



Practice Note

DIVERSITY, EQUITY, AND INCLUSION (MEXICO)



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Diversity, Equity, and Inclusion (Mexico)

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Status: Law stated as of 01-Dec-2025 | Jurisdiction: Mexico

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A Practice Note addressing key legal and practical issues regarding workplace diversity, equity, and inclusion (DEI) in Mexico. Covered topics include discrimination, human rights, employment policies and training, and data collection. The note also reviews current social strategies and business initiatives to address DEI in Mexico.

Companies across the globe must successfully navigate the rapidly evolving landscape of diversity, equity, and inclusion (DEI). Growing pressures go beyond a commitment to an inclusive workplace free of discrimination. Employer attention is also shifting to racial justice, corporate social responsibility, and a continued open dialogue with employees throughout the entire work relationship. This Note provides an overview of the established and more recent DEI legal developments and practical considerations in Mexico.

Scope of Diversity, Equity, and Inclusion

Key areas of discrimination in Mexico include gender discrimination, indigenous and ethnic discrimination, LGBTQ+ discrimination, disability discrimination, age discrimination, and discrimination based on race, ethnicity, and national origin. These issues can manifest in unequal employment opportunities, limited access to education and resources, stereotypes, prejudice, harassment, and exclusion from benefits and rights.

The Constitution of Mexico requires that all employees be treated equally without regard to gender or nationality (section A.VII, Article 123, the Constitution). To further and expand this requirement, Article 3 of the Federal Labor Law (FLL) regulates:

- All working relationships between employers and employees.
- The individual working agreements between employers and employees.
- The collective agreements between the Mexican labor unions and employer companies.

Article 3 of the FLL seeks to ensure that employers create an adequate working environment with DEI for all employees.

While most working environments in Mexico have diverse employees of different genders, races, religions, ethnicities, nationalities, sexual orientations, and disabilities, these diverse factors must not affect:

- Inclusion or equity between them.
- Employer's decisions regarding employees' benefits, salary, and working schedule.

Instead, when making employment decisions, employers:

- Must treat employees performing the same job equally and provide them the same benefits.
- May consider factors such as experience, credentials, and capabilities, and seniority within the company.

Compliance with DEI regulations under Mexico law can help:

- Instill a sense of value and respect by the company towards its employees.
- Improve worker morale, motivation, and engagement.
- Generate value and growth for a company.

Legal Requirements

The following Mexican laws regulate the diversity, equity, and inclusion of every worker:

- The [FLL](#).
- The [Social Security Law](#).

- The [Federal Law to Prevent and Eradicate Discrimination](#).
- The [Mexican Regulation for Labor Equality and to Eradicate Discrimination \(NMX-R-025-SCIFI-2015\)](#) (Regulation for Labor Equality).
- The [Constitution](#).

Federal Labor Law (FLL)

The principle of equal opportunities and non-discrimination in employee advancement and development is established in the following provisions of the FLL:

- Article 3. This article establishes that labor relations must be conducted under the principles of justice, equity, and respect for human dignity. It also establishes that every worker has the same rights as others regardless of their race, ethnicity, religion, sexual orientation, gender, or any other factor that distinguishes a person from another.
- Article 17. This article states that employers must comply with labor laws and regulations, ensuring equity and non-discrimination in employment relationships.
- Article 86. This article establishes that employees have the right to receive equal pay for equal work.
- Article 132. This article prohibits any form of discrimination based on race, sex, age, religion, disability, or any other grounds in the hiring and treatment of workers. In labor and employment matters, this equity or equality principle, applies to every jurisdictional procedure and to every working relationship among employers, employees, and labor authorities. This means that in every labor judicial procedure, the authorities must apply the equity principle to all parties involved in the procedure, so that all parties are treated equally before the authorities.

These provisions emphasize the importance of equal treatment and opportunities for employees in terms of advancement and growth within a company. Employers are required to ensure that all employees, regardless of their background or characteristics, have equal access to management positions and career progression. This principle aims to prevent discrimination and promote a fair and inclusive working environment.

