Labour Canada Travail Canada

COMPARISON OF LABOUR LEGISLATION OF GENERAL APPLICATION IN CANADA, THE UNITED STATES AND MEXICO

LABOUR CANADA

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INTRODUCTION

This document summarizes important aspects of labour legislation in Canada, the United States and Mexico. It covers the major fields of labour law, namely industrial relations, employment standards, occupational safety and health and workers' compensation. This report, however, does not examine the degree to which these laws are applied in the three countries. During its preparation, Labour Canada consulted with the appropriate officials and/or labour law experts in the three countries.

It is important to note that although Canada, the United States and Mexico are federal states, their constitutions deal in different ways with the question of jurisdiction over labour matters. In Canada, labour legislation is primarily a provincial responsibility. However, the federal government administers labour affairs with respect to certain industries (e.g. those of an interprovincial or international nature, such as railways, bus operations, trucking, pipelines, ferries, telephone and cable systems; as well as interprovincial shipping, air transport, radio and television broadcasting, banks, grain elevators, uranium mining and processing, and certain Federal Crown Corporations). In the United States, the primary authority for labour law rests with the federal government. It is based on the power of Congress to regulate interstate commerce. Therefore, generally speaking, the federal legislation is applicable to employers engaging directly or indirectly in interstate commerce; businesses that are not within federal jurisdiction are covered by State legislation to the extent that State laws have been adopted to regulate specific labour matters. With respect to Mexico, although it is a federal republic made up of 31 States and a Federal District, labour law comes exclusively within federal jurisdiction and applies throughout the country, including the export processing zones (EPZ's).

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1. INDUSTRIAL RELATIONS

A. *Acquisition of bargaining rights by trade unions*

CANADA

In each jurisdiction, a labour relations board (or, in Quebec, Department of Labour officials) have the authority to certify trade unions as bargaining agents for specific groups of employees called bargaining units. Certification obliges the employer to bargain collectively in good faith with the trade union. It is granted if the Board is satisfied that a majority of the employees in the unit are members in good standing of the trade union or if a vote has demonstrated that a majority supports it. In three provinces (Alberta, British Columbia and Nova Scotia), certification cannot take place without a vote of the employees.

UNITED STATES

Under the National Labor Relations Act (NLRA), where an application for certification is supported by at least 30% of employees, a secret mandatory representation vote is held. The vote is preceded by an election campaign involving the employer and the petitioning union. During that election campaign, the employer can, if it wishes to do so, endeavour to convince the employees not to support the trade union. The NLRA contains provisions aimed at preventing any improper interference with the employees' choice.

MEXICO

Under Mexican law, a union must register with government authorities. Once a series of requisites are complied with (such as a minimum number of actively-employed workers which has been set at 20, a founding meeting, approval of the bylaws and the election of union leaders), and provided that the purpose of the union is to study, improve and protect the interest of its members (which must be expressly stated in its bylaws), the authorities are required to grant registration. The decision by registration authorities is not final. If registration is not granted, the interested parties may have recourse to a court appeal for protection of rights granted under the Constitution.

Once a labour union has been registered, the employer is required to enter into a collective agreement with it, but this union right is conditional upon its representing the majority of the employees in a company (in the case of a company or industrial union) or the trade (in the case of a trade union). This majority is presumed to exist, and an employer who claims that it does not, must prove it through a procedure that takes place during a strike as explained in section 1.B. of this document. This proof can only be obtained after a strike is called, under interlocutory proceedings which usually take more than 15 days.

B. Conditions for exercising the right to strike

CANADA

In Canada, strikes are prohibited for the duration of a collective agreement. Conflicts relating to the interpretation or application of an agreement are referred to binding arbitration. When no agreement is in force, strikes are allowed only after certain conditions are met. These conditions vary from one jurisdiction to another. They may include requirements relating to the conciliation or mediation process, holding a strike vote or giving notice to the employer of the beginning of a work stoppage.

UNITED STATES

The National Labor Relations Act does not provide for a strike ban during the term of a collective agreement. However, the parties may include a no-strike clause in their agreement. Whether a labour contract is for a fixed or indefinite term, or contains a reopening clause, a trade union wishing to negotiate a modified or new contract must comply with certain conditions before declaring a strike. These include giving a 60-day notice to the employer. However, this "cooling-off" period applies only to strikes to change or end contracts, and not to strikes protesting unfair practices of the employer, dangerous working conditions or subcontracting of work. Unfair labour practice strikes can be called without notice. Also, the notice requirement does not apply if a strike is over a subject not covered by the labour contract.

MEXICO

The law provides that legally-recognized unions may take legal strike action after notifying the employer through the competent authority (i.e. the appropriate conciliation and arbitration board) six days in advance for an ordinary business, or ten in the case of a public utility. The matter must go before a conciliation and arbitration board for conciliation and settlement. If no agreement is reached, the union may call a strike. Unions do not need to prove they represent a majority of the workers before they can strike. As was said previously, the law presumes that this majority exists.

Within 72 hours following a work stoppage, the employer, affected workers or interested third parties may request the appropriate conciliation and arbitration board to declare the strike invalid for absence of legal purpose (i.e., to bring about economic balance between labour and management) or for lack of a majority or failure to comply with procedural requirements. If no request is made to declare the strike invalid, it is considered legally valid. If the strike is declared invalid, the board will set a limit of 24 hours for the workers to return to work in the knowledge that if they do not do so the employer-employee relations will be terminated without liability on the part of the employer. When a challenge is made to the majority claimed by the union, the proof is a count, a kind of referendum (not by secret ballot) carried out by the authority, in which the employees must state whether they agree with the strike. Workers having access to confidential information and employees hired by a company after the union has called a strike may not vote. On the other hand, employees dismissed after the strike was called are allowed to vote.

The conciliation and arbitration boards are labour tribunals, provided for in the Constitution, which sit permanently throughout the country. There is a Federal Conciliation and Arbitration Board that

These include labour conflicts in such industries as textiles, mining, petrochemicals, metallurgical and steel, hydrocarbons, automobiles, pharmaceutical products, paper, food packing and canning and railways.

Conflicts that are not federal in nature are heard by local conciliation and arbitration boards in the Federal District or in the states. The boards include representatives of employers, labour and government.

The law does not preclude the voluntary renegotiation of the collective agreement at any time. However, it requires renegotiation after the agreement has been in operation for a certain period of time. In general, the collective agreement as a whole must be revised every two years, and the wage aspect must be revised on an annual basis. Non-compliance with a collective contract on the part of the employer is a cause for legal strike provided all the requirements for a legal strike are met.

C. *Strike replacements and reinstatement of striking employees*

CANADA

In all jurisdictions, except Quebec, the legislation does not prohibit the use of temporary replacements during a legal strike. In Quebec, the utilization of any type of replacement employees is prohibited, except for supervisory personnel in establishments affected by a work stoppage.

The employment relationship continues during a labour conflict. In addition, a majority of jurisdictions have specific legislation affording protection for employees who wish to return to their positions after a legal strike or lockout. For example, Alberta, Manitoba, Ontario and Quebec have legislation providing that, in such circumstances, there is an obligation for the employer to reinstate the affected employees, unless it can produce good and sufficient reason for not doing so (e.g. the legal termination of the employment relationship or the discontinuation of the type of work performed by the employees before the work stoppage). In Alberta and Ontario, the employees must apply in writing to the employer to be reinstated. In Alberta, the application must be made within certain time limits after the end of the strike or lockout, while, in Ontario, it must be made within six months of the commencement of the strike. In practice, in all jurisdictions, employees are usually reinstated after a legal strike or lockout, unless their jobs have been discontinued for economic reasons.

