

Labor Compliance under the USMCA. The breach of labor obligations in Mexico can result in sanctions

Under the United States-Mexico-Canada Agreement (hereinafter the USMCA), it is possible for Mexican manufacturing or services companies that deny their workers certain collective rights to be sanctioned. The sanctions may include the elimination of the preferential tariff treatment on the merchandise they export, fines and even the denial of access of the merchandise to such market in the case of recurrence.

The collective rights of the workers protected under the USMCA and whose denial by employers could give rise to sanctions are: **(i)** the freedom of association and **(ii)** the effective recognition of the right to collective bargaining. In this regard, the Mexican companies that could be audited are the so-called “*Covered Facilities*”, provided they form part of a “*Priority Sector*”. Under the USMCA a “*Covered Facility*” is a workplace in Mexican territory that:

- Produces goods or supplies services traded between the Parties (*between Mexico and the United States or between Mexico and Canada*) or has an investment in the territory of the Party that failed to comply with this obligation; or
- Produces goods or supplies services that competes in the territory of a Party with a good or a service of another Party.

“*Priority Sector*” is considered the area of economic activity that produces manufactured goods, supply services or has an investment in the territory of a Party related to, among other things, aerospace products and components, autos and auto parts, cosmetic products, industrial baked goods, steel, aluminum, glass, pottery, plastic, forgings and cement, as well as those that involve mining.

The imposition of sanctions will always result from a labor dispute resolution mechanism called “Facility-Specific Rapid Response Labor Mechanism” through which the Mexican companies may be audited to determine the possible existence of a denial of collective rights.

As a result of the above, we recommend that all the workplaces in the priority sectors self-evaluate to verify their compliance with the obligations referred to here and make any adjustments that may be necessary such as: **(i)** legitimize their collective bargaining agreement; **(ii)** verify the democratization of the bylaws of their union; **(iii)** eliminate the clauses of entry or exclusion by separation of the union in their collective bargaining agreements; and **(iv)** eliminate any practice that encourages the involvement of the company in union matters.

Please let us know if you need any additional information or support in the self-evaluation to verify compliance with these obligations.

To obtain additional information contact our experts:

Rodolfo Trampe, Partner:

+52 (55) 5258 1054 | rtrampe@vwys.com.mx

Luis Miguel Jimenez, Partner:

+52 (55) 5258 1058 | lmjimenez@vwys.com.mx

Alix Trimmer, Associate:

+52 (55) 5258 1054 | atrimmer@vwys.com.mx

Alejandro Pérez, Associate:

+52 (55) 5258 1054 | alopez@vwys.com.mx

VON WOBESER Y SIERRA, S.C.

Mexico City, September 24, 2020.

SINCERELY

VON WOBESER

VON WOBESER Y SIERRA, S.C.

Paseo de los Tamarindos 60
05120 Mexico City
+52 (55) 5258 1000
vonwobeser.com