EMPLOYER GUIDANCE

ENSURING RESPECT FOR FREEDOM OF ASSOCIATION AND THE RIGHT TO BARGAIN COLLECTIVELY

AMERICAS GROUP: MEXICO COMMITTEE

Introduction

In September 2016, the Mexico Committee of the Americas Group established basic guidelines for Mexican suppliers on Freedom of Association and Collective Bargaining. The following Guidelines are an updated version that takes into account labour law reforms approved by the Mexican Congress, and entered into law on May 1, 2019. Relevant articles of the Federal Labour Law and/or Conventions of the International Labour Organization (ILO) are referenced under each Guideline. These Guidelines are applicable to both suppliers and manufacturers in the apparel sector, but could also be adapted for other manufacturing sectors in Mexico.

Employers should:

Adopt An FOA Policy: Adopt a policy expressing your commitment to the right of all workers employed by your company to freedom of association (FOA) and collective bargaining, and effectively communicate that policy to all workers, including new employees. (See page 3)

Federal Labour Law: *Article 357 guarantees the right of workers to constitute organizations as they see fit, without previous authorization, or to affiliate to them, as long as they respect the statues of such organizations. Article 387 obligates employers to negotiate a collective bargaining agreement when members of a union at their workplace request it.*

International Standards: *ILO Convention 98, ratified by Mexico in 2018, enshrines the right of workers to collective bargaining with their employer on the terms and conditions of their employment.*

Refrain from Signing a Protection Contract: Where there is currently no union in the factory, do not sign a "protection contract" (a simulated collective bargaining agreement (CBA) signed without the knowledge and/or consent of the workers) with an unrepresentative union or lawyer.

Federal Labour Law: *Article 133, IV prohibits employers or their representatives forcing workers by coercion or by any other means to join a union or to withdraw from the union to which they are affiliated. Articles 390 BIS and 390 TER state that for the registration of an initial collective bargaining agreement or revision to the agreement, the union must first obtain the Certificate of Representativeness from the Federal Centre for Conciliation and Labour Registration, and the Centre will verify that the content is approved by the majority of workers covered by the agreement, through a personal, free and secret ballot vote.*

Be Transparent about the Union: Where there is a union, inform all workers, including new employees at the time of their hiring, of the name of the union, the federation to which it is affiliated, and the names of the union representatives, and how to contact them.

Federal Labour Law: *While there are no specific requirements in the LFT for employers to provide workers information on the union that holds title to the CBA, there are new requirements for the union to be transparent regarding its statutes.*

Ensure Workers Receive the CBA: Where there is a signed collective bargaining agreement, ensure that all workers, including new employees at the time of their hiring, receive a copy of that agreement, as well as the date of its signing and any revisions made to the agreement.

***Federal Labour Law**: Article 132 XXX of the revised labour law states that the employer must provide their workers, at no cost, a printed copy of the initial collective bargaining agreement or a revised agreement within 15 days of its deposit with the Federal Centre of Conciliation and Labour Registration, and that workers should sign receipt of this copy. Regarding the consultation with the workers as to whether they support the content of the negotiated collective bargaining agreement, Article 390 TER II states that the union must provide workers a printed or electronic copy of the initial or revised collective bargaining agreement to be consulted in a timely manner and prior to the vote on the content of the CBA.*

Eliminate the Exclusion Clause: Where there is an illegal "exclusion clause" in the collective bargaining agreement (requiring the dismissal of workers expelled from or who voluntarily resign from the union), ensure that the clause is eliminated from the agreement at the earliest opportunity, and that no other clause is adopted subsequently that has the same effect.

***Federal Labour Law:** Article 391 X prohibits the inclusion of an exclusion clause for dismissal in a collective bargaining agreement. This means that contracts may no longer specify that workers can be fired for having been expelled from the union or for having renounced their union membership. Article 133 IV prohibits forcing workers by coercion or by any other means to join a union or to withdraw from the union to which they are affiliated.*

Be Transparent about other Agreements: Inform the workers of any other agreements between the employer and the union on the terms and conditions of their employment.

***Federal Labour Law:** Although the LFT does not explicitly require employers to inform workers of any other agreement negotiated with the union, Article 424 IV establishes the right of workers to file a complaint regarding legal omissions or violations in such agreements or in the workplace rules.*

Provide Prior Notice of Negotiations: Give workers prior notice of negotiations of the first CBA, revisions to the CBA, or any other agreement between the union and employer on the terms and conditions of their employment.