Mexico Constitution

DEI is addressed in the following provisions of the Constitution:

- Article 1. This article establishes the general principles of the Constitution, including the

principle of equity. It states that all individuals are entitled to enjoy the rights recognized in the Constitution without any discrimination, ensuring their equal protection and opportunities.

- Article 2. This article recognizes and guarantees the rights of indigenous peoples, emphasizing the need for equality and equity in their treatment and development.
- Article 123. This article:
 - Regulates individual working relations and establishes and recognizes all human rights for workers in general (subsection A).
 - Recognizes all human rights for all government-related and community service workers (subsection B).

Regulation for Labor Equality (2015)

The Regulation for Labor Equality provides a voluntary mechanism for every public, private, or social service company to avoid discrimination in the workplace. It establishes a certification that companies operating in Mexico can obtain after passing an audit process. The audit process is conducted by authorized, independent, third-party auditors with the required expertise and authorization to evaluate companies' compliance with the regulation. The specific content of the audit varies but typically includes:

- Reviewing policies to ensure compliance with the requirements of the regulation.
- Assessing recruitment and hiring practices.
- Evaluating promotion and career advancement procedures.
- Examining training programs.
- Assessing complaint mechanisms.
- Reviewing monitoring and reporting systems.

The audit aims to determine both that:

- The company's policies align with the regulation's requirements.
- Implementation of the policies (promoting equality and preventing discrimination in the workplace) has been effective.

Upon successfully completing the audit and meeting the regulation's requirements, the company can obtain the certification, which demonstrates its commitment to labor equality and eradicating discrimination.

Discrimination and Harassment

Mexico's anti-discrimination law, the Federal Law to Prevent and Eliminate Discrimination, regulates all discrimination matters and seeks to prevent discriminatory conduct in every workspace. On 16 March 2022, Mexico ratified the Violence and Harassment Convention, 2019 (C190), which seeks to eliminate all violence and harassment, including in the workplace.

Failure to comply with anti-discrimination and anti-harassment laws in Mexico can result in criminal felony charges and monetary fines. Under the FLL, for example, the fines range from 250 to 5,000 days of minimum wage.

Mexican companies must have a human resources department or other established avenue through which employees can submit any complaints, including claims of discrimination and harassment.

Training and Policy

There are no requirements to provide employment training on discrimination and equality, however, many employers incorporate training in labor agreements.

Best practice is for employers to have an internal policy that seeks to prevent gender discrimination, workplace harassment, and sexual harassment. It is advisable to have a code of conduct applicable to all employees, and to include in that code of conduct a section on DEI.

Human Rights Laws

Every labor agreement in Mexico must recognize the human rights of employees. Employers must establish channels that employees can use to present claims of human right violations and investigate any claims. Employees can bring allegations of human rights violations for investigation and adjudication or recommendations to federal or local labor authorities, as follows:

- **The federal and local labor courts.** These courts are responsible for handling and adjudicating labor disputes.
- **The National Human Rights Commission** (*Comisión Nacional de los Derechos Humanos*) (CNDH). While primarily focused on the protection and promotion of human rights in a broader sense, the CNDH can also receive and investigate complaints, and make recommendations for remedial actions, related to human rights violations in the workplace.

- **The Ministry of Labor and Social Welfare** (*Secretaría del Trabajo y Previsión Social*) (STPS). The STPS is responsible for enforcing labor laws in Mexico and can take appropriate action against the employer if human rights violations are found.

International Human Rights

Mexico's government has agreements with foreign governments to ensure that the international community complies with all recognized human rights in labor and employment matters. Mexico is an active participant in various international agreements and organizations that promote and protect the rights of workers, including:

- **The International Labor Organization (ILO).** Mexico has ratified numerous ILO conventions covering a wide range of labor issues, including freedom of association, collective bargaining, equal remuneration, forced labor, child labor, and discrimination in employment.
- **United Nations (UN) human rights treaties.** Mexico has ratified several UN human rights treaties including the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which recognizes the right to work under fair and favorable conditions, as well as the Convention on the Rights of the Child (CRC), which addresses child labor.
- **The United States-Mexico-Canada Agreement (USMCA).** The USMCA is a trilateral trade agreement between Mexico, the United States, and Canada that replaced the North American Free Trade Agreement (NAFTA). The USMCA includes a labor chapter that aims to ensure that each country upholds labor rights and improves working conditions. It establishes mechanisms for addressing labor disputes and encourages cooperation on labor issues.
- **Free trade agreements (FTAs).** Mexico has signed numerous bilateral and regional free trade agreements with countries around the world. These agreements often include labor provisions that address workers' rights and labor standards.