UNITED STATES

Under the National Labor Relations Act, workers engaged in a legal strike retain their status as employees. However, the use of temporary or permanent replacements is permitted depending on the circumstances.

Employees who declare a strike because of an unfair labour practice of their employer (for example, the discriminatory discharge of an employee) are entitled to be reinstated at the end of the strike even though their reinstatement necessitates the discharge of the strike replacements holding their jobs. This does not apply if the employee has in some manner forfeited the right to reinstatement, for example, by engaging in serious misconduct.

Where a strike is solely for economic reasons and the striking employees are replaced, the strikers have limited statutory rights of reinstatement. The strike replacements need not be discharged to make jobs available for returning strikers. Unless a back-to-work agreement is negotiated, the "economic" strikers are entitled to reinstatement only if jobs are available.

MEXICO

When a strike is within the terms of the law, it is illegal to attempt to replace or actually replace the strikers, without the dispute having been settled. The only exception to this is when emergency services must be provided during the strike. In addition, when a legal strike has been declared by a majority of the workers of an enterprise, it is illegal for a minority to attempt to return to work or to continue working.

A conciliation and arbitration board has the power to determine the number of workers essential for the continuance of work, the suspension of which would seriously endanger the safety of persons and the conservation of premises, machinery and raw materials or the return to work.

When agreement is reached by the parties, the employees have the right to be reinstated; and there is a practice to give them 50% back pay for the duration of the strike.

D. *Union security*

CANADA

The legislation in Canada does not prohibit "closed shop" agreements and other types of union security provisions requiring union membership as a condition of employment.

In one jurisdiction, Saskatchewan, a union security clause is mandated by law. Upon the request of a trade union representing a majority of employees in a bargaining unit, the collective agreement must contain a clause stating that every employee who is or becomes a member of the union must maintain membership as a condition of employment. Under that clause, every new employee must apply for membership within 30 days after being hired and maintain membership as a condition of employment.

All jurisdictions protect employees from losing employment under union security provisions, where they have been unfairly denied union membership.

The federal government and six provinces (British Columbia, Manitoba, Newfoundland, Ontario, Quebec and Saskatchewan) have legislation providing for the compulsory deduction of regular union dues from the wages of each employee in a bargaining unit. At the federal level, and in British Columbia, Newfoundland, Ontario and Saskatchewan, this legislation applies upon the request of the trade union concerned, although in British Columbia, it applies only during negotiations to conclude a first collective agreement. In the provinces that do not have legislation on the compulsory deduction of union dues from the wages of all employees in a bargaining unit (Alberta, New Brunswick, Nova Scotia and Prince Edward Island), a similar provision may be contained in a collective agreement.

UNITED STATES

Under the National Labor Relations Act, employers may not enter into a closed-shop or preferential-hiring agreement. Other types of union security agreements are allowed under certain conditions. One of the conditions is that the agreement must conform to any State law prohibiting, or more strictly regulating, compulsory membership in a union as a condition of employment.

The discharge of an employee for non-membership in a trade union is not permitted unless membership is available to him/her on the same terms and conditions generally applicable to other members and is denied or terminated for non-payment of the periodic dues or initiation fees uniformly required of members.

A union security agreement requiring the payment of union dues and fees by all the employees covered by a collective agreement is permissible under the NLRA. However, under that legislation a State law may forbid such an agreement within the State even for employers under federal jurisdiction.

Until now, 21 States (mainly in the south and southwest of the United States) have enacted "right-to-work" laws that either prohibit, or more strictly regulate, maintenance-of-membership agreements permitted under the NLRA. Most States with such laws also prohibit the compulsory deduction of union dues.

In States where compulsory deduction of union dues is allowed, a trade union is not permitted to spend, over the objections of non-member employees paying dues, funds collected from them on activities unrelated to collective bargaining such as, for example, supporting a political cause.

MEXICO

Under Mexican law, it may be stipulated in a collective agreement that the employer shall hire only workers who are members of the union covered by the contract. It may also be stipulated that the employer shall fire workers who resign or are expelled from the union. With respect to expulsion of a worker, the law sets forth the minimum trade union procedure to follow: stating express motives and reasons, organizing an ad hoc union assembly, ensuring the right to a hearing, defence and evidence before the assembly.

In practice, collective agreements usually provide for a "closed shop" which means that workers must join the union to maintain employment. If an employer has agreed to do so in the collective agreement, he or she is required to deduct regular union dues from the members' wages. This is a legally-authorized deduction that does not require the employee's individual consent; it is sufficient that the employee is a union member.

If there is no "closed shop", employees who are not members of the union with which the collective agreement has been reached are not required to pay dues, which means that it would be illegal to deduct them regardless of whether other employees covered by the same collective agreement pay union dues.

2. EMPLOYMENT STANDARDS

A. *Minimum wages*

CANADA

- In Canada, except in Manitoba and New Brunswick, the various acts and regulations do not specify how the minimum wage is to be determined. The Manitoba Employment Standards Act provides that in recommending the minimum wage rate, the Minimum Wage Board "shall take into consideration and be guided by the cost to an employee of purchasing the necessities of life and health". In addition, the New Brunswick Employment Standards Act provides that in advising on the minimum wage rate, the Minimum Wage Board is directed to take into account " the social and economic effects of minimum wage rates in the province and, among other matters, any cost of living increase since any previous order or regulation, with respect to the cost to an employee of purchasing the necessities of life including, but not limited to housing, food, clothing, transportation and health care and supplies, and the economic conditions within the province and the concept of a reasonable return on private investment". The provincial minimum wages vary between $4.25 (Newfoundland) and $5.97 per hour (Yukon Territory). The hourly rates in Quebec and Ontario have been set at respectively $5.30 and $5.40 since October 1, 1990. Lower rates apply in certain jurisdictions to groups such as young employees, domestic employees, employees who usually receive gratuities and farm workers. Federal legislation provides a minimum wage of $4.00 per hour. Trainees may be exempt from the minimum wage provisions, provided certain conditions are met.

UNITED STATES

- The minimum wage established by the 1938 Fair Labor Standards Act (FLSA) (as amended), represents the rate which is considered essential "to the maintenance of the minimum standard of living". In 1989, the federal minimum wage was raised for the first time in 12 years from $3.35 (U.S.) to $3.80 (U.S.) per hour, effective on March 31, 1990. On April 1, 1991, it will be raised to $4.25 (U.S.) per hour. This minimum wage applies to all employees who are not exempt or who do not qualify for sub-minimum wages. Any business that has annual gross sales or a business volume of less than $500 000 is exempt from the new minimum wage requirements. Nevertheless, no small business employer may reduce the wages below the former minimum wage of $3.35 (U.S.) per hour. Professions not covered by the minimum wage include: certain salespersons, executive, administrative and professional employees, radio and television employees, hotel, motel and restaurant employees and domestic workers.

