65 clarifies that workers cannot be obligated to work overtime, except when an extraordinary event beyond the control of the employer that would put at risk the lives of personnel or the survival of the company necessitates their presence. Since 4X4 and 4X3 work shifts are established as regular working hours, rather than in extraordinary circumstances, they are illegal in Mexico.

LFT Art. 67 restricts overtime at double the normal hourly rate of pay to three hours per day, three times in a workweek, effectively capping the workday at a maximum of 11 hours. Art. 68 establishes that if overtime exceeds nine hours per week (and never more than 3 hours per day), each subsequent hour must be paid at triple the normal hourly rate.

In addition, many company and multi-stakeholder codes of conduct state that overtime must always be voluntary.⁴⁷

i. Calculating Overtime on Base Wage rather than Daily Integrated Wage

Most employers continue to calculate overtime on the base wage (base daily rate of pay) rather than the Daily Integrated Wage established by law. The result is that legal overtime payments are grossly underestimated.

Company social auditors interviewed for this study confirmed that calculating overtime based on the base wage is standard practice in the sector, and that when they have raised this as a non-compliance issue with employers, they've encountered strong resistance to correcting the problem. Employers argue that that using the base wage for calculating overtime is *the* common practice, and that making the change would have serious cost implications.

⁴³ LFT, Arts. 61 and 69.

⁴⁴ LFT, Arts. 59, 66.

⁴⁵ LFT, Arts. 67, 68.

⁴⁶ Constitution, Art. 123, A, XI.

⁴⁷ See Levi's Terms of Engagement, Forced Labour, page 16: <http://levistrauss.com/wp-content/uploads/2017/12/TOE.pdf>; and Ethical Trading Initiative Base Code: <https://www.ethicaltrade.org/eti-base-code/6-working-hours-are-not-excessive>. The FLA Code and those of its Participating Companies use the term "consensual" rather than "voluntary". See FLA Code: <https://www.fairlabor.org/our-work/labor-standards>; and Nike Code of Conduct: https://purpose-cms-production01.s3.amazonaws.com/wp-content/uploads/2018/05/14214943/Nike_Code_of_Conduct_2017_English.pdf.

Comparing Base and Daily Integrated Wage

	BASE WAGE	INTEGRATED WAGE (for Severance, Seniority and other compensation)	INTEGRATED WAGE (only for overtime hours' payments)
Base wage	✓	✓	✓
Production bonus	No	✓	✓
Attendance and Punctuality bonuses	No	✓	✓
In-kind (food provisions or in cash)	No	✓	✓
Other In-kind remuneration	No	✓	✓
End-of-year bonus	No	✓	No
Vacation pay (annual)	No	✓	No
Vacation bonus (annual)	No	✓	No
Profit sharing (annual)	No	No	No

ii. Banking Overtime Hours

Banking overtime hours means that workers work extra hours beyond the normal workday that are later exchanged for time off during a regular workweek. The result is that employers are able to reorganize production for high-demand periods without having to pay workers higher compensation for overtime hours.

Employers “bank” overtime hours, allowing workers to substitute them for time off, annual leave, breaks, or leaving early. Sometimes factory owners create an “hours bank” (*tiempo por tiempo*) where hours are swapped on an hour-for-hour basis, without regard for the legally-required overtime premium.

Employers justify this practice by arguing that banking allows them to meet variations in client demands. Sometimes employers claim that the CBA explicitly permits overtime banking, and that workers prefer it, since it gives them the flexibility to arrange time away from work to attend family or other functions when necessary.

According to company social auditors interviewed, in some cases, workers are asked to go home mid-week if there is no work, but to come back on a Sunday or a national holiday when there is. In other cases, is it the worker who requests switching hours or days. For example, a worker asks for time off to attend to a personal situation and the request is granted, but her vacation days are docked, which has an impact on vacation pay. In either case, workers are not provided overtime pay when the substitute day is a national holiday.

Not only do workers lose money when they aren't paid the legal overtime premium for each overtime hour worked, banking overtime hours also compels workers to work excessively long days in order to “take time off” later to meet personal needs. This practice can negatively impact workers' family and social life, as it encourages unscheduled overtime.

Labour rights groups consulted for this study reported that workers regularly tell them about cases where a supervisor will give a worker permission to leave work early “as a favour,” but in exchange they have to work extra hours on another day, without receiving overtime pay. In other cases, when requests for time-off are granted, the time is docked later from the worker’s annual vacation, with the result that the worker loses their vacation bonus for that time.

iii. Compressing the Workweek into Five Consecutive Days

Workers are often required to work the legal limit of 48 hours a week, but compressed into five consecutive days. When arranging the weekly work schedule this way, employers do not pay the legal overtime premium for those extra eight hours worked in excess of the daily limitations, in violation of the LFT.

iv. 4X4 Work Shifts

As noted above, 4x4 work shifts – in which workers work 11-12 hours on four consecutive days, followed by four days off – are in violation of Mexico’s Federal Labour Law. In addition to the hours-of-work violation, factories that implement this production schedule do not compensate workers at the overtime rate for hours worked above the daily legal limit.

