

## COMPLIANCE WITH THE LABOUR CHAPTER OF THE T-MEC IN MEXICO, THROUGH THE AGILE TRANSMISSION OF INFORMATION ON FLEXIBLE WORK

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SUMMARY: I. *Introduction*. II. *Names and Origins of Flexible Work*. III. *Labour Participation in México, Benefits of Flexible Work*. IV. *Flexible Work in International Law (ILO and T-MEC) and its Application to Mexican Law*. V. *Compliance with T-MEC Regulations through Flexible Work*. VI. *Compliance with the Obligations of Awareness, Guarantees, Dialogue, Cooperation and Publicity through Flexible Work*. VII. *Compliance with the Annex on Representation of Workers in Collective Bargaining in México through Flexible Work*. VIII. *Conclusions*. IX. *Bibliography*.

### I. INTRODUCTION

All Free Trade Agreements (FTAs) pursue the same objective: to liberalize international trade between the signatory parties, in other words, to eliminate or at least reduce tariff and non-tariff barriers across borders so that goods and services circulate freely in import and/or export. Although this is the common objective of all the FTAs, each one has its own elements that differentiate them from each other.

These differences are found in some of the following elements: the signatory parties, the type and depth of the obligations are different, as well as the various themes that are reflected in its different chapters. The variability of these themes can be related to the search for respect for certain social values, such as the rights of workers.

Once the FTAs enter into force, the parties, this means, the signatory countries, undertake the task of making their best efforts to comply with

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them. Which means, manage to incorporate or apply them to their national legal systems. This exercise is also commonly known as: implementation of FTAs. Without a doubt, applying an International Agreement to a national legal system is extremely complex and in many cases its due to the different legislative legal systems.

In the case of the Trade Agreement between Mexico, the United States and Canada (T-MEC, or USMCA/CUSMA for its acronym in English and French respectively), it entered into force on July 1, 2020. The T-MEC replaces the North American Free Trade Agreement (NAFTA) containing the first binding chapter on labour law that Mexico has incorporated into its FTAs.

This chapter presents several examples of how hybrid or flexible work will facilitate compliance with the labour chapter in the process of implementing the T-MEC in Mexico.

## II. NAMES AND ORIGINS OF FLEXIBLE WORK

The origins of the hybrid work modality took place some decades ago. This modality has been given various names, such as teleworking, remote work, hybrid work, flexible work, etc. For the purposes of this manuscript, reference will be made to flexible work.

Over the last 50 years, the flexible work modality has been strengthened. Several moments in history have been triggers for this figure. For example, at the beginning of the 1970s, its origins lie within a great crisis, the oil crisis. At that time, the fuel shortage in Western countries with the US at the head, generated an energy rationing effect that forced some companies to start processes of relocation of their workers and work remotely in order to reduce the number of displacement in large cities and therefore the demand for oil at the national level.<sup>1</sup>

Technological development, globalization and the fight for gender equality are phenomena that greatly strengthened this work modality. However, the most drastic historical moment in this regard was caused by the COVID-19 pandemic. Where thanks to the existence of flexible work, society had tools to continue working.<sup>2</sup>

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<sup>1</sup> Estay-Niculcar, Christian A., *Teletrabajo y trabajo híbrido: gestión y productividad renovada*, Estay Consulting, 2021, available at: [https://www.researchgate.net/publication/351130892\\_Teletrabajo\\_y\\_Trabajo\\_Hibrido\\_Gestion\\_y\\_Productividad\\_Renovada](https://www.researchgate.net/publication/351130892_Teletrabajo_y_Trabajo_Hibrido_Gestion_y_Productividad_Renovada).

<sup>2</sup> Without failing to keep in mind that this type of work also revealed some existing gaps, such as economic or gender gaps.

For example, during the COVID-19 crisis in Switzerland the number of employees working online increased by 50 percent, from about 20 percent before the crisis. In addition, we must also take into account that this crisis will change the way we work and the way we interact with the world in the labour market.<sup>3</sup>

Therefore, it will be vital to determine how a standard that is considered satisfactory in terms of labour rights can be adopted with these new tools.

