



USMCA: Labor Provisions

The U.S.-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020, replacing the North American Free Trade Agreement (NAFTA). USMCA establishes new and updated provisions on the protection of worker rights and enforcement of labor commitments. Congress approved implementing legislation for USMCA (H.R. 5430) on December 19, 2019. President Trump signed the legislation into law on January 29, 2020 (P.L. 116-113).

The protection of worker rights and the enforceability of labor provisions were a major congressional concern throughout the USMCA negotiations and remained an issue after the three countries concluded the agreement in September 2018. In response, the U.S. Trade Representative (USTR) and some Members of the House of Representatives negotiated changes to USMCA; most of the changes modified the labor provisions. USTR then negotiated the proposed amendments with Canada and Mexico. USMCA's new labor provisions, compared to recent U.S. free trade agreements (FTAs), may be considered as a template for future FTAs.

Historically, U.S. labor advocates have expressed concern over FTAs with developing countries, due to those countries' relatively lower wages and labor standards, and have sought stronger labor provisions in U.S. FTAs. Proponents of FTAs such as NAFTA argue that they help improve standards, build capacity to support worker rights in developing countries, and enhance economic development and growth. In the long run, FTAs help reallocate resources to more efficient industries, support higher-paying U.S. jobs in some sectors, and, according to most economists, have a net positive effect on the U.S. economy. At the same time, trade liberalization can have adjustment costs and job losses in other industries and regions of the country. The U.S. International Trade Commission estimates that, if implemented, the collective bargaining commitments made by Mexico in USMCA would increase Mexican union wages and help reduce wage disparity.

NAFTA

NAFTA's labor provisions were in a side agreement called the North American Agreement on Labor Cooperation (NAALC), which contained 11 "guiding principles" pertaining to worker rights and provisions on technical assistance, capacity building, and separate dispute procedures. A goal of the agreement was to resolve issues in a cooperative manner through ministerial consultations in numerous areas, including freedom of association and collective bargaining. Full dispute resolution procedures applied to a country's "persistent pattern of failure" in trade-related cases to enforce its own laws regarding child labor, minimum wage, and occupational safety and health.

USMCA Provisions

USMCA includes components of more recent U.S. FTAs that strengthen NAFTA provisions and provide recourse to the same dispute settlement mechanisms as other parts of the agreement. It requires parties to:

- Adopt and maintain in statutes and regulation, and practices, worker rights as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, in addition to acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- Not waive or otherwise derogate from its statutes or regulations.
- Not fail to effectively enforce labor laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between parties.
- Promote compliance with labor laws through appropriate government action, such as appointing and training inspectors or monitoring compliance and investigating suspected violations.

For the first time in a U.S. FTA, the USMCA prohibits imports of goods made by forced labor, and adds new commitments related to violence against workers, migrant worker protections, and workplace discrimination. It maintains standard U.S. FTA language that each party retains the right to "exercise reasonable enforcement discretion and to make bona fide decisions" on the allocation of enforcement resources. Additionally, it specifies that the labor chapter shall not be construed to empower another party to undertake labor law enforcement in the territory of another party.

USMCA Protocol of Amendment: Key Labor Changes

Some Members of Congress criticized the original text of the USMCA chapters on labor and dispute settlement (DS) and negotiated with the Administration to amend the agreement. Key changes include the following:

- Prevention of panel blocking in dispute settlement. Ensures the formation of a panel in dispute cases where a party refuses to participate in the selection of panelists.
 - "In a Manner Affecting Trade and Investment." Shifts the burden of proof by stating that an alleged violation affects trade and investment, unless otherwise demonstrated.
 - Rapid Response Mechanism. Adds a new rapid response mechanism to provide for an independent panel investigation of denial of certain labor rights at "covered facilities," as opposed to a government inspection.
 - Mexico's Labor Reform Monitoring. USMCA implementing legislation creates a new interagency committee, labor attachés, and reporting requirements to Congress on Mexico's implementation of labor reforms.
 - New or amended provisions on Rules of Procedure for DS, forced labor, and violence against workers.
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Mexican Labor Reforms

After several years of domestic debate and constitutional reforms in 2017, on May 1, 2019, Mexican President López Obrador signed into law a labor reform bill aimed at enhancing Mexican worker rights by ensuring that workers can vote for union representatives by secret ballot, establishing the right to join unions of choice, and creating an independent labor court to resolve disputes between union workers and employers and register contracts, among other measures.