The Federal Labour Law (LFT) permits employers to assign weekly working hours to allow for additional consecutive days of rest,⁴⁸ provided that the legal maximum hours are not exceeded,⁴⁹ overtime limits are respected,⁵⁰ and overtime is paid at legal rates. The maximum number of overtime hours per day is three, and the maximum number of weekly overtime hours is nine.⁵¹

An 2019 FLA audit at a Gildan Activewear facility in Mexico found that the facility utilizes both 4x4 and a variation, 4x3 (four days of 12 hour shifts followed by three days off), noting that both are in violation of the LFT.⁵² The auditor recommended that the company ensure that all work shifts be brought in line with legal requirements. The company responded that it had signed an agreement with the union at the factory to allow for continuation of the 4X4 work shifts, and that the local government office [Local Conciliation and Arbitration Board] had approved that exception to the law.

A recurring problem in Mexico has been the practice of tripartite Conciliation and Arbitration Boards (CABs) authorizing exceptions to the law when requested to do so by employers and protection unions. One of the objectives of Mexico’s labour justice reform is to eliminate such practices, by replacing the CABs with impartial judicial institutions.

⁴⁸ LFT, Art. 59, second paragraph.

⁴⁹ LFT, Art. 59, first paragraph.

⁵⁰ LFT, Art. 66.

⁵¹ LFT, Arts. 67 and 68.

⁵² Gildan Activewear, Mexico, FLA Independent External Assessment Report, 01/15/19, p. 4.

4X4 AND 4X3 WORK SHIFTS

- Work shifts of 11 or 12 hours on 4 consecutive days followed by 4 consecutive days off is commonly called “4x4”.
- Another variation is 4x3: employees work 4 days followed by 3 days off.
- Working 4 consecutive days followed by 3 or 4 days off doesn't comply with the legal standard of the Federal Labour Law, because it:
 - exceeds the legal limit for redistribution of working hours;
 - exceeds the overtime limit of 3 hours a day or 3 times a week beyond the ordinary workday.

Arguments for Continuing the Practice

- 4X4 (4x3) and compressing the workweek into five consecutive days is becoming more common in practice.
- There are economic and technical reasons for introducing these new work shifts.
- Local Conciliation and Arbitration Boards tend to register and validate CBAs and other agreements that include 4x4 or 4x3 work shifts.

Arguments for Correcting the Practice

- Being a common practice is not an excuse to disregard the law.
- There are health and safety reasons for the daily hour limits, instead of a weekly hour limits. Any economic and technical issues should be solved without risking workers' health.
- Conciliation and Arbitration Boards have been so corrupt that reforms have been adopted to eliminate them. An illegal ruling validating a violation of the law does not eliminate the legal requirement.

RECOMMENDATIONS: Improper Use and Payment of Overtime

1. All overtime hours worked should be paid at the legal overtime rate, including at triple time when overtime exceeds nine hours per week.
2. Overtime pay should be calculated on the basis of the Daily Integrated Wage (SDI).
3. When suppliers comply with brand requests to calculate overtime pay based on the Daily Integrated Wage, brands should review pricing policies to take additional labour costs into account.
4. Employers should end the practice of overtime banking.
5. Employers should be prohibited from adopting 4x4 work shifts, which are illegal under Mexican law. When 4x4 work shifts are detected, employers should be required to reorganize the work shifts to comply with all overtime regulations under the LFT.
6. When violations of overtime compensation are identified, corrective action should include compensation (i.e. back pay) to workers for unpaid overtime.
7. Employers should provide workers training on their rights to compensation for overtime under the law.

6. FAILURE TO PAY LEGALLY-MANDATED ANNUAL BONUSES ON TIME AND CORRECTLY

Year-end bonuses (*aguinaldos*) and profit-sharing bonuses are major sources of income for workers. Employers consistently fail to provide transparent calculations for both of these bonuses, or to pay them on time.

i. Aguinaldo (Year-end Bonus)

ALL WORKERS are entitled by law to a pro-rated end-of-year bonus equivalent to at least 15 days of salary, paid out before December 20 each year.⁵³

Auditors interviewed for this study reported cases in which the *aguinaldo* was being paid in January, instead of at the end of the year, as required by law, and where the calculation of the bonus was unclear to workers. As a result, the anticipated annual bonus was not available to workers at the time of year when it is most needed.

ii. Profit-Sharing Bonus

Lack of transparency on the calculation of the annual profit-sharing bonus (*Participación de los Trabajadores en las Utilidades, PTU*) owed to each worker is a common problem. Other related problems include failure to establish the mixed profit-sharing committee or to allow workers to choose their representative to the committee, as well as delays in payment of bonuses or even denial that any bonuses are owed to workers because, according to the employer, no profits were generated by the facility.