Federal Labour Law: *Although the LFT does not obligate the employer to provide prior notice of negotiations, Article 390 TER II of the reformed law does require the union to provide workers the text of the initial CBA and a revised CBA prior to the vote by the workers to approve it before it is registered.*

Ensure Non-Discrimination: Do not dismiss, blacklist or otherwise penalize or discriminate against any worker in hirings, promotions, demotions or transfers for his/her present or past union activities or for ceasing to be a member of the union holding title to the CBA and/or for attempting to form or join another worker organization.

Federal Labour Law: *Although the LFT does not speak explicitly about anti-union discrimination, Article 357 prohibits interference in organizations of workers or employers by one party in the affairs of the other, directly or by their representatives, in their formation, functioning or administration.*

Remain Neutral: Where there is more than one union or union in formation in the workplace, remain neutral and refrain from doing anything that would place one organization at an advantage or disadvantage in relation to the other(s), including in recuentos between two or more unions for title to the CBA, and do nothing to delay, influence or prejudice the results of such recuentos.

Federal Labour Law: *As noted above, Article 357 prohibits acts of interference by employers or their representatives in the affairs of a union, including its formation, function or administration. Acts of interference are considered those actions and measures that tend to encourage the constitution of workers' organizations dominated by an employer or employer's association, or that support in any form worker organizations with the intent to subject them to control. Articles 397-F outlines procedural rules for union representation elections (recuentos) by personal, free, direct and secret ballot vote, and Article 397-G notes that penalties may be assessed against employers for actions favouring one union over another in such votes.*

Ensure non-interference: Do not interfere in the internal affairs of any union, for instance through bribes, inducements or other means to encourage workers to renounce their union affiliation, or use financial or other means to place a union under the control of your company.

Federal Labour Law: *Article 133 IV states that it is prohibited to force workers by coercion or any other means to join or withdraw from the union or group to which they belong, or to vote for a certain slate, or any other act or omission that violates their right to decide who should represent them in collective bargaining. Also see Article 357 above.*

Constitute Mixed Commissions: Ensure that all legally mandated mixed (worker/management) commissions are properly constituted and functioning effectively.

Federal Labour Law: *Various sections of the LFT require the formation and establish the mandate of mixed commissions, including Article 153 E on the mixed commission for productivity, training and education; Article 509 on the mixed commission for health and safety; Article 987 on the mixed commission for profit sharing; and Article 424 I on the mixed commission for workplace rules.*

Employer FOA Policy: Key Elements and Model Policy

An FOA Policy should include:

- A commitment to the principle of freedom of association and the right to bargain collectively, as expressed in ILO Conventions 87 and 98 and the Mexican Constitution and Federal Labour Law.
- A clearly expressed commitment to the right of all workers employed by the company to join or form a union or other worker organization of their free choice.
- A commitment to transparency so that all workers employed by the company have sufficient information to understand and exercise their rights.
- A commitment to refrain from and not tolerate any acts of discrimination, intimidation, reprisal or threats of reprisal against workers for exercising their associational and collective bargaining rights.
- A commitment to respect the right of worker representatives to freely carry out their legitimate union functions.
- A commitment to remain neutral and to refrain from any acts that favour one union over another in cases where there is more than one union or union in formation in the factory.

Model Supplier FOA Policy

[Name of Company] supports the right of workers, under ILO Conventions 87 and 98 and the Mexican Constitution and Federal Labour Law, to freedom of association and collective bargaining. We respect the right of all workers employed by our company without distinction to join or form a union or other worker organization of their free choice and to bargain collectively, and we will ensure that they are provided sufficient information to understand and freely exercise their associational and collective bargaining rights. [Name of company] does not practice or tolerate threats, intimidation, reprisals or discrimination of any kind against workers or worker representatives because of their past or present union membership, sympathies or activities. We respect the right of union representatives to freely conduct their legitimate union activities. If there is more than one union established or in the process of formation in one of our workplaces, our company and management personnel will remain neutral and will not promote or favour one union over another.

The Americas Group is a multi-stakeholder forum composed of 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. Its Mexico Committee includes adidas, C&A, Colosseum Athletics, Fanatics, Fruit of the Loom, Gildan Activewear, Levi Strauss & Company, New Balance, Nike, Patagonia, PUMA, PVH Corporation, VF Corporation, IndustriALL Mexico, the Fair Labor Association (FLA), and the Maquila Solidarity Network (RSM).