

USMCA and Mexico's New Labor Law

May 22, 2019 (IN11123)

Related Author

- [M. Angeles Villarreal](#)
-

M. Angeles Villarreal, Specialist in International Trade and Finance (avillarreal@crs.loc.gov, 7-0321)

The 116th Congress faces policy issues related to labor under the proposed U.S.-Mexico-Canada Agreement (USMCA) (see CRS Report R44981, [NAFTA Renegotiation and the Proposed United States-Mexico-Canada Agreement \(USMCA\)](#)). On May 1, 2019, Mexican President Andrés Manuel López Obrador signed into law a labor reform bill aimed at enhancing Mexican worker rights by ensuring that workers can vote for their union representatives by secret ballot, establishing the right of workers to join the union of their choice and establishing independent labor courts to resolve disputes and register contracts, among other measures. [Critics of Mexico's current labor system](#) argue that the pre-reform laws enable corruption in that they allow employers to influence union elections and prevent workers from voting freely to elect union leaders. The reform bill passed the Mexican House of Representatives and Senate in April 2019. The labor legislation is a commitment under the proposed USMCA.

Labor Provisions in Proposed USMCA

The proposed USMCA would revise and strengthen labor provisions of the North American Free Trade Agreement (NAFTA) (see CRS In Focus IF10047, [North American Free Trade Agreement \(NAFTA\)](#)). NAFTA's labor provisions are in a side agreement containing 11 "guiding principles" pertaining to worker rights in matters affecting trade, technical assistance, capacity building provisions, and a separate dispute settlement arrangement, along with a labor cooperation mechanism. Dispute procedures within the side agreement apply to failure to enforce a country's laws regarding child labor, minimum wage, and occupational safety and health. Issues regarding freedom of association and the right to organize are limited to ministerial consultations.

USMCA includes components of more recent U.S. free trade agreements that strengthen labor provisions and provide the same dispute resolution mechanism as other parts of the agreement (see CRS In Focus IF10046, [Worker Rights Provisions in Free Trade Agreements \(FTAs\)](#)). It would require parties not only to enforce their own laws, but also to adopt and maintain specific laws related to the [ILO Declaration on Fundamental Principles and Rights at Work](#), including to:

- not waive or otherwise derogate from their statutes or regulations;
- not fail to effectively enforce labor laws through a sustained or recurring course of action or inaction (ongoing and consistent) 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.

USMCA would add new commitments related to violence against workers, migrant worker protections, and sex-based

discrimination. It includes language stating that each party would retain the right to exercise reasonable enforcement discretion and to make *bona fide* decisions with regard to the allocation of enforcement resources provided that the exercise of that discretion is not inconsistent with the labor obligations. It states that nothing in the labor chapter shall be construed to empower a party's authorities to undertake labor law enforcement activities in the territory of another party.

Labor advocates have called for additional obligations in USMCA to address concerns over certain labor practices and enforcement of the agreement. [Some lawmakers](#) have stated that Mexican labor reform and enforceable labor provisions in USMCA would be key factors in deciding whether to support the agreement. They call for further strengthening enforcement mechanisms, in particular, by reopening USMCA negotiations. [U.S. labor advocates](#) contend that Mexico will be unable to meet USMCA obligations.

[Proponents of trade agreements](#) such as NAFTA contend that free trade agreements help poorer countries build their capacity to support labor protections, improve labor standards in developing countries, enhance economic development and growth, and support higher-paying U.S. jobs, particularly in the high-tech and other services sectors. [Policymakers](#) supporting NAFTA and the proposed USMCA state that it would benefit the U.S. economy and add thousands of jobs to the U.S. labor market.

USMCA Requirement Regarding Mexican Labor Laws

Mexico agreed under USMCA to strengthen its labor laws to protect collective bargaining and its system for administering labor justice. [Annex 23-A in USMCA's Labor Chapter \(Chapter 23\)](#) commits Mexico to enacting specific legislative action in regard to its labor laws in order to avoid a delay in the agreement's possible entry into force. The agreement states that it is the "expectation" of the parties that Mexico would adopt such legislation before January 1, 2019. USMCA states that Mexico's law would have to establish effective recognition of the right to collective bargaining, establish independent and impartial bodies to register union activities and collective bargaining agreements, and establish independent Labor Courts for adjudication of labor disputes, in addition to other worker rights.

Mexico's Labor Legislation

Mexico's new labor law is expected to "effectively transform the labor system in Mexico," according to Mexico's Ambassador to the United States, Martha Bárcena. The Mexican government contends that the reforms would ensure enforcement of Mexican laws on worker rights protection and fulfill its USMCA commitments. These include:

- Establishing independent labor courts in Mexico to resolve disputes and register contracts to ensure worker representation in unions.
- Protecting workers' rights to vote for independent unions through a secret ballot process, allowing workers to form their own unions and pick their own representatives.
- Imposing legal obligations by firms to recognize workers' right to strike.
- Prohibiting any form of retaliation or harassment by the government, union leadership or companies of workers exercising their rights.
- Protecting workers from any form of violence or forced labor.

Mexican government officials contend that the new law will radically improve worker rights in Mexico, mainly because workers will have the right to freely vote for their own representatives and resolve disputes through independent labor courts. [USTR Lighthizer described Mexico's labor reforms](#) as a win for labor advocates in 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." [Labor advocates](#) contend that these changes are a step in the right direction, but remain concerned about enforcement and whether the Mexican government has sufficient resources to enforce the new law. [Some U.S. policymakers have proposed](#) a possible labor enforcement plan that could be included as a USMCA side agreement and would include measures to provide more effective tools to detect labor violations.