- The following classes of employees may be paid a specified sub-minimum wage: learners, apprentices, messengers, handicapped workers, students employed in retail or service establishments, in agriculture or by educational institutions, as well as employees in the Virgin Islands and in American Samoa. In addition, the new minimum wage of $3.80 (U.S.) now applies in Puerto Rico to workers in certain industries and will be applied to other industries over a longer period of time.

MEXICO

- The Mexican Constitution assures workers of a "rationally established minimum wage, sufficient

compulsory education of the children". It also provides that "the minimum wages to be paid to employees shall be general or occupational. The first shall apply in the geographic areas to be determined; and the second shall apply to different branches of the economy, or to occupations, trades or special work". The minimum wage is set by the National Minimum Wage Commission, a tripartite group made up of representatives of business, labour and government. For the purpose of determining the minimum wage, Mexico has been divided into three regions and the minimum wage varies from region to region. The present general daily minimum wage (for unskilled workers) in Zone A is $4.65 Can. The average industrial daily minimum wage (for skilled workers) in Mexico's largest industries located in Zone A is $5.50 Can. Zone A comprises most of the northern states (including the Export Processing Zones), the federal district and metropolitan area and other municipalities in various states. The minimum wages in Zones B and C are slightly below those in Zone A (respectively $4.30 Can. and $3.90 Can. per day). Zone B includes Monterrey, Guadalajara and other cities and Zone C covers the rest of the country. (For more information on the geographic location of the Zones please refer to the map and description attached hereto as Annex I). Revisions of the minimum wage generally occur more than once a year. The last revision came into effect on November 16, 1990.

- Minimum wages are subject to a 50-60% premium for mandatory fringe benefits established by law, such as profit sharing (set at 10% of pre tax profits since 1985 and reviewed approximately every 10 years by the National Commission for Distribution of Profits which includes representatives of employers and employees), and a Christmas bonus of 15 days' pay. Companies must also contribute a sum equal to 5% of payroll to a national workers' housing institute established in 1972. A 1988 ILO publication indicates that these non-wage benefits cover around one-third of Mexico's working population, largely those in the urban - formal sector. (Van Liemt, Gijsbert, Bridging the gap: industrializing countries and the changing international division of labour, ILO, Geneva, 1988).

B. *Hours of work and overtime pay*

CANADA

- Legislation on hours of work and overtime varies from jurisdiction to jurisdiction. For example, the Canada Labour Code sets a standard workday of eight hours and a standard workweek of 40 hours. British Columbia has the same standards, while Ontario and Quebec have standard workweeks set at 44 hours. Alberta has a standard of eight hours a day and 44 hours a week. In addition, at the federal level and in some provincial jurisdictions, maximum hours of work per day and/or per week have been set. The federal jurisdiction has set the maximum hours of work at 48 hours per week, Ontario also has a maximum work week of 48 hours in addition to a maximum workday of eight hours. In Alberta, an employee's hours of work must be confined to a period of 12 consecutive hours each day. Québec has set no maximum hours of work.

- Overtime is paid for work in excess of the standard hours. The overtime rate varies: in some provinces, it is one and one-half times the minimum wage, but in most provinces and territories, it is one and one-half times the employee's regular rate of pay.

- All jurisdictions provide for exclusions from hours of work and overtime pay provisions; the most

workers.

- All provincial jurisdictions have a variety of statutes which set a minimum age for persons to be employed without the special protection afforded to young workers. The age varies per province but is generally between 15 and 18 years. Normally, employment of a person below this minimum age is either prohibited or subject to prescribed restrictions. The federal jurisdiction does not provide an absolute minimum age for employment, but lays down conditions under which persons under 17 years of age may be employed in federal undertakings.

UNITED STATES

- The federal law does not set maximum hours for most workers but stipulates that overtime rates must be paid for work in excess of 40 hours during a work week. Covered workers can be employed for any number of hours per day or per week, as long as they are paid time and one-half their regular rate of pay for overtime hours. Exemptions include inter-State motor carriers, air carriers, seamen, radio and television employees, certain categories of agricultural workers, taxicab drivers, domestic servants, police and firemen and forestry employees.

- To the extent that the FLSA applies, the employment of a child is unlawful if the child is below a minimum age prescribed by the statute or by regulations issued under the statute. Generally speaking, the FLSA makes it unlawful to employ a child below the age of 14 years in any occupation (other than agriculture). For children above the age of 14, the statute and regulations set forth the minimum ages required for various occupations. Once a child reaches the age of 18 years, his or her employment is no longer restricted by the FLSA. State and other federal laws which give children greater protection than the FLSA must be respected; nothing in the FLSA overrides or nullifies higher standards fixed by other laws.

MEXICO

- The standard work week is defined by law as six eight-hour days. The law provides, however, for a shorter maximum work period of 7 hours for the nightshift and 7.5 hours for the combined shift. Overtime is subject to acceptance by the workers and is paid at twice the normal rate for the first nine hours per week and at three times the normal rate thereafter. For every six-day work period the worker has a right to one day of rest with full pay. In case the employee is required to work on Sunday, his or her regular day of rest, he or she shall be paid an additional premium of 25% above his or her regular wages.

- Although in recent years some unions have negotiated a 40-hour work week, the 48-hour work week still prevails. By way of exception it may sometimes be reduced in private industry to 45 hours. In the public service sector, the 40-hour week is the rule, as a result of a presidential decree.

- The minimum working age is 14. Employees between 14 and 16 years are considered minors and can only be employed if special conditions concerning their physical and moral well-being are being observed. In addition, special hours of work rules apply to this age group: the hours worked may not exceed a total of 36 per week; overtime is prohibited; the work day must be divided into two 3-hour periods, with at least one hour of rest between; no work may be performed on Sundays or other statutory holidays; and [illegible]

C. *General holidays with pay*

CANADA

- The number of statutory holidays to which an employee is entitled varies from one jurisdiction to another. The federal jurisdiction, Alberta, British Columbia, Saskatchewan and the two territories provide for nine paid general holidays. Ontario provides for eight, Manitoba and Quebec seven, New Brunswick six, and Newfoundland, Nova Scotia and Prince Edward Island five. Most jurisdictions establish certain conditions or prerequisites for entitlement to specified holidays with pay, such as a minimum number of days of employment with the same employer. The pay for a holiday worked consists of generally the employee's regular pay plus a premium rate of time and one-half for all hours worked on that day. Some jurisdictions provide that, instead of paying the premium rate, the employer may give the employee another day off with pay.

UNITED STATES

- The FLSA does not create a right to be paid for time not worked. Nevertheless, employees are often paid for such absences according to the terms of their employment contract. Once an agreement concerning pay for holidays not worked has been entered into, rules formulated under the FLSA have an effect on computation of overtime in those instances. This practice of paying employees for the major holidays not worked is increasingly prevalent, even outside the context of collective agreements. Such holidays include: Christmas, the 4th of July, Thanksgiving, New Year's Day, Memorial Day and Labor Day.

- State laws regulating holidays provide a list of special days set aside for public feasting, mourning or thanksgiving on which employees do not have to work, but are not required to be paid. The statutes leave it to the employees or their trade unions to negotiate the benefit of being paid with their employer. The number of State holidays ranges from seven to 19. The majority of States have between 11 and 14 designated holidays.

MEXICO

- The federal labour law grants seven paid holidays annually, plus one for Inauguration Day every sixth year. In cases where an employee's services are required on one of the holidays, he or she must receive double pay for the service rendered, apart from his or her regular wage for the obligatory day of rest.