PROFIT-SHARING BONUSES are based on the profits of the company and on the workers' highest salary for the year. All workers, including temporary workers that have worked for an employer for at least 60 days in a year, are constitutionally entitled to receive a profit-sharing bonus of 10% of their employer's annual profit, each year.⁵⁴

⁵³ LFT, Art. 87.

⁵⁴ Constitution, Art. 123, A, IX; LFT Arts. 117 and 127. Percentage of 10% set in 2009.

Under the Federal Labour Law (LFT), a joint commission of worker and employer representatives must be established to determine and then communicate the amounts to be paid to each worker, and the employer must give the joint commission each worker's payroll and attendance information in order for it to be able to do so. Labour inspectors are mandated to resolve disputes if workers and the employer cannot agree on the amounts to be paid out.⁵⁵ The LFT gives employers 60 days from the submission of annual tax filings to pay workers this bonus (by end of May of each year),⁵⁶ and the timeframe must be met even if workers have lodged a complaint regarding amounts being paid.

All workers must receive a fixed-rate share of the profit based on the number of days they worked in the year (the same daily rate is applied to all workers' calculations), plus a varying share based on their daily wage rate throughout the year (excluding bonuses and overtime pay).⁵⁷

Social auditors consistently raised the problem of lack of clarity regarding profit-sharing bonuses. In a 2018 MSN review of 16 CBAs from the garment sector, none included provisions on profit sharing commissions. Detecting and achieving corrective action for violations in how profit sharing bonuses are calculated for workers is one of the most difficult issues to deal with. This is partly because of the complexity of the calculations involved for each worker and the limited time available to verify these calculations during an audit, but moreover because it would require specialist accounting skills and an in-depth investigation by a third party to determine if an employer's registered profit (annual tax filing) is correct.

Even in factories where a mixed commission on profit sharing is in place, worker representatives on the commission lack training and are usually not chosen through a democratic process, and therefore are unable to perform the functions that the LFT sets out for them. Worker representatives to mixed commissions are generally chosen by the employer, or where there is a protection contract, by an unrepresentative union, acting on behalf of the employer.

In addition to the lack of effectively functioning mixed commissions on profit sharing, a common violation is the failure of employers to provide correct information about the factory's profits to the Treasury Department, either by intentionally registering multiple companies and designating the company that employs workers at zero profit, or by subcontracting employment functions to a company that does not register a profit.

⁵⁵ LFT, Art. 125.

⁵⁶ LFT, Art. 122.

⁵⁷ LFT, Art. 123.

RECOMMENDATIONS: Failure to Pay Annual Bonuses on Time and Correctly

1. Workers should receive their full *aguinaldo* payment before December 20, and employers should stipulate the number of days on which it is calculated.
2. Employers should establish a mixed commission on profit sharing, including worker representatives selected through a democratic vote of their co-workers and with adequate financial information and training to assess appropriate bonuses. Employers should pay workers their annual profit-sharing bonus within the legal time period – no later than May of each year.
3. In cases where workers have expressed serious doubts that their profit-sharing bonus is correct and/or have engaged in job action to protest the perceived underpayment of the profit-sharing bonus, follow-up audits of company financial records should be conducted by competent assessors.

7. FAILURE TO PAY FULL SEVERANCE

Recent factory closures and mass layoffs in Mexico's garment export sector, largely due to the economic uncertainty in the US, the impact of the coronavirus on economic activity, and changes in sourcing patterns globally, have forced MSN and companies in the Mexico Committee to pay increased attention to common worker rights violations related to closures and layoffs. Brands, international labour rights organizations, and local labour rights groups in Mexico have confronted numerous cases in which employers have failed to meet their legal obligations to workers prior to and during mass dismissals and/or closures, including failing to pay full legal severance and other monetary benefits they owe to workers.

THE FEDERAL LABOUR LAW (LFT) includes the same legal requirements for mass layoffs, due to restructuring of the production process, and for closures.

The Mexican Constitution and the LFT establish that mass dismissals can only be justified in limited cases, including when the employer is “unable to continue sustaining the operation,”⁵⁸ which needs to be “evident”, “documented”, and not subject to challenge. Employers need to present sufficient financial information in writing to confirm that the company has no alternative but to lay off workers en masse. In other words, a mass dismissal cannot be a unilateral decision of the employer, but needs to be approved by the appropriate labour tribunal.

⁵⁸ LFT, Art. 434.

