

Reforma laboral en México, ¿Solución a la justicia social?

Labor reform in Mexico, Solution to social justice?

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Resumen

La crisis de la economía mundial desde la década de los años setenta hizo necesario hacer reformas estructurales a nivel global. Los países latinoamericanos, en la década de los años noventa, idearon una serie de reformas estructurales a fin de lograr un alto rendimiento en el sector laboral y frenar de esta manera los costos del despido. Se consideró que el sistema universal de protección social en la mayoría de los países de la región, que tradicionalmente habían regido la actividad laboral, no cumplía con las expectativas de desarrollo económico global pues no demostró un aumento de empleos y de inversión extranjera; sin embargo, las reformas instauradas en la región latinoamericana tampoco han cumplido con el objetivo de generar trabajo; por el contrario, sigue habiendo un evidente desempleo y una mayor

desprotección social, lo que entorpece el ejercicio de otros derechos y crea un factor poderoso de discriminación laboral.

Palabras clave: reforma laboral, justicia social y desempleo.

Abstract

The crisis of the world economy since the 1970s made it necessary to make structural reforms at the global level. Latin American countries, in the Decade of the 1990s, devised a series of structural reforms in order to achieve high performance in the labor sector and curb this way the dismissal costs. It is considered that the system universal of protection social in it most of them countries of the region, that traditionally had governed the work activity, does not meet the expectations of global economic development because did not showed an increase of jobs and of foreign investment; however, the reforms established in the region Latin American nor have met with the objective of generating work; conversely, there is still an evident unemployment and a greater lack of social protection, which hinders the exercise of other rights and creates a powerful factor of employment discrimination.

Key words: labor reform, social justice and unemployment.

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Introduction

In Mexico, on November 30, 2012 was published in the Official Journal of the Federation the first substantial reform of the Federal Labour Act since its enactment in 1970. A purpose of the reform was the need to update the labor law allowing officially for a few hours and not by full-time jobs, and the conclusion of trial contracts, which, in the opinion of labor experts, facilitates the dismissal of workers.

These reforms in labour matters was conceived under the vision of boosting the productivity of labour-management relations and promote the competitiveness of the economy, elements necessary for the inclusion of the Mexican economy in the globalization process. Principles such as job security, the protection of workers against the risks of unemployment, disease and old age were considered to be too expensive obstacles to the country's economy, which harm, in addition, the processes of economic growth and development.

In this sense, the federal Government insisted that, with labor law reform, it would be possible to create new thousands of jobs. These reforms included schemes such as:

- Offer new forms of recruitment, which is intended to create the conditions so that a greater number of people can integrate into jobs in the formal economy.
 - Trial periods.
 - Initial training contracts.
- Regulate outsourcing.
- Provide legal certainty to the Mexicans who go to work abroad.
- Realize the telecommuting or remote work making use of information technologies.
- Incorporate the definition of decent work that promotes the International Labour Organization (ILO), which is consistent with the definition of decent work established in the Constitution.
- Lead to better conditions of work for vulnerable groups such as: casual workers and the field, the domestic and the miners.
- Establish an agile and abbreviated procedure to negotiate conflicts derived from social security.
- Consider a new ground for employment termination of employment without prejudice for the worker, when the pattern required to perform acts or conduct or have behaviours that undermine or threaten their dignity.
- Strengthening the rights of workers and promote equity to establish the figure of maternity leaves.
- Establecer que los sueldos caídos del trabajador ganados en un juicio laboral por despido injustificado ante la Junta de Conciliación y Arbitraje se limitarán a un año

y 2 % a razón de 15 meses del salario del trabajador (antes de la reforma no había un límite para el pago de dichas percepciones).

- Improve the working conditions of domestic workers.
- Update tables or working conditions and valuation of permanent disabilities.

Although the reform aims to maintain social security as an important element in the new labor relations, in a welfare state transformation of this nature should focus on solving problems of inequality and social injustice. At present, globally we are experiencing a severe economic crisis whose effects is not yet possible to provide completely.