D. *Annual paid vacations*

CANADA

- In all jurisdictions except Saskatchewan, employees are entitled to two weeks paid annual vacation per completed year of employment. In Saskatchewan, three weeks are awarded after one year and four weeks after ten years. In most other jurisdictions a third week is granted after

UNITED STATES

- Neither the federal nor the State laws contain provisions regarding vacations with pay. Thus, the granting of vacations, with or without pay, is in the realm of negotiated working conditions and often within the employer's discretion.

MEXICO

- The law establishes that workers have the right to six days vacation after one year of service with the same employer. Vacation leave increases by two days for every additional year of service, to a maximum of 12. The federal labour law states that for every five years of service, two additional days of vacation will be added. The Supreme Court has interpreted this provision to mean that the first five years are to be counted from the date of employment. This means that after five years service, employees are entitled to 14 days of vacation; after 10 years they have the right to 16, and so on.

- Employees must be paid a vacation bonus equivalent to 25% of the wage they are entitled to during their vacation.

- Frequently, collective agreements establish longer vacations, adding two or three days more to the periods set out in the Act. Occasionally (for example the collective agreement of the employees of the Mexican Social Security Institute), vacations can be much longer (two minimum annual periods of 10 working days, increasing gradually to a maximum of 15 days in each period).

E. *Maternity leave*

CANADA

- In general, maternity leave legislation in Canada provides that a pregnant employee will be entitled to a leave of absence without pay for a period of 17 weeks. Except for British Columbia and Quebec, an employee's right to pregnancy leave is established upon the completion of a specified period of time with an employer. Some provinces and one of the territories go beyond 17 weeks, up to 20 weeks in the case of the Northwest Territories. An employee is usually entitled to be reinstated in the same position, or in a comparable one, at not less than the same wages and benefits accrued prior to the leave. In some jurisdictions, legislation provides in addition that the employee is also entitled to all increments of wages and the benefits to which she would have been entitled had the leave not been taken.

- Most provinces and territories have provisions which grant leave without pay upon the placement of a child for adoption. Some jurisdictions in addition grant unpaid parental or paternity leave. For instance, the Canada Labour Code provides an additional 24 weeks of child care leave, available to either parent, in case of either childbirth or adoption. In Manitoba, parental and adoption leave of up to 17 weeks are available to either parent. In Ontario, parents are entitled to 18 weeks of parental leave for each natural or adoptive parent, and in Quebec, 34 weeks of

- The federal Unemployment Insurance Program provides leave benefits at 60% of insurable earnings, up to a specified maximum, during 15 weeks of maternity leave and ten weeks of parental and adoption leave. The latter is to be divided between the parents as they see fit.

UNITED STATES

- There is no maternity leave legislation in the United States. Maternity leave benefits are therefore in the realm of negotiated working conditions and often within the employer's discretion. However, because title VII of the American Civil Rights Act prohibits discrimination on the basis of pregnancy, any sick leave, disability benefit, health insurance or any other type of benefit related to health offered by an employer must also be extended to a woman during the time she is incapable to work because of pregnancy. These benefits, if they are offered, with or without pay, cannot be denied to a woman because of her pregnancy. In addition, five states (New York, New Jersey, Rhode Island, California and Hawaii) as well as Puerto Rico have adopted State disability laws that go beyond the scope of the usual workers' compensation laws and provide certain disability benefits to a pregnant employee during the time she is prevented from working because of the pregnancy. Finally, an Executive Order ensures that employers who enter into contracts with the federal government do not discriminate because of race, colour, religion, sex or national origin. Discrimination for pregnancy-related reasons has been held to constitute discrimination based on sex.

MEXICO

- The Mexican Constitution grants pregnant employees twelve weeks maternity leave at full wages covered by the social security system, composed of six weeks before and six weeks after childbirth. If an employee is not insured, the employer is obliged to pay the benefit. An additional leave of up to nine weeks is possible in case of illness. The employee will then receive fifty percent of her normal wages which shall also be covered by the social security system. Special provisions exist to protect the woman's or the child's health during the pregnancy and the nursing period. During the nursing period, women are entitled to two extra breaks of half an hour each day at full pay to nourish their child. Pursuant to the federal labour law, nursery services are to be provided by the Mexican Institute of Social Security (MISS). The nursery services are to be funded by the employers through one percent payroll deductions regardless of whether the employer employs female workers.

F. *Equal Pay*

CANADA

- In 1972, Canada ratified ILO Convention 100 concerning the "Equal Remuneration for work of Equal Value". Since then, all Canadian jurisdictions have enacted some form of equal pay legislation, normally equal pay for equal work. Moreover, the laws of Québec (Charter of Human Rights and Freedoms), the Yukon Territory and the Parliament of Canada (Canadian Human Rights Act) also provide for equal pay for work of equal value. The Canadian Human Rights Act applies to all employers, whether in the private, public or para-public sectors, under federal jurisdiction and the federal public service. Similarly, the Quebec Charter of Human Rights and Freedoms applies to all employers, whether in the private, public or para-public sectors,

Pursuant to this legislation, it is a discriminatory practice for an employer to establish and maintain differences in wages between male and female employees employed in the same establishment and performing equivalent work. The criteria applied in assessing the value of the work are a composite of the skill, effort and responsibility required in the performance of the work and the conditions under which it is performed. This assessment is made in accordance with modern job evaluation techniques.

- In addition, the laws of Manitoba, New Brunswick, Nova Scotia, Ontario and Prince Edward Island provide for pay equity, the objective of which is to redress systemic gender discrimination in compensation for work performed by employees in female-dominated job classes, usually in the public and para-public sectors. Only Ontario's Pay Equity Act applies to both the public and private sectors. Manitoba's Act, however, has limited application in the private sector.

UNITED STATES

- The issue of equal pay is dealt with at the federal level in the United States through three pieces of legislation: section 6(d) of the FLSA containing the provisions of the Equal Pay Act, 1963; Title VII of the Civil Rights Act, 1964; and an Executive Order.

- The Executive Order, issued by the President and worded in much the same way as the provisions of the Civil Rights Act, requires that employers who enter into contracts with the federal government respect the basic principle of equal pay by prohibiting discrimination in any of the terms and conditions of employment.

- The two other laws are of more general application. The Equal Pay Act, 1963, which added Section 6(d) to the FLSA, expressly forbids paying workers of one sex at a different rate than that payed to the other sex when the jobs involve equal skill, effort and responsibility and are performed under similar working conditions in the same establishment. The Equal Pay Act applies to employees of any enterprise that has two or more employees engaged in interstate commerce. Since 1974, the equal pay provisions of the FLSA apply to public institutions.

- Title VII of the Civil Rights Act, 1964 is broader in scope than the above-mentioned Equal Pay provisions. It forbids discrimination in all areas of the employer-employee relationship on the basis of race, colour, sex, religion or national origin. It applies also to labour unions, employment agencies, and apprenticeship committees whether operating in the private or in the public sector of the economy. The U.S. Supreme Court has ruled that individuals may bring sex discrimination in compensation claims under Title VII even though no member of the opposite sex performs "equal work" as interpreted under the Equal Pay Act.