Hiring and Retention of Employees

While provisions related to DEI in hiring and retention of employees are not explicitly found in the FLL, employers must adhere to key principles and guidelines in the law that promote these values:

- **Equal opportunities.** Employers are encouraged to provide equal opportunities for all individuals, irrespective of their background or characteristics.

- **Non-discrimination.** The FLL prohibits discrimination based on race, gender, ethnicity, disability, religion, or any other characteristic protected by law, including during recruitment, selection, and promotion processes.
- **Termination during pregnancy.** The Labour courts provide that the termination of the employment of a pregnant woman will be null and void, even if there is a termination letter. The only viable way to formalize an employment termination with a pregnant woman is by executing a mutual termination agreement and having it ratified and approved by the Labor Authority.
- **Affirmative action.** While not explicitly required by law, the importance of promoting opportunities in hiring to increase workforce representation for historically marginalized groups, such as women, indigenous people, or individuals with disabilities, is recognized in Mexico.

For guidance on pre-employment screening under Mexico's Federal Law, see [Practice Note, Pre-Employment Screening and Data Protection Law Requirements \(Mexico\)](#).

DEI Compliance

The Mexican government employs various mechanisms to ensure compliance with diversity, equity, and inclusion (DEI) matters in companies. Some ways in which the government works towards ensuring compliance include:

- **Legislation and regulations.** The FLL and the Federal Law to Prevent and Eliminate Discrimination outline the rights and protections of employees and impose obligations on employers to promote DEI.
- **Regulatory agencies.** The STPS is responsible for monitoring and enforcing labor standards, including DEI requirements, and can conduct inspections and investigations to ensure compliance.
- **Audits and inspections.** The government can conduct audits and inspections of companies to verify their compliance with DEI-related laws and regulations. These audits may include reviewing employment records, policies, practices, and conducting interviews with employees to assess adherence to DEI principles.
- **Reporting and complaint mechanisms.** The government provides avenues for individuals to report instances of discrimination, inequality, or violations of DEI-related laws, and the government can investigate and take appropriate action against non-compliant companies.

- **Collaboration with stakeholders.** Through educational campaigns, training programs, and sharing best practices, the government collaborates with various employers' associations, labor unions, and civil society organizations, to promote DEI and raise awareness about the importance of compliance.
- **Sanctions and penalties.** The government has the authority to impose fines, sanctions, and penalties on companies that fail to meet DEI requirements.

Enforcement

The first step for the enforcement of DEI policies in the workplace should be through internal enforcement. The internal department which oversees DEI matters, usually human resources, should take steps to address any non-compliance, and can terminate the labor agreement of an employee who fails to comply with the regulations. See [Practice Note, Individual Employee Termination \(Mexico\)](#).

As an alternative, employees can approach the labor authorities and submit a claim against their employer if they are subject to workplace discrimination and their employer has not dealt with the issue.

A cause of action for a DEI-related claim is based on labor laws that prohibit discrimination, harassment, or unequal treatment in the workplace. The claim depends on the alleged violation(s), including:

- **Discrimination:** Allegations of differential treatment based on protected characteristics, such as gender, age, ethnicity, disability, or other factors.
- **Harassment:** Claims of a hostile or offensive work environment based on protected characteristics, including verbal, physical, or visual harassment.
- **Retaliation:** Allegations that the employee faced adverse actions (for example, termination, demotion, or adverse treatment) as a result of raising concerns or participating in activities related to DEI.
- **Failure to accommodate:** Claims that the employer failed to provide reasonable accommodations for individuals with disabilities or failed to address specific needs related to DEI.
- **Pay disparities:** Allegations of unequal pay or disparities in compensation based on protected characteristics.