Performance

Many despite the terrible unemployment in the country citizens strive every day to improve and raise their living standards, however, the economic crisis we are experiencing globally, poverty, lack of opportunities and dismissal in most countries Latin Americans are the main reason for individual conflict.

Therefore becomes important social justice as the means to achieve equitable distribution of social goods, which make it possible for the most disadvantaged social classes have opportunities for development. Social justice must also be an obligation of all countries to offset inequalities arising in society, as a way to strengthen services and ensure those rights deemed essential for individuals to maintain the standard of living required and be a full member of society, such as access to health, nutrition, public education, housing, work, salary and a pension system that achieve a decent standard of living.

Equal opportunities and social welfare are key elements of societies that want to be fair; They are possibilities for a human being to be or do what you see fit, a form of social justice that protects socially just system whereby people have the same opportunities of access to social welfare and the same social rights. However, social injustice has become a global problem that has fallen worryingly economic and social well-being of many people, preventing the full development of each individual and influence the ways of life of sufferers. Von Stein (1949, p. 37) exerted a major influence in the mid-nineteenth century in Germany when he argued that the welfare state was a concrete way to avoid revolution.

Today, before the adoption of the Declaration on Fundamental Principles and Rights at Work of the ILO and the implementation of free trade agreements, the need to comply undoubtedly fundamental rights at work in order to allow development arises a trade fair.

The Declaration of Fundamental Principles and Rights at Work of the ILO, adopted in 1998, commits Member States to respect and promote principles and rights in four categories, whether or not ratified the relevant conventions. These categories are:

1. Freedom of association and freedom of association and the effective recognition of the right to collective bargaining.
2. The elimination of forced or compulsory labor.
3. The abolition of child labor.
4. The elimination of discrimination in respect of employment and occupation.

The labor reform in Mexico set out to maintain the concept of decent work as a legal principle with labor standards of the Mexican state, which takes place at a time when the prevailing international economic crisis that has contributed to the number of unemployed increase considerably.

The International Labour Organization (ILO) said in its project social and employment prospects in the world. Trends 2016, that the world is showing signs of weakness and disappointing economic growth, which anticipates that during 2016 and 2017 will be a slowdown of the economy will result in a rise in unemployment scenario that Mexico is no stranger.

The report projects that our country end this year with 2.4 million unemployed, which does not diminish in 2017, because that year expects the same number of people out of work is maintained.

However, the results of the National Survey of Occupation and Employment (figures for the first quarter of 2015) by the National Institute of Statistics and Geography, reveals that in Mexico underemployment is increasing because people who sought additional employment between April-June 2015 they totaled 4.2 million, equivalent to 8.3% of the employed, higher than the same period in 2014, which was 8.2%, ie proportion, 150,000 workers were added.

These categories of workers generally suffer high levels of insecurity, and since working in these conditions generally have limited access to social protection systems access.

Social security and decent work

Social security covers all the conditions that provide benefits, whether in cash or in kind, to ensure assistance in case of:

- a. Do not expect a salary in case of: maternity, disability, illness, accidents and occupational diseases, unemployment, old age and death of a family member.
- b. Lack of access or inadequate access to health care.
- c. Insufficient family support, particularly for children or dependent adults.
- d. Poverty and social exclusion.

Decent work, on the other hand, means that people in their working lives aspire to achieve social welfare to enjoy a good quality of life, which involves the opportunity to access decent jobs to generate a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, stability in employment and equal opportunities for women and men. Another definition more quality of life is as follows:

It is a state of general satisfaction derived from the realization of the potential of the person. It has subjective and objective aspects aspects. It is a subjective feeling of physical, psychological and social well-being. It included as subjective aspects of intimacy, emotional expression, perceived safety and health objective. As objective aspects are material well-being, harmonious relations with the physical and social environment and the community, as well as objectively perceived health (Ardila, R. 2003, en Antúnez, S. T., 2014, p.3).

Productive employment and decent work are key components to achieve a fair globalization and poverty reduction. The welfare state then implies respect for the rights that a person

needs to enjoy a good quality of life, a quiet life, a state of satisfaction as to have a decent job, a fair wage that meets the basic needs, housing, access to education and health.

