

**The Labor Reform Transition in Mexico: 2019 – 2023**

Testimony for the  
Committee on Ways and Means  
United States House of Representatives

Hearing on “Mexico’s Labor Reform: Opportunities and Challenges for an Improved NAFTA”

Rayburn House Office Building, room 2020

June 25, 2019

By

Joyce Sadka  
Professor and Researcher  
Department of Law and Center for Economic Research  
Instituto Tecnológico Autónomo de México

Thank you very much for the invitation to present testimony before this committee. For the last 15 years I have worked on gathering empirical evidence from labor courts in Mexico and studying the enforcement of individual and collective labor rights. In recent years I have run several randomized controlled trials in labor courts in Mexico, testing policies to improve the delivery of labor justice and the enforcement of labor rights. Evidence from these field experiments is reflected in several of the features of the new Mexican Federal Labor Law.

In this written testimony I will discuss briefly some relevant features of labor markets in Mexico, emphasizing the poor performance of the Mexican labor market, especially in terms of participation, wages, and enforcement of workers' rights. I will then touch on how a change in the cost of enforcing labor rights should be expected to affect labor market outcomes, based on evidence from labor reforms in other economies. Next, I provide a diagnostic of current enforcement of Mexican labor law, both at the individual and collective levels, showing strong evidence of inadequate enforcement. I discuss the labor reform of 2019, starting with the constitutional reform of 2017, and describing the process of reform, including concerns and discussions internal to Mexico and at the international level. The reform produced a profoundly different labor law, which is a substantial improvement over existing law in terms of labor rights, procedural efficiency, enforcement mechanisms, and union transparency and representativity. This ambitious reform comes with a complicated and challenging timetable for implementation, that includes important challenges for cooperation between judicial and executive branches as well as state and federal level institutions. Finally, I mention the first implementation steps that have been taken and the opportunity these steps provide to develop and monitor indicators of the degree of completion and quality of the labor transition.

### **1. Performance of the Mexican labor market.**

The Mexican labor market performs poorly in comparison to other Latin American countries, given Mexico's status as an upper middle-income country. Mexico is ranked 13th out of 17 countries in the Better Jobs Index of the Inter-American Development Bank (IDB), despite being the 5th richest country of the group in terms of per capita GDP. In addition to having a poorer performance in the Better Jobs Index than the four countries with a higher per capita GDP, there are eight countries with a lower per capita GDP that also outperform Mexico in the index. Mexico's labor-market problems can be seen in each of the four components of the index. Mexico is ranked 14th out of 17 in female labor market participation<sup>1</sup>, 10th out of 17 in employment, 10th out of 17 in formality, and 14th out of 17 in living wage.

To illustrate the lacking performance of the Mexican labor market, it is useful to compare it to other Latin American countries with similar levels of GDP per capita. According to the Labor Markets and Social Security Information System of the IDB, only 30.58% of Mexican workers between 15 and 64 years are formal workers in the sense of making social-security contributions. The analogous figures for Argentina, Brazil, and Chile are 50.38%, 64.38%, and 70.49% respectively. Data from the International Labor Organization (ILOSTAT) suggest that, in real terms, wages in Mexico are 46%, 37%, and 51% lower than in Argentina, Brazil, and Chile respectively.

---

<sup>1</sup> A recent study (Kaplan and Piras 2019) finds that, among adults who are not students, Mexico has the second largest gender gap in Latin America in terms of labor-market participation (of the 17 Latin American countries included in the analysis). Female labor-market participation in Mexico is the fourth lowest, while male participation is the sixth highest. Additionally, Mexico is estimated to have the largest gender wage gap (controlling for observable characteristics and sample selection) among the 14 Latin American countries analyzed.

Unfortunately, the labor market in Mexico has not been improving much over the last 15 years or so, and in fact may be deteriorating. According to the National Board for the Evaluation of Social Development Policy (Coneval for its initials in Spanish), average labor income in the first quarter of 2019 was 8.4% lower in real terms than in the first quarter of 2005. This reduction of labor income occurred despite an increase of average years of education of the workforce from 8.5 in the first quarter of 2005 to 10.1 in the first quarter of 2019. In this same time period, the official informality rate fell from 59.1% to 56.9%. Although any reduction in informality is welcome, the reduction is significantly less than one would have expected given the increase in years of education of the workers (See Levy and Székely 2016).