USMCA Annex 23-A in the labor chapter commits Mexico to enact new labor laws, such as those in the May 2019 reforms. Under these reforms, Mexico commits to:

- Eliminate all forms of forced or compulsory labor.
- Protect the right of workers to organize, form, and join the union of their choice.
- Prohibit employer interference in union activities, discrimination, or coercion against workers.
- Provide for the exercise of a personal, free, and secret vote of workers for union elections and agreements.
- Establish and maintain independent and impartial bodies to register union elections and resolve disputes relating to collective bargaining agreements.
- Establish independent labor courts.

Then-USTR Robert Lighthizer described Mexico's reforms as a win for labor advocates, claiming that the new laws "will greatly improve Mexico's system of labor justice and are exactly what labor leaders in the United States and Mexico have sought for decades." While Mexico has enacted these labor law reforms, and undertook constitutional reforms in the past, policymakers remain concerned about Mexico's ability to fully implement and enforce its laws.

Mexico's Federal Labor Law: Key Articles

- **Article 47.2:** Protects workers from any form of violence or forced labor.
 - **Article 133:** Prohibits any form of retaliation or harassment by the government, union leadership, or companies of workers exercising their rights.
 - **Article 386:** Protects workers' rights to vote for independent unions through a secret ballot process, allowing workers to form their own unions and pick their own representatives.
 - **Article 387:** Imposes legal obligations on firms to recognize workers' right to strike.
 - **Article 604:** Replaces existing Conciliation and Arbitration Labor Boards that dealt with employment law altercations with independent labor courts to resolve disputes and register contracts.
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Mexico's Implementation Plan

Mexico has outlined an ambitious roadmap with annual benchmarks to implement reforms over four years. Mexican officials contend that replacing the conciliation and arbitration board with independent labor tribunals and courts run by the judicial branch over the next three years will ensure effective enforcement. After Mexico's president submitted budget proposals to Mexico's Congress on September 1, 2019, critics questioned whether the 2020 budget and plan would be sufficient. Subsequently, some Members of Congress proposed adding a labor inspection

system within USMCA to ensure stronger enforcement. The rapid response mechanism in the amended USMCA thus provides for an independent panel investigation at "covered facilities" for the suspected denial of the right of free association and collective bargaining, with the potential for penalties and blocking of imports from the entities.

To monitor and assess Mexico's labor reform efforts, the USMCA implementing legislation established an Independent Mexico Labor Expert Board that calls for the appointment of 12 U.S. trade and labor policy experts. On December 15, 2020, the board issued its first interim report to Congress in which it acknowledges that Mexico has made significant progress in implementing the labor reform measures, especially when taking into account the impact of the Coronavirus Disease 2019 (COVID-19) pandemic. However, the report also acknowledges that many of the changes promised to improve the lives of workers and ensure freedom of association and collective bargaining remain to be implemented. The board offered recommendations on how the United States can help bolster worker rights in Mexico.

Issues for Congress

The debate over USMCA labor provisions revisited similar issues raised during other FTA debates. Some policymakers contend that FTAs help raise labor standards and wages in lower income countries; others are concerned about worker rights protection. Numerous Members welcomed the amended agreement, which, they argue, includes stronger and more enforceable labor provisions. While major U.S. labor unions endorsed the revised agreement, other stakeholders question how the new enforcement mechanism will operate in practice. Some Members, concerned about Mexico's ability to carry out its obligations, view the U.S. commitment to capacity building as key to strengthening enforcement. In moving forward, Congress may consider:

- **Mexico's enforcement ability and labor reform:** Reforms in Mexico have potential to be transformative, but face challenges. Do Mexico's recent actions demonstrate enough political will to overcome internal challenges? How can the United States assist?
- **Resources:** Some stakeholders point to limited capacity in Mexico, especially at the subnational level, as an issue. USMCA implementing legislation designates funding for the Department of Labor to support reform efforts in Mexico and worker-focused capacity building. To what extent should the United States assist Mexico with resources to implement the new labor standards?
- **Dispute settlement:** Amendments to the USMCA's original DS procedures prevent a disputing party from blocking formation of a panel. How effective will USMCA's DS provisions be in resolving labor disputes?
- **Rapid Response Mechanism:** This new mechanism provides for independent panel investigations at covered facilities, and stakeholders have indicated plans to file complaints. How can USMCA parties ensure the mechanism's effectiveness?

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