If a worker or a group of workers believes that their dismissal was not justified, they can appeal to the appropriate labour tribunal for reinstatement or payment of three months Daily Integrated Wage (SDI), plus back pay to the date of firing, not exceeding one year, plus interest on 15 months' salary if payment is not made within the year. In such cases, workers are also entitled to seniority bonuses and payment of any benefit still outstanding, such as the end-of-year bonus (*Aguinaldo*), vacation pay and bonuses, or social security contributions. If workers ask for reinstatement and the employer is unable or unwilling to comply, they must pay an additional benefit of 20 days at the Daily Integrated Wage rate for each year worked. In the case of a factory closure, severance pay and outstanding wages take precedence over the payment of all other debts, including taxes, IMSS contributions, and other claims on the employer's property and other assets.⁵⁹

When there is no justified cause for dismissal, it is common practice for employers to fail to provide workers prior written notice outlining the reasons for dismissal. In cases of mass dismissals, employers often pressure workers to sign voluntary resignation letters or to accept settlements that are less than their full legal entitlement, without providing a copy of the severance agreement. In some cases, workers are required to sign blank sheets of paper when they are hired, which are used to simulate voluntary resignation letters when the workers are later dismissed. Requiring workers to sign blank sheets of paper is now illegal, as a result of the recent reforms to the LFT.⁶⁰

Even in cases in which mass dismissals or closures are justified, workers seldom receive reasonable notice or written documentation on how their severance pay was calculated. In some cases, employers give prior notice to the union that holds title to the CBA, but neither the union nor the employer share that information with the affected workers. This is especially problematic in cases where there is a protection union that signs off on the terms of the closure without informing or consulting with the workers. Nor do employers generally notify or seek authorization for the layoffs or closure from the Local Conciliation and Arbitration Board (CAB).

It is also common for the CAB to either approve severance payments that are lower than legally required or to act as the facilitator of negotiations between management and dismissed workers that result in workers receiving less than their legal entitlements.⁶¹ When workers take their cases to the local CAB, employers often will obstruct or delay the conciliation process, while negotiating lower settlements with individual workers.

In cases of factory closures, some owners fail to file for insolvency before closing, and they begin to remove the assets from the property to prevent an embargo of factory machinery and equipment, the sale of which could be used to pay for severance.

In cases where authorities have ordered a reinstatement, employers sometimes dismiss workers on the day of their reinstatement or shortly thereafter.

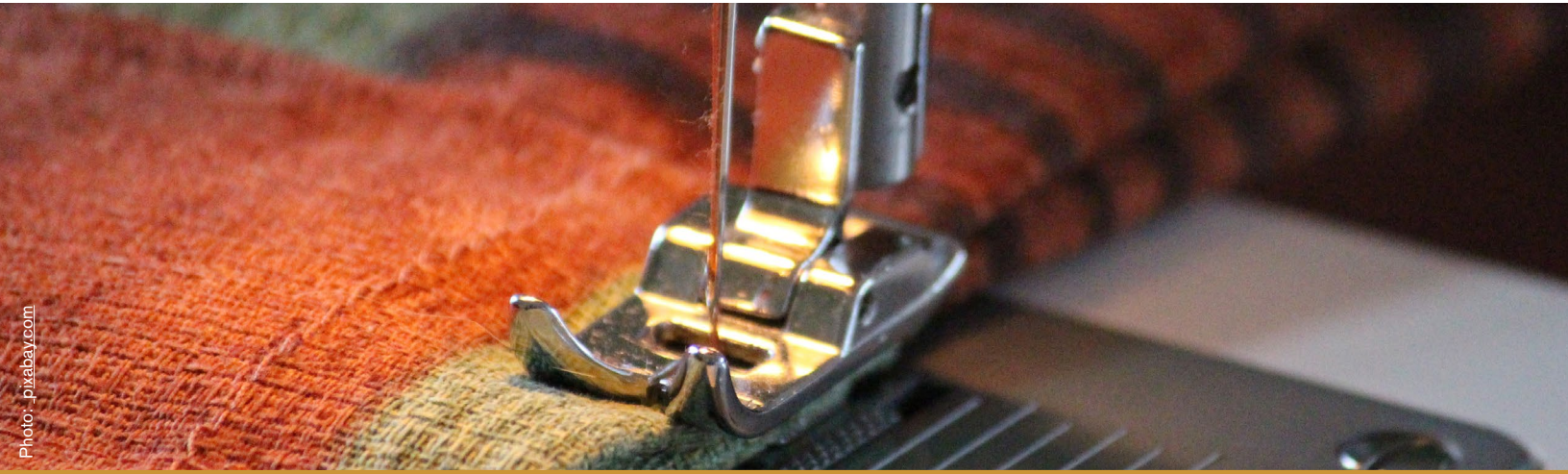
⁵⁹ LFT, Art. 113.