The importance of decent work for sustainable development has been highlighted in the Agenda 2030 Sustainable Development Goal 8, and whose purpose is to promote sustained, inclusive and sustainable, full and productive employment and job growth decent for all.

But social injustice is a global phenomenon that has fallen worryingly the lives of many people. This situation prevents the full development of each individual and determines the way of life of sufferers. In this sense the absence of a true social state of law as a form of political, economic and social organization aimed at achieving social justice and human dignity through the observance of public servants to social rights and duties of constitutional order is clear, eliminating or reducing the effects of social inequality in the majority of the population.

Results of the labor reform

The initial purpose of labor reform to make the labor market more Mexicans and facilitate the generation of more and better formal jobs to meet the most basic needs of Mexicans, is far from being met.

In Mexico, as in many Latin American countries, poverty is linked to the lack of opportunities, ie, many citizens have no chance of finding a job paid well enough. For ten years, the unemployment rate has grown alarmingly, which has also caused an increase in informality and lack of social protection.

With the global economic crisis is not likely to generate new jobs are observed, because besides those responsible for public policies are no longer sure how to create jobs because of globalization, technological innovation and outsourcing are inducing changes in the world economy, disrupting the structures of national labor markets.

According to data compiled by the National Institute of Statistics and Geography (INEGI), during the months of January, February and March 2014, the unemployment rate of young people between 20 and 24 years of age was 9.2%, which It represents a high level of inactivity.

A reality that can not be hidden is that young people currently suffer from this employment crisis and therefore are forced to create their own sources of employment and income,

which of course are informal. The National Survey of Occupation and Employment 2013, records that 32.3% of the country's youth have informal employment that allows them to earn an income

Most people enter the informal economy do so because they are in a situation of need, so try to survive and gain access to income-generating activities to meet their most basic needs. In addition, the informal economy is characterized by an acute shortage of decent work and a disproportionate share of working poor.

Some data from the World Development Report 2013: Employment, the World Bank, argue that the informal economy is characterized by an acute shortage of decent work and a disproportionate share of working poor. It is true that some activities in the area of the informal economy can provide living conditions and reasonable income, but most people working in this type of economy are exposed to conditions of inadequate and unsafe working and have high levels of illiteracy, low-skilled and low training opportunities; the income they earn are not regular or insurance, work longer hours and have no access to social security.

The excessive growth of the informal economy has led to:

- a. The expansion of precarious jobs and low productivity.
- b. Lack of job stability.
- c. A major source of insecurity, poverty and low levels of productivity.
- d. Obstacles to economic and social development.
- e. Lower income taxes, which limits the state's ability to meet needs of social justice for citizens.
- F. To be placed outside the social security system, allowing a large segment of the population working in these conditions remain marginalized from social protection.

According to the results of the National Survey of Occupation and Employment figures for the second quarter of 2015 reveal that the data "seasonally adjusted" both the rate of informality as the employment rate in this sector registered a growth of 0.1 percentage points compared to the previous quarter; 6 out of every ten people work without any social security, according to records of the National Institute of Statistics and Geography.

In this situation of rising unemployment in Mexico, the growth of the informal economy and thereby generating activities outside the law is clear. Thus, decent work includes social welfare to which they aspire people during their working life. It means the opportunity to obtain decent and productive employment to generate a fair income, job stability, social protection for families and better prospects for personal development and social integration. In this context, new forms of employment contracts in Mexico have not improved or have increased employment rates, as explained in the preamble to the initiative, saying that "younger and women may have more opportunities access to employment and part-time jobs. "

The right to employment stability also violates to new forms of temporary contracts because the principle of permanence is eliminated, while the matter of labor persists and is conditional on the functions performed are of the same nature.

With regard to wages as a factor influencing the standard of living of workers should be considered first existed, and still exists, an economic crisis at global and national level since before it was passed labor reform in Mexico (2012) , crisis has obviously deteriorated sharply purchasing power of wages.