One might argue that the declining real wages are the product of declining worker productivity, but the empirical evidence appears to show otherwise. Recent quarterly reports from Mexico's Central Bank document a consistent decline in unit labor costs (the ratio of total labor compensation per hour worked to output per hour worked) since 2006. The fact that wages are lagging behind worker productivity would appear to be more consistent with the interpretation of increasing employer (monopsony) power.

Although it is difficult to explain the reasons for the poor performance of the labor market in Mexico, certain institutional factors deserve to be highlighted. Since the 1990s the minimum wage in Mexico has been extremely low. Furthermore, as I will discuss in more detail in the diagnostic section, there is ample evidence that worker rights are not respected in Mexico. According to the Workers' Rights index in the World Economic Forum's 2018 Global Competitiveness Report, Mexico is ranked last in Latin America in terms of defending labor rights (especially collective bargaining rights). This poor performance in terms of a regional comparison coincides with my own analysis that 76% of collective bargaining agreements (in federal jurisdiction) are employer protection agreements.

There is some reason for optimism based on the recent changes in the minimum wage and the federal labor law. The average real wage registered with the Mexican Social Security Institute in May of 2019 was 2.3% higher than in May of 2018. The fact that wages at the lower part of the wage distribution increased more in percentage terms than wages at the higher end of the wage distribution suggests that the increase in the minimum wage in 2019 may explain the modest increase in real wages. In the city of Matamoros, which has received considerable attention because of the strikes that occurred early in 2019, the results are more dramatic. The average real wage registered with the Mexican Social Security Institute increased 20.2% from May 2018 to May 2019, again with higher percentage increases for wages at the lower end of the wage distribution. It is possible that the labor conflicts have had some effect on formal-sector employment, but this effect appears to be quite modest. Possibly we are witnessing the beginning of a new culture in which workers exercise their collective bargaining rights more actively due to the recently approved labor reform.

## **2. Labor justice, costs of enforcing labor rights, and the performance of the labor market.**

How does poor quality labor justice and inadequate enforcement of labor rights impact labor market performance in Mexico? The new Federal Labor Law aims to improve both quality of justice and enforcement of labor rights in Mexico. This is not necessarily equivalent to an increase in firing costs and may even imply lower firing costs and greater flexibility in employment for formal sector firms. The current situation, which will be described in detail in the diagnostic section, is one in which the costs of legal intermediation of labor disputes is high and uncertainty faced by both workers and firms

is quite severe, so that at the same time firms may face high costs of firing while workers receive only a fraction of the costs paid by firms. In other words, high transaction costs of using the systems for enforcing labor rights drive a large wedge between what firms pay to make employment adjustments, and what workers receive as compensation for firing.

High costs of firing are known to inhibit firms' hiring patterns, causing slower adjustment and lower growth in employment even in the presence of an economic expansion. The evidence suggests that as dismissal costs grow, companies change both their hiring and firing practices. García-Martínez and Malo (2007) find that labor reforms in Spain between 1994-1997 –which decreased firing costs – diminished the proportion of individual (vs collective) dismissals. Novo and Centeno (2009) present pseudo-experimental evidence that suggests that a 2004 labor reform in Portugal that increased the cost of firing employers with open-ended (tenured) contracts lead to a statistically significant increase of 1.6 percentage points (2.1 once endogeneity concerns are attended) in the share of the workforce hired under fixed-term contracts.

While reducing costs of enforcing labor rights may lower firing costs for firms, it also increases workers' bargaining power in the employment relationship and should imply higher wages as argued above in the discussion of labor market performance. The current situation implies poor bargaining power for the individual worker, since enforcing individual labor rights is expensive and uncertain. Additionally, the general remedy for poor individual worker bargaining power, unionization, is an ineffective solution in Mexico due to the high prevalence of employer protection contracts. Hence, it is reasonable to expect that better enforcement of labor rights, along with more efficient procedures, could raise wages while at the same time creating greater flexibility in the labor market.