MEXICO

- The Constitution and the federal labour law embody the principle of equality of men and women under the law. The latter also contains a more general prohibition of discrimination in the workplace, including a prohibition of discrimination based on sex, as well as the enactment of the provisions of ILO Convention 100, "A Convention concerning Equal Remuneration for Work of Equal Value".

- Workers who believe they have been discriminated against by being paid a lower wage than other workers doing the same job must go before a conciliation and arbitration board to demand equal pay, and a settlement for back wages. The burden of proof that they perform equal work is on the employees.

3. OCCUPATIONAL SAFETY AND HEALTH

A. General

CANADA

The responsibility for occupational health and safety regulation is divided on the basis of constitutional authority between federal, provincial and territorial legislatures. Numerous federal, provincial and territorial Acts and Regulations provide for health and safety standards covering practically all workers in Canada. For example, the following subjects are regulated in legislation of general application: safety and healthiness of buildings, housekeeping and cleanliness of premises, lighting, sound levels, airborne contaminants, guarding devices for machinery, protective clothing and equipment, material handling and storage, explosive substances, and maintenance and use of tools. Other legislative measures are industry-specific and regulate safety, among others, in the following industries: logging, construction, mining, and oil and gas. Finally, a third type of legislation concerns the safety of certain hazardous installations, such as boiler and pressure vessels and elevators and lifts.

UNITED STATES

The sources of occupational safety and health legislation are the Occupational Safety and Health Act (OSHA) and various regulations, including the Chemical Hazard Communication Standard (CHCS). The OSHA provides a legal framework for State participation in the OSHA program. If a State wishes to exercise occupational health and safety jurisdiction, it must submit to the federal OSH Administration a plan meeting certain requirements, the most important of which is that the State standards and their enforcement must be "at least as effective" as the federal program. If the federal administration approves the State program, the federal and the State authorities will have concurrent enforcement powers for a period of at least three years. The federal OSH authority is authorized to pay up to 50 percent of the cost of an approved State plan. After three years, the federal OSH authority may grant final approval to the State plan. To date, there are 25 States and jurisdictions with approved plans, two of which cover public sector employees only.

MEXICO

Most provisions of ILO Convention 155, "A Convention concerning Occupational Safety and Health and the Working Environment", are covered in articles 504 through 512 of the federal labour law. This Convention requires member States to formulate, implement and periodically review a coherent national policy on occupational safety and health and on the working environment, in consultation with employers' and workers' organizations.

The federal labour law is not the only law covering safety and health problems. There are also regulations on accident prevention at work, such as: the Order of 29 November 1934 on the prevention of on-the-job accidents; the Order of 27 August 1936 on the inspection of steam generators and pressure vessels; the Order of 13 March 1967 on mine workers; and particularly the General Regulations governing Job Safety and Health of 5 June 1978. Moreover, the Mexican Social Security Institute is concerned with work safety and health and plays a preventive role.

B. *Occupational safety and health obligations, rights and standards*

i) The right to refuse

CANADA

- In all jurisdictions in Canada, a worker has the right to refuse dangerous work, provided certain conditions are met. These conditions vary; the federal government, Manitoba and Quebec simply require that the work be "dangerous"; and in New Brunswick, Nova Scotia, Ontario and Prince Edward Island the work must be "likely to endanger". In Alberta, "imminent danger" is the terminology used which is described as a danger that is not normal for the occupation and is on the very point of materializing. British Columbia uses the phrase "undue hazard", and in Saskatchewan this right applies when circumstances are "unusually dangerous". All jurisdictions provide protection against dismissal or disciplinary action if the right to refuse has been exercised in accordance with the relevant legislation, as well as a right to complain to the proper authority about an unjust dismissal or disciplinary action following a legitimate refusal.

- Workers have a right to refuse work when their own safety is at risk. Some jurisdictions, however, also give workers the right to refuse work when the safety of one of their colleagues is at stake (Federal, Alberta, New Brunswick and Prince Edward Island). In British Columbia Manitoba, Newfoundland, Quebec and Saskatchewan, the law also allows a refusal when the health or safety of any other person is endangered.

- Each jurisdiction requires the employee to have a "reasonable cause" to believe that the work is dangerous. This normally means that such reasonable grounds must objectively exist. If the danger is not objectively ascertainable, an employee may have been justified in using his or her right to refuse if he or she appears to have been genuinely concerned about the health and safety risks of the particular situation.

- Following a refusal to work, the supervisor must make an inspection in the presence of the worker and a member of the health and safety committee or a worker representative. If the worker maintains his/her refusal following rectification by the employer, a government appointed safety inspector or officer must be notified. Following an inspection, the safety officer must either make an order requiring the employee to return to work or order the employer to make improvements.

- Ontario has recently created a right for certified members of safety and health committees to direct an employer to stop work if dangerous circumstances exist. Normally, such an order must be agreed upon by an employee and by an employer representative on the safety and health committee. Only under exceptional circumstances provided for in the Act, does a certified member of the committee have the unilateral authority to direct the employer to stop work. This authority complements the individual right to refuse work in circumstances where the dangerous condition affects more than one worker.

UNITED STATES

- OSHA generally prohibits retaliation for the exercise of rights provided in the Act. Although the right to refuse imminently dangerous work is not explicitly provided for, a 1973 official interpretation of the OSHA provision on protection against retaliation stated that workers may refuse to perform work rather than subjecting themselves to serious injury or possible death. The circumstances must be such that a reasonable person would conclude there is real danger of death or serious injury and insufficient time, due to the urgency of the situation, to eliminate the danger through the regular enforcement route of requesting an OSH Adminstration area director to conduct an inspection. An inspection must be made following the refusal, in order to determine whether the refusal was justified. If the investigation reveals that the refusal was not justified, the employer retains the right to discipline the employee in question. Also, where possible, the employee must have requested from his or her employer, and been unable to obtain, a correction of the dangerous condition. As for the right to continue to be paid after refusing dangerous work, the U.S. Supreme Court has ruled that a worker who refuses dangerous work should be assigned to alternative tasks if available. If the worker is not given the opportunity to perform safe alternative work but is sent home instead, this may be interpreted as retaliatory or discriminatory conduct by the employer as a result of which lost wages must be awarded.

- Should the conditions under which a worker has the right to refuse not be present, a worker can resort to his or her right to request an inspection by a regional OSH inspector provided that the complaint concerns the threat of physical harm or an imminent danger. An immediate inspection must be held in case of an apparent imminent danger situation. If the OSH Administration proceeds with an investigation and concludes that there is imminent danger, it may issue a citation to the employer and has recourse to the courts to enforce it.

MEXICO

- There are no provisions authorizing workers to refuse dangerous work. Such refusals could be considered disobedience leading to justified dismissal, unless it is determined by a conciliation and arbitration board that the employer has not complied with his or her obligations and responsibilities to prevent labour hazards. The burden of proving this rests on the employee.

- The federal labour law establishes various obligations for employers: they are required to build their factories, workshops, clinics and other work premises in keeping with safety and health standards to prevent dangerous situations and to avoid contaminants that exceed the maximum tolerances set "in the regulations and orders issued by the competent authorities". They are also required to comply with the safety and health provisions set out in laws and regulations. The law provides that employers must "visibly display the applicable provisions of health and safety regulations and orders in the workplace and to inform employees of them".