The potential recovery for an employee who prevails in a DEI-related claim in Mexico can include:

- Compensation for damages. This can include back pay, lost wages, or compensation for moral damages suffered because of the violation(s).
- Job reinstatement. If the employee was wrongfully terminated or suffered adverse employment actions, the court can order reinstatement to their previous position.
- Legal fees and costs. The prevailing employee may be entitled to recover reasonable attorney fees and litigation costs associated with pursuing the claim.

For more information on employment claims in Mexico, see [Practice Note, Employment Litigation and Timelines \(Mexico\)](#).

Collection of Personal Data

The protection of personal data in Mexico is governed by the [Federal Law on the Protection of Personal Data Held by Private Parties \(LFPDPPP\)](#).

Companies in Mexico typically require personal information from their employees, usually at the time of hiring, including their:

- Home address.
- Social security number.
- Federal taxpayer registry number.
- Education degree.
- Letters of recommendation.
- Former employer's contact for future references.
- Beneficiaries' names for social security purposes.
- Age.
- Marital status
- Nationality.

For more information on personal data and employment contracts, see [Country Q&A, Employment Contract Terms in Mexico: Overview](#).

For guidance on privacy and data security programs and policies in Mexico, see [Data Protection Toolkit \(Mexico\)](#).

Rights and Accommodations for Disabilities

Despite the absence of quota requirements, companies in Mexico have accommodation obligations for people with certain disabilities, who can be trained and accommodated to perform

their jobs. Companies must ensure employees with certain disabilities can participate in their workplace without limitations. For example, building adjustments may be required to allow every person, with or without a disability, to move around without any difficulty. Other laws that set out requirements applicable to employers are:

- **The Federal Law for the Integration of Persons with Disabilities.** Employers are required to provide reasonable accommodations to ensure equal opportunities for disabled employees.
- **Mexican Official Standard NOM-035-STPS-2018.** This standard focuses on the identification and prevention of psychosocial risks in the workplace. It includes provisions addressing the needs of employees with disabilities, ensuring their well-being and promoting a respectful work environment.
- **Accessibility standards.** Employers must adhere to the accessibility standards set forth in various regulations, such as the Mexican Standard NMX-R-050-SCFI-2006. These standards require employers to make necessary adjustments to physical infrastructure, facilities, and equipment to ensure accessibility for employees with disabilities.
- **The FLL.** The FLL requires equal treatment, non-discrimination, and reasonable accommodations to facilitate employment and work conditions of disabled employees.
- **The National Council for the Development and Inclusion of Persons with Disabilities (CONADIS) Guidelines.** CONADIS provides guidelines for employers on promoting inclusion and reasonable accommodations for disabled employees. These guidelines offer practical recommendations for adapting the workplace and employment practices.
- **The Constitution.** Articles 1 and 4 of the Mexican Constitution recognize the rights of disabled individuals and prohibits discrimination based on disability.

Pay Equity

The FLL regulates pay equity and requires that employees receive the same salary when they perform the same job. As with other employment decisions, differences in salary can be justified based on seniority in the company, credentials, experience, or other academic reasons. A difference in salary, however, can never be tied to a worker's gender, religion, race, or any other protected factor.

Salary Disclosures and Pay Reporting Requirements

Regarding salary disclosure or pay reporting requirements, the FLL does not specifically mandate public disclosure of individual salaries or require employers to report employee salaries. However, employers are obligated to comply with the principle of equal pay for equal work (Article 86), which means employees in the same job or position should receive the same compensation regardless of discriminatory factors such as gender.

Employers must make sure that all employees receive the same:

- Possibilities of advancement.
- Opportunities of growth in the company and the same opportunities to develop a management position.
- Treatment.

Unions/Worker Representation

Unions in Mexico play a role in workplace DEI efforts by:

- Negotiating inclusive policies and DEI provisions in collective bargaining agreements. These include areas such as anti-discrimination policies, equal pay, diverse hiring practices, and workplace accommodations.
- Advocating for fair treatment and equal opportunities for workers, challenging discriminatory practices, and promoting a more inclusive and diverse work environment.
- Providing education and training programs to their members on diversity, unconscious bias, and respectful workplace behavior, and raising awareness and promoting understanding of DEI issues.
- Supporting underrepresented groups, such as women, minority communities, and individuals with disabilities, advocating for their rights and addressing their specific concerns.