### **3. Diagnostic of the current state of Mexican labor justice and enforcement of labor rights.**

Here I discuss the labor justice and enforcement system, from the perspective first of individual labor rights and then in relation to unionization and collective bargaining.

Individual labor rights are of primary importance because they cover all workers, even informal sector workers to the extent they can show the existence of a labor relationship. In 2016, the ILO reported only 12.5% of Mexican workers were unionized, and in 2019, INEGI, the official statistical agency of the Mexican government, reported 12.41% of unionized workers based on a nationally representative employment survey.

Sadka, Seira, and Woodruff (2018) analyze a large dataset of recently concluded labor lawsuits in the largest state level labor court in the country, in Mexico City, and provide useful stylized facts to understand the extent of inefficiency and barriers to enforcement in the current system:

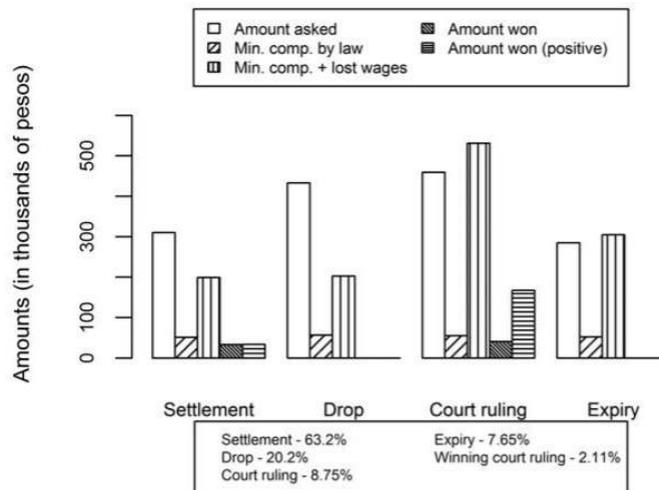
- Levels of settlement of employment disputes are low in Mexico, at 52% at the national level, and only 63% in the Mexico City Labor Court.
- Individual lawsuits that continue to a first instance court judgment last around 3 years, while the law specifies less than 4 months as the maximum length of a lawsuit.
- In individual firing disputes, workers receive far less than they ask for, and less than the very minimum firing compensation under the law. Enforcement is very poor; according to historical data from concluded lawsuits in the Mexico City Labor Court, 53% of judgments favorable to

the worker are unenforceable<sup>2</sup>. Therefore, we find that only 24% of the workers who go to a final judgment are eventually able to collect any compensation for firing.

- Over one quarter drop or lose the right to continue the case. Drops may imply payments unobserved in the casefile, however from survey information we know they are lower payments than in explicit settlements.
- Survey evidence shows workers are grossly uninformed about their labor rights, the process to enforce these rights, and about what they are asking for in their lawsuit.
- In related and ongoing field work we find that 47% of workers who do not have personal contacts to locate a labor lawyer, currently make their first contact with their lawyer through an informal middleman. In this work we measure the quality of legal services and find poor quality associated with lawyers and law firms that acquire clients through informal middlemen.

Figure 1 shows some of these facts, graphing for a set of more than 5000 concluded labor lawsuits. This figure shows the amount asked for, the minimum compensation based on the law, the minimum compensation including lost wages, the average amount recovered by the worker, and the average amount recovered by the worker conditional on positive recovery, for cases that are settled, are dropped, expire, or go to the court judgment.