### III. LABOUR PARTICIPATION IN MEXICO, BENEFITS OF FLEXIBLE WORK

In order to measure which could be the opportunities to increase flexible work in the Mexican labour world, it is important to start from the analysis of its current employment status, consulting the related statistics. For example, in the fourth quarter of 2021, the labour participation rate in Mexico was 59.7%, which implied an increase of 0.23 percentage points compared to the previous quarter (59.4%). The unemployment rate was 3.66% (2.15 million people), which implied a decrease of 0.57 percentage points compared to the previous quarter (4.23%). The employed population in Mexico in the fourth quarter of 2021 was 56.6 million people, being 2.42% higher than the previous quarter (55.3 million people employed). Within the registry of employed persons in the fourth quarter of 2021, 60.6% were men and 39.4% were women.<sup>4</sup>

Thanks to the advantages of flexible work, employment can increase, as well as the participation of women and those groups that are in a certain degree of vulnerability. It has been overwhelmingly recognized that work will never go back to the way it was before the pandemic, because of flexible working is here to stay.

Although it is true that many of the occupations, and precisely those that have more workers, obviously do not enjoy the possibility of working remotely. For example, sales employees, dispatchers, store clerks (3.29 million people), merchants in establishments (2.9 million people) and support workers in agricultural activities (2.49 million people). However, it is possible to transition to hybrid work in some of these occupations. This could reduce

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<sup>3</sup> Valérie Berset Bircher, “The future of work summit 2022”, conference in Geneva Graduate Institute, April 26, 2022.

<sup>4</sup> Encuesta Nacional de Ocupación y Empleo (ENOE) 2021, available at: <https://www.inegi.org.mx/programas/enoe/15ymas/> (consulted on April 18, 2022).

the job vacancy rate in Mexico, since with flexible hours and without recurrent difficult geographic conditions, more accessibility to jobs is generated. In addition, many of the women who have not yet entered the world of work are due to the lack of opportunities to find a balance between rigid schedules and family life.

Also, another essential right for workers that can benefit from this transition is salary. The average monthly salary in Mexico in the fourth quarter of 2021 was \$4.89k MX, being \$39.2 MX lower than the previous quarter (\$4.93k MX). Hybrid work would cooperate in fulfilling the right to an acceptable salary, taking into account that companies would spend less on office maintenance services, basic services and worker's transportation. Just as workers would also be spared the travel time to their workplace, which in 2020 was an average of 34.7 minutes.<sup>5</sup>

#### IV. FLEXIBLE WORK IN INTERNATIONAL LAW (ILO AND T-MEC) AND ITS APPLICATION TO MEXICAN LAW

This standard can be found in the field of international treaties, specifically in the T-MEC. Its chapter 23 establishes what is related to labour rights in which the parties affirm their obligations as members of the International Labour Organization (ILO). These include those set out in the ILO Declaration on Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization (2008). In addition, they recognize the important role of workers' and employers' organizations in protecting internationally recognized labour rights and the goal of trading only goods produced in compliance with this chapter.

Within mentioned chapter its established that the labour rights that the parties will adopt and maintain in their laws and regulations, and in the practices, that derive from them, as established in the ILO Declaration on Rights at Work. These standards are presented below:

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labour;
- c) the effective abolition of child labour and, for the purposes of this Agreement, the prohibition of the worst forms of child labour, and

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<sup>5</sup> INEGI, Censo de Población y Vivienda 2020 (cuestionario ampliado), available at: <https://www.inegi.org.mx/programas/ccpv/2020/#Microdatos> (consulted on April 18, 2022).

d) the elimination of discrimination in employment and occupation...

In addition, each Party shall adopt and maintain laws, regulations and practices derived from them, that regulate acceptable working conditions with respect to minimum wages, hours of work, and occupational safety and health.

Within the framework of compliance (or implementation) of the T-MEC, in the midst of the COVID-19 pandemic, in order to support workers, the Mexican authorities, specifically the Senate of the Republic, approved modifications to the Federal Labour Law on teleworking.

When reforming article 311 of this law, the chapter XII BIS was added, so that workers had the following benefits:

- Companies must provide, install and maintain the work equipment used by their employees, for example, a computer, a printer, among others.
- The companies will have to assume a proportional part of the electricity, internet, telephone and electricity services, since these services are used more when they are at home.
- Companies have to pay the salary in a timely manner, not less than what a worker receives in person.
- Companies must also include in individual and collective contracts, the new working conditions of their workers. In case of not doing so, it may be subject to a fine of 21,170 to 217,200 pesos, in accordance with article 992 of the Federal Labour Law.<sup>6</sup>

It should be noted that legislation on hybrid or flexible work is not something completely new in other parts of the world. However, this reformulation of the Federal Labour Law had been unprecedented in our country.

