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MARVÁN, GONZÁLEZ GRAF Y GONZÁLEZ LARRAZOLO

ABOGADOS

THE IMPLEMENTATION OF MEXICO'S LABOR LAW REFORM ONE YEAR BEFORE TAKING FULL EFFECT

As of the May 1, 2019 reform to its Federal Labor Law, Mexico is implementing substantial changes in the administration of labor justice. These changes must be complied with within the deadlines established in accordance with the legal transition set forth in the reform.

This note summarizes in the most succinct manner (a) the scope of the reform; (b) the progress of the implementation and (c) the perspective and expected development in the short term of the same, considering the factors that make up the transition, the results achieved since the start of the reform and reflections on the possible scenarios that may arise going forward.

Scope of the Reform

The way the reform was conceived and implemented implied a radical change in the country's legal culture and management of collective labor and employment relations. While the administration of labor justice was historically considered as an instrument to achieve social balance, in this new stage it has evolved to provide a more technical and expeditious procedure led by the judiciary.

With this reform, the paradigm of the jurisdictional processes has changed, now imposing an obligation on workers and employers to submit to a conciliation hearing as a requirement before filing a lawsuit.

For such purposes, the reform included the entry into operation of state conciliation centers, as well as one on federal level, which also has the responsibility of administering the registry of unions and collective bargaining agreements at the national level.

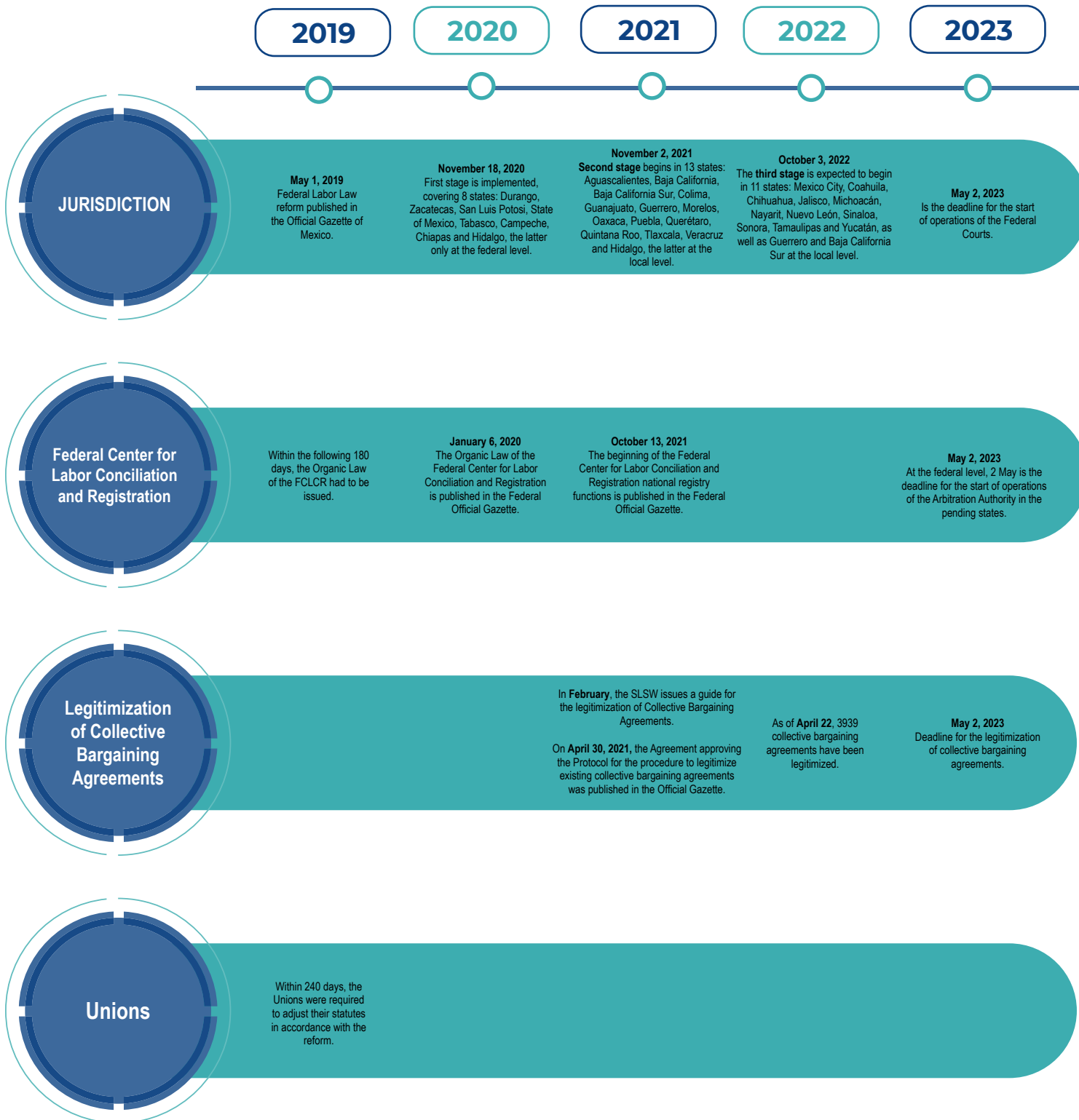
With respect to collective labor relations, the new model is built on the power of representation through the active participation of workers. Under the new scheme, workers must vote personally, freely, directly and by secret ballot to approve the collective bargaining agreements in force in their workplace.

