

Mexican Labor Laws differ from those in the US and are more heavily weighted towards protection of the employee. As an employer, contributing author and law professor Jaques Beaulne outlines how to protect your interests.

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Most foreigners who come and live in Mexico think they can hire and fire an employee “just like back home”. This line of thoughts can only bring situations that are not so pleasant and even situations of “legal extortion” in the short and long haul.

In Mexico one who hires a physical person must know the consequences of his or her act otherwise will be surprised by a “demanda” (lawsuit) in front of the appropriate labor authority.

First of all let us look at the hiring portion and then how one can protect himself from x-employees.

Hiring means exactly what it means everywhere in the world and this can be applied to hiring a physical person (great ape with large brain = human) or a moral person (one who can be called= Partnership, business, corporation).

When one hires a moral person one must have a contract to establish the duties and responsibilities of each parties.

When one hires a physical person one should do the same and be aware of other “things to do”. Actually replace the word “should” by “must”...

The “other things to do” are:

- A) Having the future employee present a job application form along with a good conduct letter which is emitted by the police authorities.
- B) Make sure the future employee has his “Seguro Social” (IMSS) number and card. In the event that he / she does not have said number do not hire.
- C) Register the new employee at IMSS.
- D) Have the employee sign a letter stating that he will pay the taxes on his income. In the event that the taxes are paid by the employer have the accountant keep a record of such payments.
- E) Have the accountant make a report called “Libro de Nominas” which is the record of payment of salary paid.
- F) Provide a letter stating the conditions of work: Type of job, responsibilities, duration of a day’s work etc., and have the new employee sign it and receive a copy.



Once the hiring is done:

- 1) Make the employee sign in and out (time record).
- 2) Make sure that vacation pay and Christmas bonus are paid and in the event that the "boss" is a business pay on time the 10% of the profits to be paid to an employee.
- 3) Have the employee sign for every payment made to him.
- 4) In the event that the employee does not do his job or respect the working hours: Present him with a letter stating the complaint and have him sign a copy that must be keep for 5 years.
- 5) In the event that the 8 hour working day must be extended, work on sunday or "dias festivos": Pay overtime as per the law.

Firing:

- 1) In the event that the employee must be fired one has to have a just cause. This "just cause" must be in writing with a witness attesting it.
- 2) Make sure the employee is removed from the IMSS records on the same day.
- 3) A full report must be filled at the appropriate labor board.



Employee not reporting to work:

In the event that the employee does not come to work without any explanations an employer must file a report to the appropriate labor authorities to protect himself.

More than five employees can be syndicated by one...this means that a "union shop" is created...

Now here is a legal trick:

Instead of hiring an "employee" one should hire a person for his professional services as an independent contractor...This can be done by having a proper contract that will establish this...

The above is an illustration of what one has to do and is not the complete picture but enough to know that it is not "just like back home"

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