



WORKERS' VOTING RIGHTS AND EMPLOYER OBLIGATIONS

FACT SHEET 7

The May 2019 reforms to Mexico's Federal Labor Law (LFT) institutionalized a number of new voting rights for workers, as well as obligations for employers. Below is a brief description of the various new voting rights of workers and responsibilities of employers.

1. Votes on an Initial Collective Bargaining Agreement (CBA)
2. Votes on Negotiated Revisions to the CBA
3. Votes on Union Leaders and Revisions of Union By-laws
4. Union Representation Elections

While unions and the labor authorities are responsible for organizing and overseeing these votes, employers must help facilitate voting and not interfere in the voting process.

In August 2022, the Federal Center for Conciliation and Labor Registration (Federal Center) published detailed guidelines on union democracy under the labor reform, and while these guidelines primarily address the rights of workers and rights and obligations of unions that represent them, they also include guidelines for employers regarding worker votes.¹

1. Votes on an Initial CBA

Prior to negotiating an initial collective bargaining agreement (CBA) with an employer, a union must now provide evidence to the Federal Center that it has the support of at least 30% of the workers who will be covered by the agreement in order to receive a Certificate of Representativeness (*Constancia de Representatividad*), which gives that union the exclusive right to negotiate a CBA with the employer. Once agreement is reached between the union and employer on an initial CBA, it must be subjected to a secret-ballot vote of the workers that will be covered by the agreement.

¹ Federal Center, General Guidelines for Procedures of Union Democracy (*Lineamientos Generales para los Procedimientos de Democracia Sindical*): centrolaboral.gob.mx/CFCL/Idemocracia_sindical.pdf. Active CBAs can be accessed on the Federal Center's Repository of Information: repositorio.centrolaboral.gob.mx.

Employer Obligations:

While it is the union's responsibility to organize the vote on the initial CBA and to provide workers a printed or electronic copy of the proposed agreement at least five days prior to the vote, the LFT also requires the employer to provide the workers a printed copy of the final agreement within 15 days of its deposit with the Federal Center.

The employer should allow the union to post notice of the vote, and allow the union to post notice of its outcome, in prominent and visible locations in the workplace. If the vote is held in the workplace, the employer may not intervene and should also ensure that the vote is held in a safe, neutral and accessible location.

If the labor authorities send observers to monitor the vote, the employer should provide them access to the workplace and fully cooperate with the monitoring process. If the labor authorities identify irregularities in the voting process, or workers file a complaint alleging irregularities have taken place before, during or after the vote, the employer should fully cooperate with any investigation and/or remediation plan determined by the labor authorities.

Beyond these responsibilities, the employer should refrain from making any statements or taking any actions to influence how workers vote or to discourage them from voting.

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

Rights of Workers:

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

2. Votes on Negotiated Revisions to the CBA

Under the LFT, employers and unions are required to negotiate revisions to the CBA every two years and revisions to the salary scale every year. Pursuant to the 2019 labor reform, revisions negotiated every two years must be approved by workers in a personal, free, direct and secret-ballot vote. However, there are some contradictions in the law as to whether a vote must also be held on annual revisions to the salary scale, which will likely be resolved in future court cases.

Employer Obligations:

As with an initial CBA, it is the union's responsibility to organize votes on revisions to the CBA and to provide workers a printed or electronic copy of the revised provisions to the CBA prior to

the vote. The LFT also requires the employer to provide workers a printed copy of the negotiated revisions to the CBA within 15 days of its deposit with the Federal Center.²

The employer should allow the union to post prior notice of the vote, and allow the union to post notice of its outcome, in prominent and visible locations in the workplace. If the vote is held in the workplace, the employer may not intervene and should also ensure that the vote is held in a safe, neutral and accessible location. The employer should refrain from making any statements or taking any actions to influence how workers vote or to discourage them from voting. If the labor authorities send observers to monitor the vote, the employer should provide them access to the workplace and fully cooperate with the monitoring process.

If the labor authorities identify irregularities in the voting process, or workers file a complaint alleging irregularities have taken place before, during or after the vote, the employer should fully cooperate with any investigation and/or remediation plan determined by the labor authorities.

If the employer is the party that requests negotiations for revisions to the CBA, they should comply with the legal notice requirements. Beyond these responsibilities, the employer should refrain from making any statements or taking any actions to influence what proposals workers put forward to their union or how they vote on negotiated revisions to the CBA.

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

Rights of Workers:

Workers have the right to receive a printed or electronic copy of the revised provisions of the CBA from the union five days prior to the vote, to participate in a personal, free, direct and secret-ballot vote, to receive a printed copy of the approved version of the revised provisions from the employer within 15 days of its deposit with the Federal Center, and to file complaints with the labor authorities if there are any irregularities in the process.

3. Votes on Union Leaders and Revisions of Union Bylaws

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

² 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.

Employer Obligations:

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

If the labor authorities send observers to monitor the vote and the vote is held in the workplace, the employer should provide them access to the workplace and fully cooperate with the monitoring process, as well as with any investigation and/or remediation plan by the labor authorities in response to the monitors' findings or a worker complaint.

Rights of Workers:

Union members have the right to elect their leaders in personal, free, direct and secret-ballot votes, and to file complaints with the labor authorities if there are any irregularities in the process by the union and/or employer. A union or 30% of the union's members can request that the Federal Center verify the election of union leaders.

4. Union Representation Elections

Union representation elections are votes to determine which of two or more unions will hold title to the CBA and the right to negotiate any revisions to that agreement. In the past, such elections were often not by secret ballot – workers had to verbally state which union they supported in front of management personnel, union leaders and observers.

Rights of Workers and Obligations of Employers:

The 2019 labor reform clarified that union representation elections must be held by secret-ballot vote and that employers and unions are prohibited from using threats, intimidation or inducements to influence how workers vote or to discourage them from voting in such elections.

The employer also has a responsibility to post prior notice and the results of the vote in the workplace and to cooperate with the labor authority that oversees the vote and any authorized external observers of the vote.

The union that wins a union representation election will be granted a Certificate of Representativeness from the Federal Center giving it the authority to negotiate future 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.