- If it can be determined that an employer was at inexcusable fault in creating a labour hazard, the employer must pay compensation to the employee(s) affected, which amount may be increased by 25% if the conciliation and arbitration board so requires. Inexcusable faults include the situation where an employee informs the employer of a danger and the employer fails to take steps to correct it.

ii) Joint safety and health committees and representatives

CANADA

- In most Canadian jurisdictions, health and safety committees are required when a certain minimum number of employees are regularly present in the workplace, usually either 10 or 20. The size of the committees varies between two to twelve members, based usually on the number of employees present in the workplace. In Alberta and Newfoundland, committees are not required in a workplace unless it has been so identified by the Minister of Labour. In Quebec, a committee is established in any workplace in which more than twenty workers are employed, and which belongs to a category identified by regulation, provided written notice is given to the employer by the bargaining agent of the workers, or, if there is no union, by at least 10 percent or four of the workers when there are fewer than 40.

- Normally, at least half of the committee members must represent the workers and be elected by them or selected by their union.

- Typical duties of health and safety committees include: developing and promoting programs for education and information concerning safety and health in the workplace; dealing with complaints related to the health and safety of the workers represented on the committee; cooperating with the occupational health service, if one exists; ensuring that adequate records are kept on work accidents, injuries and health hazards; and participating in the identification of risks to the safety or health of workers.

- Ontario's recently amended Occupational Health and Safety Act provides for the certification of committee members by a newly-created Workplace Health and Safety Agency. The certified members will, in addition to their other responsibilities as committee members, have the right to direct an employer to stop work as described previously under the heading "the right to refuse" (section 3.B.i).

- A number of provinces as well as the federal jurisdiction require or allow the appointment of a safety and health representative in those workplaces where no health and safety committee is required. Some jurisdictions add the condition that a minimum number of workers be ordinarily present in the workplace. For example, the federal jurisdiction requires the appointment of a worker's safety representative in workplaces where there are five or more employees and where no safety and health committee has been established. This representative is to be chosen by the employees and has roughly the same powers and duties as the committee members. In Quebec, the representative is treated as a complement to the committee and not as a substitute; the bargaining agent or ten percent of the workers may request the designation of one or more representatives from among the employees.

UNITED STATES

- Joint safety and health committees are not mandatory. In 1982, however, the OSH Administration published a notice of implementation of three "voluntary protection programs" as a means of expanding worker protection by awarding limited regulatory relief to employers with good safety and health records. One of these programs called "Star" is designed to

demonstrate that good safety and health programs can prevent injury and illness. A workplace may be admitted into the "Star" program when it has superior health and safety programs that go beyond OSHA standards in providing worker protection, through either employee participation or management initiative efforts. The notice on the subject of Voluntary Protection Programs indicates that the OSH Administration has "clarified labour-management committee responsibilities for those programs where such committees are used".

- In addition, many collective agreements in a large variety of industries call for the establishment of joint management-union safety and health committees.

- Finally, with respect to the construction industry, the OSH Administration has created health and safety programs which require the establishment of such accident prevention programs as necessary to comply with the standards. These programs must provide for frequent and regular inspections of job sites, materials and equipment by "competent persons" to be designated by the employer and authorized to take prompt corrective measures to eliminate hazardous conditions.

MEXICO

- The federal labour law provides for a compulsory joint committee on hygiene and safety that operates within each enterprise. This committee must be composed of equal numbers of employer and employee representatives. Its main responsibility consists of investigating accidents and diseases, proposing measures to prevent them and ensuring that these are complied with. The joint health and safety committees do not have the power to enforce their decisions. Their function is to conciliate different interests. There is a mechanism to solve disagreements on-the-spot, but always based on mutual agreement. In the event that no agreement can be reached, each of the parties is free to take the matter to a conciliation and arbitration board. The joint committees are required to perform their services "free of charge during working hours".

- In addition, there is a national committee on hygiene and safety. This committee is operated by government, although, as a norm, worker and employer representatives participate frequently. The federal labour law authorizes the Labour Ministry to require employers, unions and independent workers to join the National Committee for Hygiene and Safety.

iii) The right to know

CANADA

- Federal, provincial and territorial legislation on occupational health and safety generally provides that the employer has the duty to ensure that the employees are made aware of every known or foreseeable physical safety or health hazard. This general duty has been further prescribed in specific legislation on hazardous materials in the workplace. For example, the Canada Labour Code obliges the employer to provide each of his employees with a material safety data sheet on each controlled product in the workplace, which must contain information concerning, among other things, the dangerous ingredients, the physical characteristics of the product, its toxicological properties, preventive measures to be taken and first-aid measures to be applied. Moreover, an employer must ensure that all controlled products in the workplace are labelled in order to ensure the disclosing of prescribed information and the displaying of all applicable

prescribed hazard symbols. These requirements are based on the Workplace Hazardous Materials Information System (WHMIS), a nation-wide occupational safety and health program which has recently been implemented and is designed to protect workers by providing them and their employers with vital information about hazardous materials or substances used in the workplace. Legislation and regulations at the provincial and territorial levels also contain provisions implementing such safety and health requirements concerning the use, handling or storage of hazardous materials in the workplace in addition to provisions requiring effective worker education programs.

- Criteria are established for evaluating claims by employers or suppliers pertaining to confidentiality of business information which they do not wish to disclose. An independent agency evaluates whether a justifiable reason not to disclose is present. In case of a medical emergency, the information must, however, be disclosed.

UNITED STATES

- Several provisions of the OSHA are designed to ensure that workers have the information they need to protect themselves. These provisions include the requirements that citations issued to an employer for violation of a health standard must be "prominently posted ... at or near the place where the violation occurred", and that standards promulgated under the OSHA prescribe the use of "labels or other appropriate forms of warning" to inform workers of the hazards to which they are exposed. Health standards regulating specific substances have routinely provided for employee observation of workplace monitoring by safety and health officers and access to monitoring as well as medical records.

- The Hazard Communication Standard requires chemical manufacturers, importers and all employers covered to convey hazard information to employees and any contractor employees by means of container labels and other forms of warning, Material Safety Data Sheets (MSDS's) and to provide employee training on the subject. In addition, distributors of hazardous chemicals are required to ensure that containers they distribute are properly labelled and that a MSDS is provided to their prescribed customers.

- Employers can maintain the confidentiality of bona fide trade secrets. This, however, can be challenged in the courts. The chemical manufacturer, importer or employer must immediately disclose the specific chemical identity of a hazardous chemical to a treating physician or a nurse when the information is needed for proper emergency or first-aid treatment. They also may be required under certain circumstances to disclose such information to health professionals in non-emergency situations.

- Finally, the Emergency Planning and Community Right-to-Know Act, passed in October 1986, requires employers who are required to prepare or have available an MSDS under the OSHA, to submit an MSDS to the appropriate local emergency planning committee, the State emergency response commission, and the fire department.

MEXICO

- In Mexico workers have the right to know the conditions under which they are expected to work. The General Regulations on Safety and Health at Work, published in the Official Gazette of 5 June 1978 contain specific provisions in this regard, regulating the operations of the joint safety and health committees which are concerned with the problem of dangerous work, and requiring employers to post visible "safety and health notices and information on accident prevention, depending on the nature of the activities carried out at each work centre".