Cultural Practices and Business Initiatives

Business Strategy

DEI strategies lead to a healthier work environment for employers, employees, clients, and customers. Larger companies in Mexico, particularly multinationals, are often at the forefront of

embracing DEI strategies and initiatives. There are several reasons why these companies tend to be more proactive in embracing DEI:

- **Global influence.** Larger companies operating in Mexico are often influenced by international DEI standards and best practices. They operate in diverse markets and understand the importance of creating inclusive work environments to attract and retain top talent, build strong customer relationships, and enhance their global reputation.
- **Regulatory compliance.** Larger companies may be subject to regulations and requirements outside of Mexico that require them to adhere to global DEI standards.
- **Organizational resources.** Larger companies typically have sufficient resources, in terms of budget and personnel, to invest in DEI initiatives, such as establishing dedicated DEI departments or teams, developing comprehensive training programs, and allocating resources to implement and monitor the effectiveness of DEI strategies.
- **Talent acquisition and retention.** Larger companies often operate in highly competitive industries where attracting and retaining top talent is crucial. Embracing DEI practices can give them a competitive edge in attracting diverse talent pools, fostering a sense of belonging, and promoting career advancement opportunities for underrepresented groups.
- **Brand reputation.** Larger companies often have established brands with a significant public presence. Embracing DEI is seen as part of positive branding and can enhance reputation and stakeholder trust. Consumers and investors increasingly value companies that demonstrate a commitment to diversity and inclusion.

Smaller companies in various industries are also recognizing the importance of DEI and taking steps to embrace it. Some smaller organizations can be more agile and able to implement DEI initiatives more quickly due to their smaller organizational structure.

Foreign Workers and Diversity

One factor that contributes to the diversity of a workforce in Mexico is hiring employees from other countries. This can happen when a non-Mexican company establishes operations in Mexico and brings foreign employees to Mexico.

This can produce a more diverse working environment and promote a more cosmopolitan image for the company. International personnel can bring new ideas to the workplace and generate diversity among employees.

Diversity of genders, religions, and races in a Mexican business is very important, and helps promote stronger relations with other companies and business partners.

Promotion Opportunities

In Mexico, promotions within a company are typically based on a combination of factors, including an employee's abilities, qualifications, performance, and potential to fulfil additional accountability, responsibilities, and obligations. While equal opportunities and non-discrimination are fundamental principles in the workplace, promotions are granted to employees who demonstrate the necessary skills and capabilities to handle higher-level accountabilities.

The Mexican labor framework emphasizes the importance of equal treatment and non-discrimination however, it also recognizes that promotions should be based on merit and the ability to fulfill new responsibilities. Employers have the right to evaluate an employee's qualifications and suitability for a higher position by assessing their skills, experience, and potential for growth.

Decisions regarding promotions should not involve discriminatory practices, such as basing a promotion solely on factors like gender, race, or any other protected characteristic. Promotions should be fair, transparent, and based on objective criteria, allowing employees to advance based on their abilities and qualifications.

Workplace Affinity Groups

There are no regulations which govern an employer's ability to create affinity groups in the workplace.

Companies are free to take measures to promote inclusiveness in the workplace as they see fit.

Maternity, Paternity and Adoption Leave

The FLL provides:

- A three-month rest period, paid in full, to working mothers in the gestation and lactation period (that is, before and after the child is born).
- Mandatory paternity leave of five working days.
- A six-week rest period to parents who adopt a child, starting from the date of adoption or when the child is placed in their care.

Dependent Care Leave

The FLL does not specifically address leave for employees to care for sick dependents. However, there may be provisions or regulations in collective bargaining agreements, internal company policies, or other applicable laws that provide for such leave or time off to care for sick dependents. These provisions can vary depending on the specific circumstances and the employer's policies.

Measuring Success

In Mexico, there is no regulated way of measuring success when it comes to DEI. Companies can assess DEI success voluntarily by keeping a record of all employees, noting their roles, promotions, salary levels, ethnicity, religion, gender, nationality, and any other characteristic that distinguishes one employee from another. By keeping track of this, employers can analyze statistics and use the data to improve their internal DEI policies and measures.

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