

# Labor Rights and the United States-Mexico-Canada Agreement (USMCA)

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## Background

On November 30, 2018, the Governments of the United States, the United Mexican States, and Canada signed the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada (USMCA).

The USMCA has the strongest and most far-reaching labor provisions of any trade agreement. The agreement contains a labor chapter that prioritizes labor obligations by including them in the core of the agreement and making them fully enforceable. This is a major change from NAFTA, which contained only a side agreement on labor, and it will dramatically benefit American workers and businesses.

Complementing the USMCA's cutting-edge labor provisions, the agreement also contains a groundbreaking enforcement provision. [The Rapid Response Labor Mechanism](#) is the first of its kind and allows the United States to take enforcement actions against individual factories if they fail to comply with domestic freedom of association and collective bargaining laws. Similarly, the USMCA includes provisions aimed at directly improving wages and bringing jobs back to the American auto industry. In support of these goals, the USMCA includes new rules of origin criteria for claiming preferential tariff treatment for automotive goods, including Labor Value Content (LVC) requirements.

## Requirements

Among its provisions, the USMCA [Labor Chapter](#) includes the following:

- Requires the Parties to adopt and maintain in law and practice labor rights as recognized by the International Labor Organization (ILO), to effectively enforce its labor laws, and not to waive or derogate from its labor laws.
- Includes new provisions that require the Parties to take measures to prohibit the importation of goods produced by forced labor, to address violence against workers exercising their labor rights, to address sex-based discrimination in the workplace, and to ensure that migrant workers are protected under labor laws.
- Includes an Annex on Worker Representation in Collective Bargaining in Mexico, under which Mexico commits to specific legislative actions to provide for the effective recognition of the right to collective bargaining.
  - Will allow for workers to engage in real collective bargaining and will require companies in Mexico to abide by the same basic labor principles that companies in the United States do.
  - To fulfill this commitment, Mexico enacted historic labor reforms on May 1, 2019, and is implementing transformational changes to its labor regime, including new independent institutions for registering unions and collective bargaining agreements and new and impartial labor courts to adjudicate disputes.

USMCA requirements promote high wages and better jobs for the U.S. automobile and auto parts industry by requiring that, to qualify for preferential tariff claims under U.S. Customs and Border Protection (CBP) guidelines, manufacturers must produce a significant portion of certain motor vehicles using high-wage labor, or LVC.

The law requires that for a passenger vehicle, light truck, or heavy truck to be eligible for preferential tariff treatment, a minimum percentage of the cost of the vehicle must involve certain

“high-wage expenditures,” originating at a facility that pays an average hourly base rate of at least \$16.00 per hour to direct production workers, which is defined in the interim final rule (IFR).

To receive preferential tariff treatment, a vehicle producer must file a certification every year, demonstrating that its production of covered vehicles meets the high-wage components of the law’s requirements. The Wage and Hour Division (WHD), in conjunction with CBP, will review those certifications. The schedule for submitting certifications is December 31 of every year. Verifications will be conducted in coordination with CBP throughout the year.

The interim final rule, effective July 1, 2020, defines the scope of the Department’s role in conducting verifications to help ensure producer compliance, sets forth recordkeeping requirements, and describes the Department’s whistleblower enforcement process.

In this interim final rule, the Department addresses the following:

- Explains how producers must calculate the average hourly base wage rate for direct production work, including what kind of work may be included in the calculation and how to treat certain workers for purposes of the calculation.
- Defines direct production workers.
- Explains how producers must calculate the high-wage technology expenditures credit.
- Details what information the Department will review for omissions and errors on certifications submitted by the producer to U.S. Customs and Border Protection.
- Defines the scope of the Secretary’s role in conducting verifications of whether a covered vehicle complies with the high-wage components of the LVC requirements and the process by which the Secretary will conduct such verifications.
- Explains producers’ recordkeeping responsibilities and the scope of the Secretary’s authority to request and inspect such records.
- Describes an administrative review process for the Department’s verification analysis and findings concerning a producer’s compliance with the high-wage components of the LVC requirements.
- Describes the Department’s whistleblower enforcement process, including the filing of complaints, investigations, issuance of determinations, and the administrative review process.

A final rule is envisioned by end of December 2021.

## **Monitoring and Enforcement**

The Labor Chapter language designated the U.S. Department of Labor as the point of contact for addressing matters related to the agreement. The USMCA implementing legislation establishes an [Interagency Labor Committee for Monitoring and Enforcement](#), co-chaired by the Department and the USTR, to coordinate U.S. efforts with respect to implementation and maintenance of the USMCA labor obligations, to monitor Mexico's historic labor reforms, and to enforce USMCA labor provision where necessary. Among the many responsibilities of the Committee, it will receive and review submissions under the USMCA Labor Chapter and Rapid Response Labor Mechanism.

## **Technical Assistance**

As of January 2020, ILAB awarded [\\$32 million](#) to assist Mexico in complying with the labor commitments in the USMCA, improving working conditions, and strengthening the rule of law. Specifically, projects supported with these funds will build government capacity in Mexico to undertake the following:

- implement its labor reforms, including training and support for the new labor courts and centers that will attempt to conciliate disputes and register unions and collective bargaining agreements;
- implement commitments related to collective bargaining, secret ballot voting for union representation challenges and approval of collective bargaining agreements, as well as improve government enforcement of labor laws; and
- combat child labor and forced labor, enforce labor laws and acceptable conditions of work in the agriculture sector, and promote economic empowerment of vulnerable women and girls.

ILAB is working with the government of Mexico and labor stakeholders to develop technical assistance projects using the USMCA funding. Projects will build capacity of the Mexican Ministry of Labor to implement the 2019 labor reform, increase awareness of the new labor law requirements, provide training for workers and employers to improve labor relations and collective bargaining, and engage with civil society organizations to promote acceptable conditions of work. In addition, we are focusing on worker-focused capacity building and efforts to reduce workplace discrimination, child labor, forced labor, and human trafficking.

### **Labor Attachés**

The USMCA implementing legislation calls for the Department to post up to five attachés to the U.S. Embassy and/or consulates in Mexico. So far, ILAB has worked with the U.S. Department of State to establish three attaché positions at the Embassy in Mexico City. The attachés will monitor implementation of the USMCA labor obligations and support bilateral cooperation on labor and employment matters.

### **Funding Resources**

The USMCA implementing legislation includes \$210 million to ILAB for USMCA-implementation activities: \$180 million over four years for USMCA-related [technical assistance projects](#) and \$30 million over eight years for the capacity of ILAB to monitor USMCA compliance, including the necessary expenses of additional full-time ILAB employees for the Interagency Committee and labor attachés in Mexico. Technical assistance funding will be used for contracts, grants, subgrants, or other arrangements to support reforms for the labor justice system in Mexico. The Department allocated \$5.5 million to WHD for system development and regulation implementation necessary to carry out its USMCA responsibilities.

In addition to the supplemental funding provided, the Department plans to use resources from other appropriations where applicable. WHD will use the agency's one-year appropriation to fund LVC enforcement costs as well as the operations and maintenance of the LVC case management system. The Office of the Solicitor will use resources appropriated for Departmental Management to provide legal support. The Employee and Training Administration will expand the agency's existing grant management services and support ILAB's expanded grant portfolio with an estimated annual cost of \$1 million in FY 2021 through FY 2024.

Congress has significant interest in the Department's USMCA-related activities, including the status of hiring additional labor attachés, grant announcements and awards, and the spending plan.