# EMPLOYER OBLIGATIONS AFTER A CBA HAS BEEN TERMINATED

## FACT SHEET 6

Mexico's 2019 labor justice reform not only guaranteed workers the right to participate in personal, free, direct and secret ballot votes on initial collective bargaining agreements (CBAs) and revisions to those CBAs, but also established a one-time-only voting process to legitimize all existing CBAs that were valid as of May 2019, which was completed on July 31, 2023. If workers voted "no" or the union failed to hold a legitimation vote, the CBA was terminated. However, the employer is legally obligated to continue to respect the rights and provide the wages and benefits that were provided for in a terminated agreement that are superior to what is required by law.

According to the Secretariat of Labor and Social Welfare (STPS), the purpose of the CBA legitimation process was to eliminate simulated CBAs, which are known as "protection contracts" in Mexico, and verify that workers know and approve the content of their collective bargaining agreements.[1] The votes, which were completed within the first four years of the reform, were organized by the union that held title to the CBA, and overseen by the labor authorities or a notary public.

**Results of CBA Legitimation Process:**

- More than 100,000 CBAs terminated[2]
- 30,536 CBAs legitimated
- 663 CBAs voted down

In the post-CBA legitimation period, workers continue to have the right to form or join a union of their free choice, or not to join a union, and employers have a responsibility to respect that right and not discriminate against workers for their union membership, activities or sympathies.

[1] Legitimación de Contratos Colectivos de Trabajo: La llave de acceso al nuevo modelo laboral, feb 2021: gob.mx/cms/uploads/attachment/file/616210/LEGITIMACION_DE_CONTRATOS_COLECTIVOS_110221-1.pdf.

[2] The majority of these CBAs were terminated because no vote was held.

In workplaces where the CBA was terminated, the union that held title to that agreement does not necessarily disappear. If and when it continues to have affiliates employed in that workplace, it has the right to represent them in discussions with the employer.

However, to gain the right to negotiate a new CBA, that union or another union must first receive a Certificate of Representativeness from the Federal Center for Conciliation and Labor Registration (Federal Center) confirming that it has the support of at least 30% of eligible workers in the facility. If a union has obtained a Certificate of Representativeness, the employer is obligated to negotiate with that union for a new collective bargaining agreement and revisions to that agreement.

Below are obligations and good practice expectations of employers after a CBA has been terminated.

## Where workers voted against the existing CBA in a legitimation vote, or no vote was held:

### Be transparent about the terminated CBA and continuation of benefits.

If the existing CBA has been terminated in a legitimation vote or because the vote was not held, inform the workers of that situation, and continue to respect the rights and provide the wages and benefits in the terminated CBA that are superior to what is required by law.

> **Federal Labor Law:** Although the LFT does not explicitly require employers to inform workers of termination of the CBA, Transitory Article 11 establishes that benefits and working conditions provided for in any terminated collective bargaining agreement, which are superior to those established in this Law, must continue to be provided by the employer.

## Where the CBA was terminated, but the union continues to have affiliates in the workplace:

### Allow union representatives to carry out their legitimate worker representation functions.

When a union has affiliates in the workplace, allow the union's worker representatives access to the workplace, their affiliates and workplace facilities needed in order to carry out their legitimate worker representation functions, such as private meeting spaces and/or offices, access to office equipment, and areas to post notices and communications, without disrupting the production process. Good practice is to negotiate a written agreement with the union that spells out the terms and conditions of access to the workplace and its facilities.

> **International standard:** Although the LFT does not address union representatives' access to the workplace or facilities in the workplace, ILO's Convention 135 and Recommendation 143 include the right of union representatives to have access to the workplace and workers to effectively represent them.

## Do not sign a CBA with any union that does not hold a Certificate of Representativeness.

### Refrain from signing a protection contract.

Whether or not there is a union with affiliates in the workplace, do not sign a "protection contract" (a simulated collective bargaining agreement signed without the knowledge and/or consent of the workers) with that union or another union that has not yet received a Certificate of Representativeness from the Federal Center confirming that it has the support of at least 30% of eligible workers in the workplace.

> **Federal Labor Law:** *Article 133, IV* prohibits employers or their representatives from obligating or inducing 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, the union must first obtain the Certificate of Representativeness from the Federal Center, and the Center will verify that the provisions of the agreement are approved by the majority of workers covered by it, through a personal, free, direct and secret-ballot vote.

## Where there is more than one union or union in formation in the workplace:

### Remain neutral.

Where there is more than one union or union in formation in the workplace, remain neutral and refrain from making any statement or taking any action that would place one organization at an advantage or disadvantage in relation to the other(s). This includes during union representation elections between two or more unions for title to the CBA, in which case, do nothing to delay, influence or prejudice the results of such elections.

Allow representatives of the unions equal access to the workplace and to facilities necessary to carry out their worker representation functions, such as private meeting spaces and/or offices and equipment, and areas to post notices and communications. Respect and do not attempt to influence workers' decisions regarding the cessation of deduction of union dues.

> **Federal Labor Law:** *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.
>
> Article 897-F outlines procedural rules for union representation elections (*recuentos*) by personal, free, direct and secret-ballot vote, and Article 897-G notes that penalties may be assessed against employers for actions favoring 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 Labor Law:** *Article 133 IV* prohibits employers and their representatives from obligating 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, as well as prohibiting any other act or omission that violates their right to decide who should represent them in collective bargaining (also see Article 357 above).

## Where a union has received a Certificate of Representativeness confirming it has the support of at least 30% of the eligible workers in the workplace:

### Negotiate in good faith.

When a union has received a Certificate of Representativeness from the Federal Center, confirming it has the support of at least 30% of eligible workers in the workplace, negotiate in good faith with that union for an initial CBA, and every two years for revisions to the CBA.

> **Federal Labor Law:** *Article 387* establishes the obligation to negotiate a CBA when requested by a union. Article 390 requires the union to obtain a Certificate of Representativeness from the Federal Center in order to negotiate, sign and register a CBA.

### Do not include an exclusion clause in the CBA.

When negotiating a CBA or revisions to the CBA, do not include an illegal "exclusion clause" requiring dismissal of workers who are expelled from or who voluntarily resign from the union. Where there is an exclusion clause in an existing CBA, 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 Labor 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 employers from obligating workers, by coercion or by any other means, to join a union or to withdraw from the union to which they are affiliated.

### Ensure workers receive the CBA.

Where there is a signed CBA that has been registered with the Federal Center, ensure that all workers, including new employees at the time of their hiring, receive a printed copy of that agreement, as well as the date of its signing and any negotiated revisions made to the agreement.

> **Federal Labor Law:** ***Article 132 XXX*** states that the employer must provide their workers, at no cost, a printed copy of the initial collective bargaining agreement or negotiated revisions to the CBA within 15 days of its deposit with the Federal Center,[3] 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 CBA or negotiated revisions to the CBA to be consulted in a timely manner and prior to the vote on the content of the CBA. Federal Center guidelines further state that CBAs should be provided by the union to workers at least five days prior to the vote on the content of the CBA.

[3] Articles 132 XXX and 390 TER II are ambiguous about whether the employer and union must provide workers copies of the revised CBA or the negotiated revisions to the CBA. However, the Federal Center has interpreted those Articles as meaning the revisions to the CBA.

*This fact sheet is part of the MSN's Resource Kit on Freedom of Association in Mexico available at: maquilasolidarity.org/en/resources-foa-mexico.*