The reform also imposed an obligation on the unions to legitimize the collective bargaining agreements entered into, a regulation that needs to be complied with within 4 years after the entry into force of the reform.

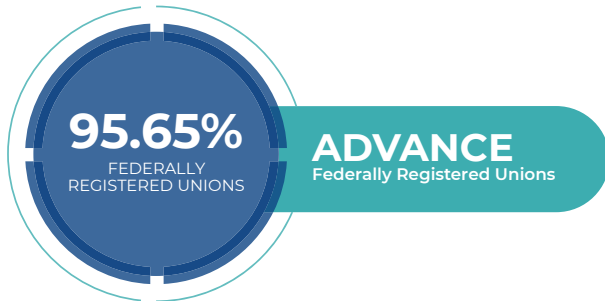
Considering that new authorities had to be created and put into operation, in parallel within the 4-year term, the system has experienced certain challenges of legal interpretation, as well as setbacks of an economic, operational, and structural nature, which were exacerbated by the health emergency.

How the implementation of the reform has progressed so far

In accordance with the deadlines stipulated in the reform, various aspects have been modified over time and have been completed, resulting in the below timeline:



As shown above, so far the labor reform has been implemented at the federal level in 21 entities of the country, facing delays mainly due to budgetary issues and the challenges of coordination between the state and federal levels.



Trade unions have also had to adjust their bylaws to the new provisions regarding the election of union leaders and consultation procedures in order to comply with the new rules on union democracy and collective bargaining.



With respect to the legitimization of collective bargaining agreements, the Secretariat of Labor and Social Welfare that initially oversaw the legitimization process, handed over such responsibilities to the Federal Center for Labor Conciliation and Registration that absorbed those functions on May 1, 2021.



Throughout the legitimization process, the Law now prohibits Companies from intervening directly during the voting procedure, and should only assist personnel charged with the verification of the procedure in what they are requested to do.

Of the total number of collective bargaining agreements registered in the country, only 3,939 agreements have been legitimized to date.



The process of legalization of collective bargaining agreements has faced operational challenges, due to (i) the lack of personnel to meet the demand for legalization requirements, (ii) the lack of issuance of collective bargaining agreement deposits by the Conciliation Boards, and (iii) capacity issues on the digital platform for the documentation review and setting of dates for the legalization of collective bargaining agreements.

Considering all these factors, one year before the expiration of the term set forth in the transitory provisions of the decree that reformed the Federal Labor Law, we share some further reflections and perspectives.

Perspectives

With less than one year to go before the deadline for the implementation of the labor reform, we are facing a series of jurisdictional and collective challenges. Firstly, it remains to be seen whether in October of this year it will be possible to implement the last stage of the labor reform so that the courts in those states where the implementation is still pending, can begin to function, considering their substantial budgetary, legislative and operational challenges.



It is worth mentioning that on April 29th of this year, the Organic Law on the Labor Conciliation Center was published in the Official Gazette of Mexico City, specifically acknowledging that it does not have its own budget and would have to take it from the Conciliation Board. In addition, there are states that have not yet made the legislative updates to create conciliation centers and labor courts.

Regarding the legitimization of contracts, unions face the challenge of creating structures that can lead to such legitimization, ensuring representativeness and achieving greater worker participation. This challenge includes the need to design a better value proposition for workers, most of whom are unfamiliar to union intervention in labor administration.



Unions have until May 2, 2023 to comply with the obligation to legitimize their collective bargaining agreements. However, according to the statistics provided by the authorities progress is very slow. The current estimated number of collective bargaining agreements that are deposited implies a lack of interest, appropriate structures or the right mechanisms on the part of the Unions to achieve the transformation of their operating model.

Considering the historical evolution of collective relations and the demographic profile of workers -most of whom are young people that have recently joined the active workforce- it seems like the challenges in terms of communication and leadership, as well as the scale and material potential to serve these employees, seem insurmountable. The current model requires the use of technological platforms, immediate attention and responsiveness to members, as well as access to tangible benefits that meet their social, recreational, cultural and legal needs.

For their part, companies have faced challenges in sharing information and complying with the procedural deadlines established in lawsuits under the new procedure, in addition to the procedural complexities resulting from the reinforcement of employment stability, with the understanding that it will not be possible to deny dismissal and offer reinstatement as a means of defense.



And those number of cases are marginal compared to those handled by the Conciliation and Arbitration Boards, which are estimated at approximately one million files still to be processed and concluded, so that it will take about ten years to fully comply with this transition.