Other examples of hybrid work regulations can be seen in the world, for example, in 2002 the European Framework Agreement on teleworking emerged, a generic starting point for collective bargaining, although previously some initiatives were already in force in several Member States at sector-level.<sup>7</sup> Another recent example of regulation of teleworking at the country level is Spain, where in the year 2020, the Remote Work Law (Royal

<sup>6</sup> Conducef, “¿Conoces el esquema de trabajo híbrido?”, *Revista Conducef*, 2021, available at: [https://revista.conducef.gob.mx/wp-content/uploads/2021/10/259\\_hibrido.pdf](https://revista.conducef.gob.mx/wp-content/uploads/2021/10/259_hibrido.pdf) (consulted on April 18, 2022).

<sup>7</sup> Masson Rodrigues, Rubem, *El trabajo en un mundo cambiante. El teletrabajo*, tesis, España, Universidad de la Laguna, 2005, available at: <https://riull.ull.es/xmlui/bitstream/>

Decree-Law 28/2020, of September 22, on remote work (“*Ley de Trabajo a Distancia [Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia]*”) comes into force, the which, for the first time, is dedicated to covering the needs of regulation for this work modality.<sup>8</sup>

## V. COMPLIANCE WITH T-MEC REGULATIONS THROUGH FLEXIBLE WORK

Flexible work will facilitate compliance with the section entitled regulations of the labour chapter of the T-MEC. In compatibility with existing obligations in the ILO, the T-MEC also establishes regulations for the non-repeal and application of labour laws. Specifically, it refers to provisions to combat forced or compulsory labour, violence against workers, equity for migrant workers, and the elimination of discrimination in the workplace.

Specifically, the Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing labour protections. In this way, hybrid work encourages the strengthening of labour protections in same sense of what was already established in the aforementioned Mexican regulation.

In addition, they undertake that each Party will promote compliance with its labour laws through appropriate government arrangements. With the legislation that came into force in Mexico on Teleworking, this means, flexible work, it is shown that the reality that occurred in the pandemic has been taken into account and in order to respect compliance with labour laws, the relative to teleworking in order to adapt to real needs.

Also, the Parties recognize the objective of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour in the T-MEC, as established in the ratified obligations of the ILO agreements.

The Parties recognize that workers and trade unions must be able to exercise their labour rights in an environment to be free from violence, threats and intimidation against workers. In this way, the reform to article 311 of the Federal Labour Act (*Ley Federal del Trabajo*) contributes to this environment by promoting the same payment to the worker in face-to-face and remote modes. This guarantee creates peace of mind and stability for workers who need to work remotely. This must be stated in the new individual and collec-

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handle/915/25689/El%20trabajo%20en%20un%20mundo%20cambiante%20El%20teletrabajo..pdf?sequence=1.

<sup>8</sup> *Idem*.

tive contracts, the reform of article 311 of the Federal Labour Act regarding teleworking. Undoubtedly, carrying out remote work reduces the possibilities of physical, psychological or economic violence against workers.

Also, the parties recognize the vulnerability of migrant workers with respect to labour protections and recognize the goal of eliminating discrimination in employment and occupation. With the modification of article 311 of the Mexican Federal Labour Act, it is specified that *companies have to pay the salary in a timely manner, not less than what a worker receives in person*. With this, the non-discrimination of workers is promoted, be it by gender, nationality or by any existing condition. It is undeniable that this type of work promotes the inclusion of women in the labour market by creating more accessibility for housewives or women with other occupations who wish to work remotely.

However, it is necessary to take into account the need to continue reconciling work life and the needs that arise when working from the family home. For example, in Spain, Royal Decree-Law 6/2019 (*Real Decreto-ley 6/2019*), of March 1, on urgent measures to guarantee equal treatment and opportunities between women and men in employment and occupation, was regulated in 2019, making the modification of article 34.8 of the Workers' Statute (*Estatuto de los Trabajadores*), establishing a right to reconcile work and family with flexible work methods, including teleworking formulas<sup>9</sup>.