⁶⁰ LFT, Art. 48 Bis.

⁶¹ Documented cases in the garment sector in which the local CAB either approved or convened negotiations for severance of less than what workers were legally entitled in the garment sector include Rintex, Morelos (closed Dec 2018); Alabama Mexico, Yucatan (closed December 2018) and Industrias Jobar, Aguascalientes (mass layoff, 516 workers, July 2019).

RECOMMENDATIONS: Failure to Pay Full Severance

- 1. Prior to a closure, employers should consult with legitimate worker representatives about possible alternatives to closure.**
- 2. Prior to a closure or mass layoff, employers should fulfill their legal obligation to notify and seek authorization for the closure/layoffs from the appropriate labour tribunal.**
- 3. Workers should receive their full legal severance and other outstanding benefits; negotiation of a lesser amount should not be permitted.**
- 4. Employers must refrain from requiring workers to sign blank sheets of paper, or to pressure workers to sign voluntary resignation letters.**
- 5. Employers should provide adequate written notice to workers – and not only notice through the existing union – in advance of their dismissal, including a written justification of the reason for the dismissal.**
- 6. Employers must provide a detailed itemization of the severance pay and its calculation.**



RECOMMENDATIONS: FULL LIST

Below are the recommendations on how to address the seven common wage violations in Mexico's garment industry profiled in this Briefing Paper.

Opaque Payslips

1. Whether or not workers receive an electronic version of their payslip, they should also receive a printed version for each pay period that provides workers sufficient information to verify their pay against hours worked, deductions made and benefits accrued.
2. The SAT receipt should not replace a detailed printed payslip.
3. The employer should provide verbal explanations, training and educational materials to workers to ensure they understand how their pay, bonuses and deductions are calculated.
4. An appropriate and effectively functioning grievance process should be established or upgraded to allow workers to dispute compensation and receive clarifications in a timely manner, without fear of retaliation.

Irregularities regarding Bonuses and Piece Rates

1. Workers should receive clear communications, in writing, on piece rates and the criteria for calculating their payment. These need to be updated as rates change.
2. Workers should receive clear communications, in writing, on all bonuses and the criteria for determining and allocating them.
3. Bonuses should be allocated based on objectively verifiable criteria, applied equally to all workers.
4. Workers should have recourse to file complaints through an appropriate and effectively functioning grievance process to dispute irregularities regarding piece rates and bonuses.

False Reporting of Social Security Contribution

1. IMSS registration numbers should be cited on workers' payslips.
2. Auditors and inspectors should cross-reference these records during their visits to the factories.
3. When under-reporting of actual wages and benefits to IMSS is identified, employers should be required to cease this practice immediately.

Improper Use and Payment for Time Off

1. Where workers' rest or meal breaks are unpaid in violation of the law, the employer should be required to pay for such breaks in the future, and to provide compensation to workers for unpaid breaks in the past, including overtime pay where the practice has resulted in overtime.
2. Employers should be discouraged from extending breaks beyond one hour in order to create a discontinuous work shift, and therefore evading their legal obligation to pay break time.
3. Where workers are working during lunch or rest breaks to meet production targets, employers should ensure that this practice is discontinued, and that workers are informed of the importance of taking full lunch and rest breaks. In such cases, employers should be encouraged to review the production targets and make any adjustments to make sure they are achievable within the normal workday.
4. Workers should have the right to decide whether to seek medical attention either at the workplace clinic or at an IMSS clinic, and should not be penalized for making medical visits to IMSS clinics during working hours. In cases where workers have suffered financial penalties, they should be compensated in full.
5. Legal requirements regarding national holidays should be respected, and not exchanged and compensated at regular time.
6. Workers' seniority and remaining vacation days should be included in their payslip, listing vacation pay and vacation premiums separately.
7. Employers should provide workers with trainings on their legal rights regarding lunch breaks, medical leave and vacations.
8. Employers should refrain from asking workers to work during vacation time to which they are legally entitled, even when additional payments are offered to the workers for doing so. All workers should receive their full time off during vacations.

Improper Use and Payment of Overtime

1. All overtime hours worked should be paid at the legal overtime rate, including at triple time when overtime exceeds nine hours per week.
2. Overtime pay should be calculated on the basis of the Daily Integrated Wage (SDI).
3. When suppliers comply with brand requests to calculate overtime pay based on the Daily Integrated Wage, brands should review pricing policies to take additional labour costs into account.

4. Employers should end the practice of overtime banking.
5. Employers should be prohibited from adopting 4x4 work shifts, which are illegal under Mexican law. When 4x4 work shifts are detected, employers should be required to reorganize the work shifts to comply with all overtime regulations under the LFT.
6. When violations of overtime compensation are identified, corrective action should include compensation (i.e. back pay) to workers for unpaid overtime.
7. Employers should provide workers training on their rights to compensation for overtime under the law.