C. *Enforcement*

CANADA

- Occupational safety and health legislation in all Canadian jurisdictions provides for inspections of the workplace by safety officers or inspectors, who are usually employed by the Ministry of Labour or an occupational safety and health agency in the jurisdiction concerned. These officers may enter a workplace at any reasonable time and make any investigations necessary to verify whether the Acts and regulations are being complied with. They normally have the power to make a variety of orders directed at the employer and/or the worker, such as orders to comply with the Acts or regulations, improvement orders, stop work orders, enforcement orders, storage and handling of substance orders, stop emission of contaminant orders, and stop using tools orders. Employees may also request an inspection of their workplace either by telephone or in writing.

- In most Canadian jurisdictions, employees are entitled to participate in the enforcement of occupational health and safety laws either as members of joint health and safety committees or as health and safety representatives. The committee members and representatives have a number of functions including receiving, considering and disposing of complaints from the workers, to maintaining records pertaining to those complaints, requesting from the employer any information they consider necessary to identify existing or potential hazards in the workplace, recommending the creation of safety and health education programs for the employees, and monitoring programs, measures and procedures related to the safety and health of employees.

- All jurisdictions provide for an appeal process for parties aggrieved by any order of a safety officer. In addition, any person accused of violating a provision contained in the law or regulations may be prosecuted before the courts. Penalties for enforcement of general health and safety provisions usually consist of a fine and/or a jail term the amount and length of which vary from jurisdiction to jurisdiction. Prince Edward Island, at the lower end of the scale, imposes a maximum fine of $2 000 or imprisonment not exceeding one month or a combination of the two and does not distinguish between offenses committed by individuals or corporations. The recently amended Occupational Health and Safety Act of Ontario imposes a maximum fine of $25 000 or imprisonment for a maximum of 12 months, or a combination thereof, for individuals, while the maximum fine for corporations has been increased from $25 000 to $500 000.

UNITED STATES

- A representative of the OSH Administration may enter at reasonable times to inspect, and may require testimony of witnesses and production of information and records. The employer may require a warrant. Employees may also request inspections either in writing or by telephone and must disclose their grounds for doing so. Employer and worker representatives may accompany the compliance safety and health officer during the inspection and may participate in opening, closing and information conferences held between OSH representatives and employers. However, as a result of the delays in the selection of an employee representative in non-union establishments, and the ensuing enforcement problems caused by the delays of the inspection, the OSH Administration has issued a notice indicating that inspections of a non-union establishment would "typically" be conducted without the walk-around participation of an employee representative.

- Employers with fewer than 10 employees or with an accident rate less than the national industry average are not subject to planned safety inspections except in cases of a complaint or accident. However, they continue to be subject to health inspections.

- The OSH Administration will issue a citation against an employer if the employer has violated a general duty clause, a standard or a regulation. Failure to correct the violation for which the citation was issued may lead to the imposition of a penalty, the amount of which depends on the gravity of the violation. It is the responsibility of the compliance safety and health officer to assess the relative weight of all factors to be considered in this determination process. The maximum fine is $10,000 per violation for wilful and repeated violations. Multiple fines may be imposed for blatant violations. If death has occurred, an employer may also receive a court imposed fine or be imprisoned.

- When an imminent danger exists and the employer does not voluntarily comply with the inspector's directions to eliminate the hazardous conditions, the U.S. District Court may be petitioned by the OSH Administration for an order to restrain the conditions and practices causing the imminent danger. An employee who fears injury may file a writ of mandamus in which he or she asks the Court to compel the Administration to petition the Court for the restraining order.

- Employers and employees have the right to appeal to the Safety and Health Review Commission against citations or against the period of time fixed in the citation for abatement. The Commission will issue an order after having given the parties the opportunity to present their arguments during a hearing. Any person adversely affected or aggrieved by an order of the Commission may appeal for a review to any U.S. Court of Appeals.

MEXICO

- Government inspectors are in charge of ensuring that safe working conditions and legislation are observed. The duty of the inspectors is to make verification visits to each company once every six months and to report on the health and safety conditions encountered. They must prepare reports on the condition of the premises in the presence of witnesses. They do not have the power to stop an activity they believe to be dangerous, but must limit themselves to reporting the event, and may advise the interested parties about the risk.

- Fines ranging from 15 to 315 times the minimum general daily wage can be imposed on employers who refuse to allow inspection and monitoring by labour authorities in their establishments; or fail to observe safety and hygiene rules set out by law to prevent labour hazards. The fine is doubled if the cause is not remedied within the deadline given. If employers have not made the changes ordered by the labour authorities within the deadline allowed for this purpose, the Ministry of Labour and Social Insurance will sanction employers, and the fine will be increased in the event they fail to comply with the order within the new deadline.

- In the event that the irregularity continues to exist after the sanctions mentioned above, the Department, taking into account the nature of the changes ordered and the degree of danger, may partly or totally close the work centre until such time as the problem is remedied. For this purpose it will solicit the opinion of the corresponding joint safety and health committee, notwithstanding the fact that the Department may take steps to ensure that the employer complies with the order.

- If the Ministry of Labour decides upon partial or total closure, it will notify the employer and union representatives in writing three working days in advance of the date of closure. If the employees are not unionized, the notice will be sent in writing to their representatives on the joint safety and health committee.

- It should be noted that the Ministry of Labour and Social Insurance exercises federal authority throughout the country over safety and health. State bodies are required to assist the Ministry.

- Fines levied on employees may not exceed one-day's minimum general wage under Article 21 of the Constitution.

4. WORKERS' COMPENSATION

A. *Compensation in case of occupational accidents or diseases*

CANADA

Compensation for workers or their dependants in respect of occupational accidents or diseases is mainly a provincial and territorial matter. A federal law applying to federal public servants refers to provincial legislation for the determination of benefits and the administration of the compensation system. The system existing in the provinces and territories covers most types of industrial employment in the country. Coverage is compulsory for all industries within the scope of the provincial or territorial workers' compensation laws. The following are important features of the system:

- collective liability on the part of employers within a class of industry based on the type of business;
- compulsory insurance in a provincial or territorial fund;
- costs are borne exclusively by employers;
- workers or dependants entitled to compensation cannot take legal action against the employer;
- administration by an independent agency, the workers' compensation board;
- "administrative" rather than "adversary" system.

UNITED STATES

- Workers' compensation is mainly the responsibility of the individual States. There are considerable variations in the types of laws, coverage, amounts of benefits paid, insurance requirements, and administrative procedures of the various State workers' compensation laws. There are two basic types of workers' compensation laws: compulsory laws and elective laws.

- Under a compulsory law, every employer and employee subject to the law is required to comply with its provisions regarding the compensation of work-related injuries. Some States restrict compulsory coverage to so-called hazardous occupations and/or exempt employers with fewer than a specified number of employees. Agricultural workers, domestic workers, and casual workers are often excluded from coverage.

- Under an elective law, employers and employees have the option of either accepting or rejecting the law. However, if they reject coverage, the employers usually lose certain common law defenses they could use to escape liability. Where employers do not elect to come under the Act, employees may be unable to obtain compensation unless they sue for damages.

- Most State laws provide that an employee is entitled to specified benefits whenever he or she suffers an injury "arising out of and in the course of employment." The concepts of negligence or fault are generally not applicable. Employees give up their right to sue the employer for damages resulting from a compensable injury.