The minimum wage, according to international law and Mexican, must be sufficient for a family of four on average and not just for one. In section VI of Article 123, the Constitution of the United Mexican States it states that the general minimum wage must be sufficient to meet the normal requirements of a householder in the material, social and cultural order, and to provide education compulsory for children. It is widely known that the above in Mexico is not met, despite being a constitutional provision.

The minimum wage in Mexico, as documented in the previous section, is the lowest in Latin America. In one of the most recent editions of the Global Wage Report, the International Labor Organization (ILO, 2013, p. 42) stressed that in Mexico the minimum wage is below market levels, even for unskilled workers.

The wage deterioration is so obvious that the OECD has reported that in Mexico the lowest among all countries of the agency is paid minimum wage. Mexico is also the OECD country that spends less on active employment policies. effective activation measures help connect unemployed and inactive people with jobs and can play a key role in reducing inactivity. To achieve these objectives, activation policies need to strengthen the motivation

to seek work and improve the employability of those seeking a job and available opportunities (OECD, p. 2015). Another interesting aspect raised at the time the initiative to reform the Federal Labor Law and is now a reality, is the fact set a limit to the generation of losers to fight malpractice lawsuits prolong wages.

The general principles of labor law point out that the rules of work tend to achieve balance and social justice in relations between workers and employers, that work is a right and a social duty, which is not an article of commerce, and It requires respect for the liberties and dignity of the worker.

Work is a common good, which should be available for those who demonstrate competence to do so. Full employment is therefore a must for every economic system oriented objective justice and the common good. A society where the right to work is canceled or systematically denied and where measures of economic policies do not allow workers to reach satisfactory standards of living, can not get its ethical legitimacy and achieve social justice.

Who are unemployed or underemployed suffer indeed deeply negative consequences that this condition occurs in personality and risk being left out of society and of becoming a victim of social exclusion.

What happens when a worker is laid off from their jobs?

Article 48 of the Federal Labour Act states in this regard that if the corresponding trial the pattern does not show the cause of termination, the employee is entitled to receive payment for overdue wages from the date of dismissal up for a period up to twelve months in terms of the provisions of the latter part of the previous paragraph. If at the end of the period prescribed in the preceding paragraph has not terminated the proceeding or has not complied with the award, they shall be paid to the worker the interest generated on the amount of fifteen months of salary, at the rate of 2% per month, compounded at the time of payment. The provisions of this paragraph shall not apply to the payment of compensation or other benefits. It is noteworthy that the payment of wages has an effect of repairing the damage done to the worker, ie, the worker is paid what he did not receive because he was fired unjustifiably.

This change was made on the grounds that the labor process is not running out (nor is exhausted, because in some locals the slow procedure remains a constant) quickly and its development could take up to six or eight years of Hence labor cases turn out so long and that when they condemned the defendant employer to pay back wages, this had to cover the payment of all the years of wages took the trial, causing an economic impact that could even bring it to bankruptcy.

Although the reform includes measures of constraint for those notoriously dilate the procedure through the promotion of resources, stagecoaches, incidents and offering evidence even if the delay is caused by the authoritatively, labor procedure on the boards of conciliation and arbitration follows It is slow.

The purposes set forth in the preamble of the labor reform to avoid, on the one hand, the economic impact on employers who are sued by their workers for unfair dismissal and are later convicted in the award to unpaid wages and, the other, to seek to decrease procedural time trials held before boards of conciliation and arbitration, are not met. Labor officials acknowledge that they have been exceeded with regard to the workload and human resources are insufficient to address and resolve in less time demands that accumulate each day at their desks.

This situation may discourage workers from claiming their rights or make the urgent need for them to have economic subsistence resources, they are forced to accept illegal economic arrangements, affecting the right of workers to enjoy social justice and eliminating the social character of labor law.

The labor situation in Mexico today is that many citizens live excruciating scene, away from social justice and largely caused by unemployment, working conditions unsafe and unstable, low wages, discrimination, non-observance of labor standards, everything which invalidates any possibility of you need to have a dignified life and consequently creates stress among the working class because the demands of your work environment exceed your ability to cope or keep them under control.