Failure to Pay Annual Bonuses on Time and Correctly

1. Workers should receive their full *aguinaldo* payment before December 20, and employers should stipulate the number of days on which it is calculated.
2. Employers should establish a mixed commission on profit sharing, including worker representatives selected through a democratic vote of their co-workers and with adequate financial information and training to assess appropriate bonuses. Employers should pay workers their annual profit-sharing bonus within the legal time period – no later than May of each year.
3. In cases where workers have expressed serious doubts that their profit-sharing bonus is correct and/or have engaged in job action to protest the perceived underpayment of the profit-sharing bonus, follow-up audits of company financial records should be conducted by competent assessors.

Failure to Pay Full Severance

1. Prior to a closure, employers should consult with legitimate worker representatives about possible alternatives to closure.
2. Prior to a closure or mass layoff, employers should fulfill their legal obligation to notify and seek authorization for the closure/layoffs from the appropriate labour tribunal.
3. Workers should receive their full legal severance and other outstanding benefits; negotiation of a lesser amount should not be permitted.
4. Employers must refrain from requiring workers to sign blank sheets of paper, or to pressure workers to sign voluntary resignation letters.
5. Employers should provide adequate written notice to workers -- and not only notice through the existing union-- in advance of their dismissal, including a written justification of the reason for the dismissal.
6. Employers must provide a detailed itemization of the severance pay and its calculation.

APPENDIX A: PAYSリップ EXAMPLES

Payslip 1: This is an example of an opaque payslip, without clear indications of the number of hours worked, the rate of pay per hour, the basis for the calculation of the overtime pay (no rate of pay included), and the details for the calculation of bonuses for punctuality and attendance. Furthermore, overtime pay seems to be calculated on the base salary and not on the integrated daily salary (SDI).

Departamento		Días Trab. 7		Periodo #43		R.F.C	Afil I.M.S.S.	
PERCEPCIONES				DEDUCCIONES				
Concepto		Importe		Concepto		Importe		
1	Sueldo	6.00	\$	568.68	32	Subs al Empleo acreditado	\$	-64.12
3	Séptimo día	1.00	\$	94.68	39	Subsidio al Empleo (sp)	\$	-2.16
4	Horas extras	9.00	\$	213.25	41	I.S.R. antes de Subs al Empleo	\$	61.96
14	Premios Asistencia		\$	66.35	52	I.M.S.S.	\$	16.46
132	Premio Puntualidad		\$	66.35	99	Ajuste al neto	\$	-0.10
133	Despensa		\$	112.79				
Suma percepciones		\$	1,122.20	Suma deducciones		\$	14.20	
						Neto a pagar	\$	1,108.00

Recibí de la empresa arriba mencionada, la cantidad neta a que este documento se refiere, estando conforme con las percepciones y deducciones que en el aparecen especificados.

Firma del empleado

Payslip 2: This is an example of a SAT-compliant electronic receipt, which many employers use in place of a proper payslip. While allowed by Mexican law, this kind of receipt provides insufficient information to workers. It gives a synthesis of the pay for a given period and information on some benefits, such as productivity bonuses and transport subsidies. It includes union dues deductions, but no information on the union itself. Although it is more transparent than some payslips, it does not include the rate of pay per hour, total number of hours worked during the pay period, overtime hours and overtime pay, or detailed information on entry and exit times for each shift, all of which are important information for workers. As well, some of the tax-related information may be confusing to workers and unnecessary on a payslip.

FECHA
CERTIFICADO DIGITAL EMISOR
FOLIO FISCAL
CERTIFICADO DIGITAL SAT
FECHA DE CERTIFICACIÓN

REGIMEN FISCAL EXPEDIDO EN General de Ley Personas Morales

EMPLEADO				COMPROBANTE			
No.	2354	NOMBRE	_____	TIPO COMPROBANTE	N Nómina		
RFC	_____	NUM SEG. SOCIAL	_____	FORMA DE PAGO	93 Por definir		
CURP	_____	INGRESO	_____	METODO DE PAGO	PUE. Pago en una exhibición		
				USO CFDI	P01	Por definir	

CONCEPTO						
CLAVE SERV	CANTIDAD	UNIDAD	DESCRIPCIÓN	VALOR UNITARIO	IMPORTE	DESCUENTO
_____	_____	_____	_____	_____	_____	_____