- A few States require employers to insure their risks in an insurance fund administered by the State. In other States, employers may choose whether they will insure in the State fund or with a private insurance company. In the remaining States, employers may insure with a private insurance company or qualify as self-insurers. Where self-insurance is permitted, the laws

establish financial responsibility requirements for self-insured employers. Penalties may be imposed if an employer fails to comply with the insurance requirements.

MEXICO

- Employers are legally responsible for work accidents and occupational diseases suffered by workers because of, or in the performance of, their work or profession.

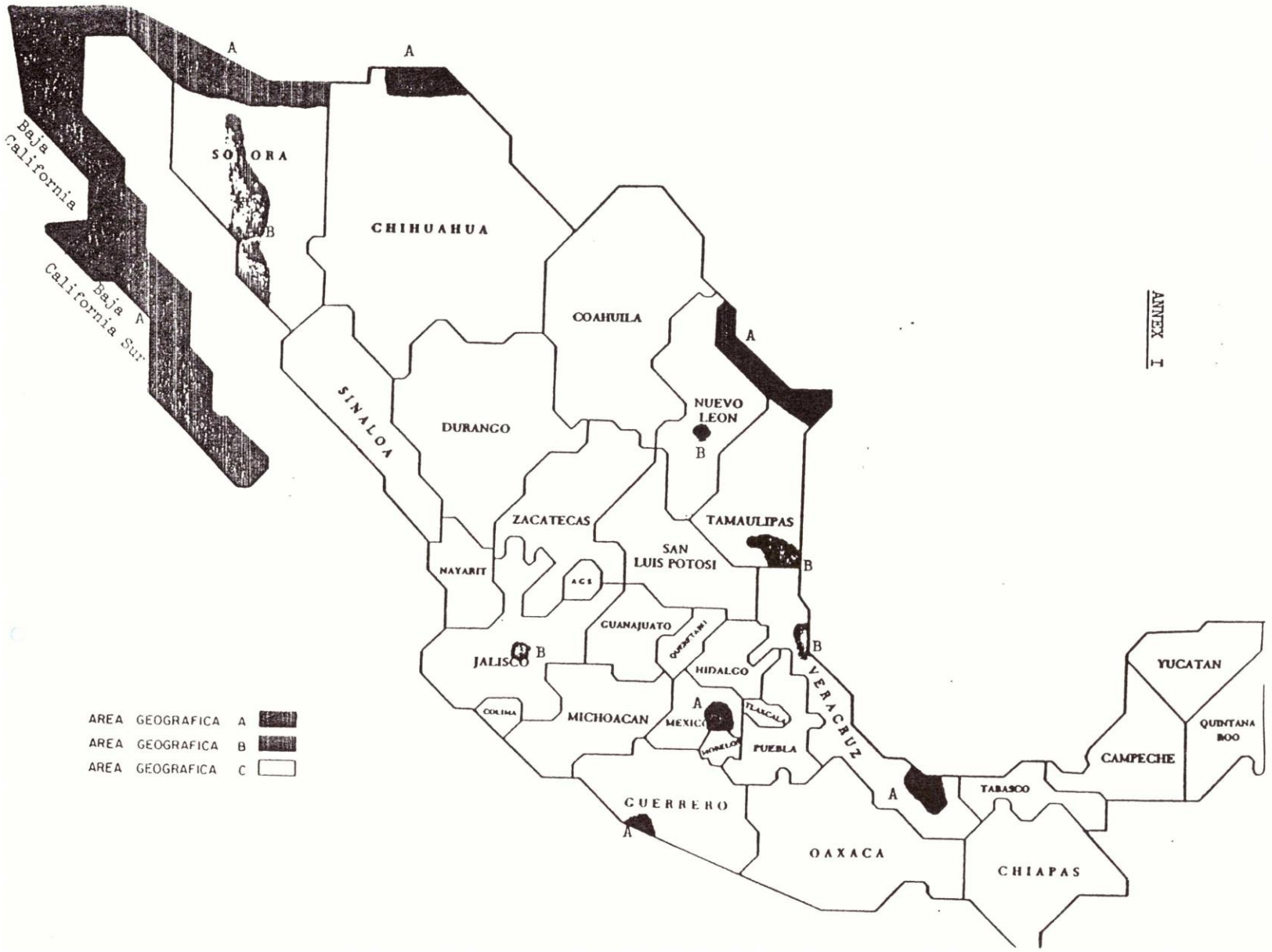
- Workers insured with the Mexican Social Security Institute are entitled to benefits under the Social Security Act in the event they suffer from a labour accident. This insurance relieves the employer of all responsibility for such accidents.

- As outlined in "Mexico", Investing, Licensing and Trading (August 1989, Business International Corp.), the social security system which is supported by employers (68.75%), employees (25%) and the government (6.25%) provides for, among other things, broad coverage of the responsibilities arising from work-related accidents and diseases (e.g. 100% of salary for up to 72 weeks of disability and permanent disability insurance).

- In cases where social security is not available due to the lack of facilities in certain municipalities, the employer must pay the compensation provided for in the Federal Labour Act.

- If an accident or disease results in the death of an employee, compensation is equivalent to 730 days of salary, which will be paid to the legally designated beneficiaries. If the accident or disease results in disability, the employee has the right, in proportion to the disability, up to a total of 1,095 days of salary which is the compensation for total, permanent disability. In both cases the Federal Labour Act establishes that the base salary for compensation may not exceed double the minimum general or occupational wage.

ANNEX I


Baja California
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SONORA
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MICHOACAN
MEXICO
TLAXCALA
MORELOS
PUEBLA
VERACRUZ
GUERRERO
OAXACA
CHIAPAS
TABASCO
CAMPECHE
YUCATAN
QUINTANA ROO
AREA GEOGRAFICA A
AREA GEOGRAFICA B
AREA GEOGRAFICA C

There are three zones. The first, where living expenses are highest, includes Baja California, Ciudad Juárez (in the state of Chihuahua), the Federal District (metropolitan area), Acapulco (in the state of Guerrero), Nogales (in the state of Sonora), the north of the state of Tamaulipas, and Minatitlán and Coatzacoalcos in the state of Veracruz.

They are export processing zones where export processing factories (maquiladoras) are located (Baja California, Ciudad Juárez, Nogales, the north of Tamaulipas); heavy tourist areas (Baja California and Acapulco); industrial zones or simply expensive zones (Federal District) or oil refining areas (Minatitlán and Coatzacoalcos, particularly the petrochemical industry).

The second zone, called "B", has an intermediate cost of living. It includes the metropolitan areas of Guadalajara and Monterrey, the coast of Sonora, the cities of Tampico, Madero and Altamira in the state of Tamaulipas (coast of the Gulf of Mexico), the city of Mante also in Tamaulipas, and Poza Rica and Tuxpan in the state of Veracruz.

These areas were also selected based on economic development. Monterrey has large industries and is the second most important industrial area after the Federal District. Guadalajara also has considerable industrial development. The coast of Sonora, which lies on the landward side of the Gulf of California, receives the impact of higher border prices, but is not itself highly industrialized, although it does have a fishery. Tampico is a busy port and Madero has a large oil refinery. Mante has several sugar refineries. Poza Rica is also a petroleum zone, and Tuxpan is a fishing port.

The rest of the country is classified as zone "C", with the lowest level of development.