



USMCA: Labor Provisions

The U.S.-Mexico-Canada Agreement (USMCA) entered into force on July 1, 2020, replacing the 1994 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 for inclusion in 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 more enforceable labor provisions in U.S. FTAs. Proponents of FTAs such as NAFTA and USMCA 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 estimated that, if fully implemented, Mexico's USMCA labor commitments 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 mechanism 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 the following key changes to the initial agreement:

- **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 of labor obligations 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, on May 1, 2019, Mexico's president 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. The reform also mandates the creation of Conciliation and Labor Registration Centers, which are responsible for carrying out conciliation services in labor conflicts and the registration of collective bargaining agreements. The new law will fully enter into effect by May 2023.

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

- 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 "are exactly what labor leaders in the United States and Mexico have sought for decades." Some policymakers remain concerned about Mexico's ability and commitment 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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Independent Labor Board Monitoring

To monitor and assess Mexico's labor reform efforts, USMCA implementing legislation established an Independent Mexico Labor Expert Board of 12 U.S. trade and labor policy experts. The Board has issued two reports to Congress and the Interagency Labor Committee, one on December 15, 2020 and the second on July 7, 2021. In both reports, the Board acknowledged that Mexico had made significant progress in implementing the labor reform measures, especially when taking into account the impact of the Coronavirus Disease 2019 (COVID-19) pandemic, but that more changes remained to be implemented. The 2021

report includes recommendations on how the United States can help bolster worker rights in Mexico. However, it also includes a separate statement with dissenting views of some board members who, although they agree with the main report conclusions, state that the Board does not have the legal authority to make wide-ranging recommendations.

USMCA Implementation

Some U.S. policymakers and labor advocates raise a number of issues over implementation of USMCA labor provisions. The first USMCA labor petition was filed by Mexican migrant worker women and civil society organizations against the United States. Five others were filed by the United States against facilities in Mexico under USMCA's rapid-response mechanism. Remediation agreements were reached on all U.S. complaints, while the Mexican complaint appears to remain in the consultation stage. A new U.S. petition filed in January 2023 targets a facility in Mexico that was subject to a prior complaint.

USMCA implementing legislation included \$210 million to go to the Department of Labor's Bureau of International Labor Affairs (ILAB) for USMCA-implementation activities. Out of this amount, \$180 million would be used over four years for USMCA-related technical assistance projects and \$30 million over eight years for the capacity of ILAB to monitor USMCA compliance, including the necessary expenses of additional full-time employees for the Interagency Committee and labor attachés in Mexico.

Issues for Congress

The debate over USMCA labor provisions revisited similar issues raised during other FTA debates. While U.S. labor unions endorsed the final agreement, some question how the new dispute mechanism is operating in practice. Some Members, concerned about Mexico's ability to carry out its obligations, view U.S. commitment to capacity building as key to strengthening enforcement. Congress may consider

- **Mexico's enforcement ability and labor reform.** Reforms in Mexico have potential to be transformative, but face challenges. To what extent can the Mexican government overcome internal challenges?
- **Resources.** Some stakeholders point to limited capacity in Mexico as an issue for full implementation of USMCA labor provisions and reforms. To what extent should the United States continue to assist Mexico with resources to implement labor reforms? How effective are related U.S. technical assistance programs?
- **Dispute settlement.** Amendments to USMCA aimed to resolve key procedural shortcomings of DS. How effective are DS provisions in resolving labor disputes?
- **Rapid Response Mechanism.** Several complaints have been initiated and resolved under the new mechanism that provides for independent panel investigations at covered facilities. What are the lessons learned? How can USMCA parties ensure the mechanism's continued effectiveness? Is the mechanism a model for prospective U.S. trade deals?

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