DETALLE							
NÓMINA	20180033				TIPO	Nómina ordinaria	
FECHA INICIAL	13/08/2018	FECHA FINAL	19/08/2018	DÍAS PAGADOS	7.00	FECHA PAGO	22/08/2018
UBICACIÓN	OPERARIO			CENTRO DE COSTO	Sewing		
DEPARTAMENTO	Sewing			PUESTO	OPERARIO		
PERIODO	SEMANAL			TIPO REGIMEN	02 Sueldos		
TIPO CONTRATO	01 Contrato de trabajo por tiempo	PERIODICIDAD	02 Semanal	RIESGO PUESTO 2 Clase II			
TIPO JORNADA	01 Diurna	ANTIGUEDAD	P369W	SINDICALIZADO SI	S.D.I.	_____	
BANCO		CUENTA	_____	S.B.C.	S.B.C.	_____	
CLAVE ENT. FED	_____						
SUBCONTRATAN							

SAT	PERCEPCIONES	GRAVADO	EXTENTO	IMPORTE	ACCUMULDAO	SAT	DEDUCCIONES	IMPORTE	ACUMULADO	
001	001	SUELDO NORMAL	_____	_____	_____	001	200	CUOTAS IMSS TRABAJADOR	_____	
001	009	DÍAS POR VACACIONES	_____	_____	_____	005	221	INFONAVIT VSM	_____	
010	024	BONO POR PUNTUALIDAD	_____	_____	_____	019	230	CUOTA SINDICAL	_____	
038	026	BONO DE PRODUCTIVIDAD	_____	_____	_____	018	256	APORTACIÓN CAJA DE AHORRO	_____	
036	071	SUBSIDIO TRANSPORTE	_____	_____	_____	004	260	FONDO DE AHORRO EMPLEADO	_____	
038	129	DEVOLUCIÓN SUB PARA EL EMPLEO	_____	_____	_____	011	271	1ER CREDITO FONACOT	_____	
TOTAL				_____	_____	IMP. RETENIDOS	\$0.00	OTRAS DEDUCCIONES	_____	
RESUMEN		PERCEPCIONES			_____	DEDUCCIONES		_____	OTROS PAGOS	_____

RECIBÍ EL TOTAL DE LOS VALORES ANOTADOS INCLUYENDO SEPTIMO DÍA EN SALARIO ORDINARIO QUEDANDO LA EMPRESA AL CORRIENTE EN EL PAGO DE TODAS LAS PRESTACIONES DERIVADAS DE MI RELACIÓN DE TRABAJO CORRESPONDIENTE AL PERÍODO QUE ARRIBA SE INDICA Y ESTOY DE ACUERDO CON LAS DEDUCCIONES DE LEY QUE EN EL MISMO APARECEN.

CANTIDAD CON LETRA	CUATROCIENTOS CINCUENTA Y CINCO PESOS 37/100 M.N.	SUB TOTAL	_____
		DESCUENTOS	_____
	FIRMA _____	TOTAL	_____

Payslip 3 This is an example of a more complete payslip, including all the relevant information on the days worked, the hours of each shift, and the total number of overtime hours for the period. Moreover, it includes a clear description of the shifts worked for each day, and entry and exit times, which allows workers to keep track of the hours worked. In addition, the payslip indicates the corresponding fiscal file, allowing comparison of the amounts reported to the tax authorities with what was reported to the workers. This payslip is unclear about the calculation for the attendance and punctuality bonuses, as well as the “production incentives”. Although the payslip is a significant improvement from Payslip 1, it could include further information that would allow workers to confirm appropriate compensation on their bonuses.

		No Nómina	Período de Pago		Fecha de Pago			
		6						
		Salario diario	% Ganado	% Pagado	SDI			
		\$106.96	99.60	109.82	\$197.21			
Sección	Número	Nombre de Empleado		I.M.S.S.	R.F.C.	C.U.R.P.		
SPS2A1								
Percepciones		Días/Horas	Importe	Deducciones		Importe	Saldos	
1	Sueldo Semanal Ordinario	2.49	\$319.54	51	I.S.R.	\$150.17		
2	Séptimo Día		\$96.04	52	Cuota Obrero IMSS	\$31.79		
3	Horas Extras Dobles	2.00	\$91.84	54	Crédito INFONAVIT	\$480.71		
5	Vacaciones	1.00	\$106.96	57	Cuota Recuperación Alimenticia	\$33.80		
6	Prima Vacacional		\$26.74	61	Caja de Ahorro	\$50.00	\$382.85	
8	Incentivo Producción		\$225.52	62	Aport. Empleado Fondo Ahorro	\$56.12	\$334.89	
10	Incentivo Prod. Séptimo Día		\$133.01	66	Aport. Empresa Fondo Ahorro	\$56.12	\$334.89	
11	Bono de Puntualidad		\$30.00	141	Ayuda para Defunción (Sind)	\$20.00		
12	Bono de Asistencia		\$126.00	297	Descuento Fonacot	\$322.35	\$15,500.76	
13	Vale Despensa		\$136.29					
21	Incentivo Prod. Vacaciones		\$286.74					
22	Incentivo Prod. Prima Vacaciones.		\$64.01					
25	Día Festivo	1.00	\$128.35					
29	Incentivo Prod. Festivo		\$307.23					
Total Percepciones			\$1,998.10	Total Deducciones		\$1,202.06	NETO A PAGAR \$796.04	
Recibí esta cantidad en vales de despensa en tarjeta de débito							VALE DESPENSA \$169.08	
TARJETA ASISTENCIA	Fecha	Entrada	Salida	CRA	Incidencia			
	2019-02-04	:	:		FE	INCIDENCIA	CÓDIGO	
	2019-02-05	07:01	12:14		RE	FALTA INJUSTIFICADA	FI	
	2019-02-06	07:00	17:14			FALTA JUSTIFICADA	FJ	
	2019-02-07	07:00	17:36			PERMISO	PE	
	2019-02-08				VAC	VACACIONES	VA	
	2019-02-09					RETARDO	RE	
	2019-02-10					FESTIVO	FE	
							INCAPACIDAD	IN