As has been observed, what is regulated regarding hybrid work in Mexico provides a greater opportunity for the obligations that Mexico committed to in the T-MEC to be more easily fulfilled.

## VI. COMPLIANCE WITH THE OBLIGATIONS OF AWARENESS, GUARANTEES, DIALOGUE, COOPERATION AND PUBLICITY THROUGH FLEXIBLE WORK

In addition to the aforementioned obligations, there are also provisions that refer to Public awareness and due process, public communications, cooperation, cooperative labour dialogue, labour council, points of contact, public participation and labour consultations.

Within these articles it is important to highlight the obligation to promote public awareness of labour laws, including ensuring that information related to their labour laws and procedures for their application and compliance is publicly available. A transition to hybrid work would imply an approach of workers to the digital world, this could be seen as an opportunity

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<sup>9</sup> *Idem*.

for the Parties to publish their information related to labour laws and procedures using electronic medias.

All these conditions favour hybrid work, they would ensure compliance with labour rights in Mexico and the objective of trading only merchandise produced within the framework of this regulation would be achieved. Likewise, the importance of cooperation and social dialogue to ensure flexibility and accommodate all these new forms of work can be stressed. It should be noted that in order to generate changes, we need to have the social partners who generate dialogue and who are involved in the labour and political sectors.<sup>10</sup>

With the experience of the COVID-19 health crisis, it has been shown that digital contacts are improving and are fast. However, there is still a great need to continue holding certain face-to-face meetings, such as those where high-level negotiations and decision-making take place.<sup>11</sup> Experts even point out that when issues related to dialogue and cooperation are involved, 50% face-to-face and 50% virtual is appropriate.<sup>12</sup>

## VII. COMPLIANCE WITH THE ANNEX ON REPRESENTATION OF WORKERS IN COLLECTIVE BARGAINING IN MEXICO THROUGH FLEXIBLE WORK

Finally, the labour chapter of the T-MEC also contemplates a specific annex for Mexico. This annex seeks to adjust the collective bargaining system in Mexico. Requires all collective labour contracts in Mexico to be renegotiated at least once within four years after the legislation takes effect to review pay and working conditions issues.

Collective labour contracts must be approved by the majority of the members through a “personal, free, and secret” vote. Although this process has been in force at the federal level in Mexico for some time, its inclusion in the T-MEC will reinforce such process (as of December 31, 2019, only 29 collective bargaining agreements have been legitimized). The T-MEC also creates a separate and independent entity to regulate Collective Bargaining Agreements in Mexico.<sup>13</sup>

<sup>10</sup> Valérie Berset Bircher, “The future of work summit 2022”, conference in Geneva Graduate Institute, April 26, 2022.

<sup>11</sup> *Idem*.

<sup>12</sup> *Idem*.

<sup>13</sup> Straulino-Rodriguez, Pietro, “Revisión del T-MEC: un nuevo panorama para el trabajo en el «nuevo TLCAN»”, Ogletree Deakind, México, 2020, available at: <https://ogletree.com>.

Flexible work provides tools to carry out the process of renegotiation, voting and institutional work around collective agreements efficiently, quickly and without the need to concentrate all the people in a single physical place to carry out some of these processes. Above all, those initial ones, providing agility in the development of the parties' positions. As reflected above, decision-making is recommended to be carried out in person.

## VIII. CONCLUSIONS

- Hybrid work allows speeding up the information that is transferred between the actors that participate in the FTAs. This agility allows the prompt fulfilment of the obligations that the countries acquire in the framework of the FTAs. Compliance with it generates more flexible and accessible jobs for all vulnerable sectors, one of them being women who also do housework.
- Hybrid work, and the information that is transmitted quickly when using it, also provides the conditions to generate an increase in wages since it would avoid administrative expenses for companies.
- Mexico has made legislative efforts regarding the protection of labour rights in flexible work. However, it is still necessary to transfer this information to a social dialogue and not just leave it at the political level.
- The approach of the workers to the digital world allows an agile transmission of information, which multiplies the benefits they receive in the different areas of professionals, including, regarding transparency and access to the information they have to protect the fulfilment of their labour rights.
- Hybrid work will facilitate compliance with the T-MEC for Mexico, especially labour obligations thanks to the agility provided by the digital information transmitted in this work modality.

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