The relationship between unemployment and stress

Stress stress derived from the English concept, which refers to (Royal Spanish Academy, 2014, p. 976) "caused by overwhelming situations that cause psychosomatic reactions or

serious psychological disorders sometimes tension." Another definition refers to stress as "status of an individual, or any of its organs or devices that require them a higher standard of performance puts them at risk of falling ill" (Canda, MF et al, 2002, pp.. 112 and 113). In the specialized work on the subject states that stress:

It is a personal response and the negative result of an imbalance between the pressure and the ability of the person to cope. Stress is the way people feel when you have too much pressure: it has a knot in the stomach, shoulder tension, inability to sleep, behavioral problems and so on. These are the physical, mental and social signs that is no longer able to cope (Williams, E. y Cooper, L. 2002, p. 6).

The work-related stress is a pattern of reactions that occur when workers face occupational requirements which do not correspond to their knowledge, skills or abilities and challenge them to cope with the situation. When there is an imbalance between demands and resources of the environment and personal with counting worker, then a series of reactions that may include presents: physiological responses (increased heart rate or blood pressure, hyperventilation and secretion hormone "stress" such as adrenaline and cortisol); emotional responses (eg, feeling nervous or irritated); cognitive (eg, reduction or limitation of attention and memory) and behavioral reactions (eg aggression, impulsive behavior, making mistakes) (Houtman, I., Jettinghof, and Cedillo K., L., 2008, p responses. 10).

Consequences of stress.

The effects of stress at very low levels are positive as they are mechanisms that drive the action; at high levels are negative, the most common:

- a. *Behavioral alcoholism, prone to accidents, addictions and impulsive behavior.*
- b. *Subjective: aggressiveness, depression, fatigue, frustration.*
- c. *Cognitive: lack of concentration, poor decision making, mental block.*
- d. *Psychological: hypertension, tachycardia, psychosomatic illnesses.*

- e. *Organizational: absenteeism, low productivity, failures and errors, dissatisfaction and lack of commitment* (Münch, L., 2005, p. 124).

Stress felt and expressed in its various forms represents a set of states and personality traits that reduce, inhibit or block the potential of workers to perform efficiently and effectively in their work environment, as these experiences affect health mental and welfare of staff; understood mental health:

The ability to design, create, produce, coexist with the environment and their peers, meet their basic needs, cultivate friendship and promote peace, create empathy, love, love and be loved, to overcome their failures; but above all, enjoy your successes, have fun, be happy and share that happiness with family and friends (Antúnez, S.T., 2010, p. 4).

A worker who has saved their rights, enjoying job security, you get the income to meet basic needs of your family, enjoying good physical and mental health, that is with or without low levels of stress , will arrive on time to your workplace, will be conducted with optimism during working hours, it will act efficiently and responsibly, will be contributing to the fulfillment of the strategic objectives of the company, which will be reflected in productivity, and ensure that it has stability, growth and continuity.

Conclusion

The analysis of labor reforms in Mexico and their relation to social justice, can reach the following conclusions:

It was not clear that the labor reform is contributing to the economic growth of the country; on the contrary, there is more inequality and vulnerability among the low-income population. Nor it has shown a generation of more and new jobs; on the contrary, these have decreased and those that exist are temporary and low-paid, which prevents workers meet their basic needs and aspire to live in dignity. The trend is to increase the informal economy with no social security. With the increase in the informal economy and underemployment, access to social security is not guaranteed.

The reform of the Federal Labor Law in Mexico is generating a reversal of the gains made from the struggles of social movements has decreased because the parameters of respect and observance of human rights work.

Low or insufficient income of workers hinder their access to basic services of physical and mental health; also, unemployment generates tensions difficult to cope, resulting in negative stress that can complicate mental and emotional stability, characteristic sign of mental disorders associated with both poor working conditions and unemployment. In addition to the latter is the threat of discouragement, undervaluation, low self-esteem, isolation and, in extreme cases even depression.

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