Recibí de la empresa arriba mencionada el salario que me corresponde y demás prestaciones a las que tengo derecho por los conceptos antes descritos y conforme a lo establecido de mi contrato de trabajo y la Ley Federal de Trabajo del período que se paga. Así mismo manifiesto que los tiempos que aparecen en la presente tarjeta de asistencia son correctos toda vez que fueron marcados por mi persona a las horas de entrada y salida, por lo tanto corresponde al record de mi asistencia en las fechas indicadas.

Importe en Letra: Setecientos Noventa y Seis Pesos 04/100

Folio Fiscal _____

Firma Empleado

APPENDIX B: FULLY TRANSPARENT PAYSリップ

WORKER DATA	
Full Name	
Worker Number	
Unique Population Reference (CURP)	
Federal Taxpayer's Register Reference (RFC)	
IMSS Employee Registration Number	
Date of Initial Hire	
Seniority	
Type of Contract	

EMPLOYER DATA	
Company Name (Razón Social)	
Federal Taxpayer's Register Reference (RFC)	
Company Address	
Workplace Address	
IMSS Employer Registration Number	

UNION DATA	
Union name	
National Affiliation	
Date of Ratification of CBA	
Date of Next Contract Revision	
Name of Union Representative	

BASE-LINE INFORMATION	
Job Category/Payscale	
Shift (start and end time)	
Lunch Break Pay	
Paid Breaks (start & end time)	
Annual Vacation Entitlement	
Vacation Balance	
Daily Integrated Wage (SDI)	
Daily Base Wage	
Contribution Base Wage (SBC)	

PAY PERIOD: _____

DATE PAID: _____

DAILY CLOCK-IN AND CLOCK-OUT TIME				
	DATE	SHIFT IN	SHIFT OUT	TOTAL HOURS
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
TOTAL PAY PERIOD HOURS				

SYNOPSIS		
Subtotal Earnings (from page 2)		
Sub-total Benefits & Other (from page 2)		
Income Paid in Food Vouchers		
Total Gross Income		
Sub-Total Deductions (from page 2)		
Income Tax Retained		
Total Deductions		
TOTAL PAID		

Worker Signature _____

Fiscal File _____

Note: Workers should receive training about what is included in the payslip, including legal entitlements, for example what overtime is allowed by law.

EARNINGS for Pay Period

CATEGORY	UNIT (days / hours / minutes)	QUANTITY	DATE	RATE	TOTAL
Work days					
Seventh day					
Rest days					
Overtime (double pay)					
Extra-Ordinary Overtime (triple pay)					
Work at home					
Productivity bonus					
Productivity bonus (Seventh Day)					
Attendance bonus					
Punctuality bonus					
Other: (detail)					
SUB-TOTAL EARNINGS					

BENEFITS AND OTHER INCOME for Pay Period

CATEGORY	UNIT (days / hours / minutes)	QUANTITY	DATE	RATE	TOTAL
Vacation days					
Vacation Bonus					
National Holiday Pay					
National Holiday Bonus					
Sick Pay					
End of Year Bonus (Aguinaldo)					
Profit Sharing Bonus					
Company Funds (if applicable)					
Union Funds (if applicable)					
Other: (detail)					
SUB-TOTAL BENEFITS					

DEDUCTIONS for Pay Period

CATEGORY	UNIT (days / hours / minutes)	QUANTITY	DATE	RATE	TOTAL
Cafeteria					
IMSS					
INFONAVIT					
FONACOT					
Union dues					
Union funds (detail)					
Company Saving Fund					
SUB-TOTAL DEDUCTIONS					