**Figure 1:** Differences in Claims and Compensation by case file outcome - Historical Data



*Notes:* The figure shows the average amount asked in the filing initiating the suit, the amount actually received at the end of the process (overall and conditional on recovering a positive amount), the minimum legal compensation based on the case filing if the judge rules it he worker's favor, and the minimum legal compensation plus lost wages. Data are displayed in thousands of pesos by type of case ending, using the 5,005 historical case files. The amounts are discounted at the rate of 3.43 per month. Cases may end in any one of four ways: *settlement*, when the parties agree on a compensation for the worker and register that settlement at the court; *drop*, when that the case was dropped by the worker; *court ruling* when the judge issues a ruling in the case; *expiry*, when the case was closed by the court from lack of activity. The bottom legend shows the percentage of each outcome for the cases in the historical case files. By definition, workers recover nothing when cases are dropped or expire. In our data, all settlements imply a positive recovery for the worker. In court rulings, workers recover a positive amount only 24% of the time. We cannot distinguish between the judge ruling against the worker vs ruling in favor but the court being unable to collect anything from the firm.

<sup>2</sup> Kaplan and Sadka (2010) show that this situation is even worse in other state jurisdictions. In Mexico State, 56% of judgments favorable to the worker are unenforceable. The authors use data on enforcement attempts and successes to estimate the costs of enforcing a judgment and the proportion of defendants who are judgment proof.

The causes of the delay, low settlement levels, low levels of recovery, and poor enforcement, are all related to distortions in incentives created by the previous labor law itself. Notifications are highly formalized and are organized to include monopoly rights over the casefile for the assigned notifier, creating strong incentives for bottlenecks, bribery, and shirking. In fact, more than three quarters of the delay involved in labor lawsuits can currently be attributed to the initial notification process. Rules for distributing burdens of proof in a standard firing lawsuit create incentives for firms to offer reinstatement, but to fire workers again, immediately upon the reinstatement taking place. This often leads to multiple lawsuits resulting from one firing event. Labor courts are housed in the executive branch of government, and have low levels of infrastructure and budgets, as well as inadequate access to enforcement mechanisms both for their judgments as well as to sanction fraudulent behavior by parties, lawyers, and their own employees. Due to poor infrastructure, insufficient human resources, and heavy backlogs, quality of first instance decisions is lacking, leading to high levels of appeals that are granted by higher courts in the judicial branch (for example, in one individual labor court housed in the Mexico City Labor Court, we have measured a 40% appeals rate on first instance decisions by the court, as well as a success rate of over 50% on appeal).

Turning to collective labor rights, historically there has been heavy criticism both within and outside Mexico, of the high incidence of employer protection collective bargaining agreements, that is, simulated or sham agreements made between union leaders who do not effectively represent workers' rights, and the employer, and which benefit the de facto parties to the agreement without creating benefits for the workers, while preventing true unionization of the company's workforce.

Part of the external pressure that initiated the efforts of the government of Enrique Peña Nieto towards a labor reform, was a lawsuit filed at the ILO by independent unions in Mexico, claiming that a large majority of CBAs in the country are employer protection contracts. As part of efforts to find hard evidence of the prevalence of these contracts, the Mexican Secretary of Labor sought to promote and facilitate an academic study that could determine their incidence. Under a confidentiality agreement on the use of any name, address, or identifying data, the Secretary of Labor provided me with a random (7% of population) sample of the CBA casefiles that existed in 2016 in the Federal Labor Court.

With the aid of evaluations performed by anonymous collective labor law experts and former employees of the Federal Labor Court, I designed a semi-supervised application of the method of principal components, after coding a database with over 100 variables from each of approximately 1500 casefiles. PCA resulted in identifying the first 3 principal components or dimensions, which together explained 62.8% of the variation between employer protection CBAs and real CBAs. Using these three principal components, I split the data using optimal visualization techniques, into 4 groups, as shown in Table 1:

Table 1: groups of CBAs distinguished by collective bargaining study (Sadka, 2016)

Group	# CBAs	% of the sample
1	121	8.455625
2	1099	76.799441

3	73	5.101328
4	138	9.643606

To illustrate the spatial division of contracts, see Figures 2 and 3 below, that show respectively the separation of groups 1-4 when comparing Dimensions 1 and 2, and Dimensions 2 and 3. The green points, which are deemed employer protection contracts, are located near zero as they provide no real protection, nor do they show any real activity, in any of the dimensions considered.

Figure 2:

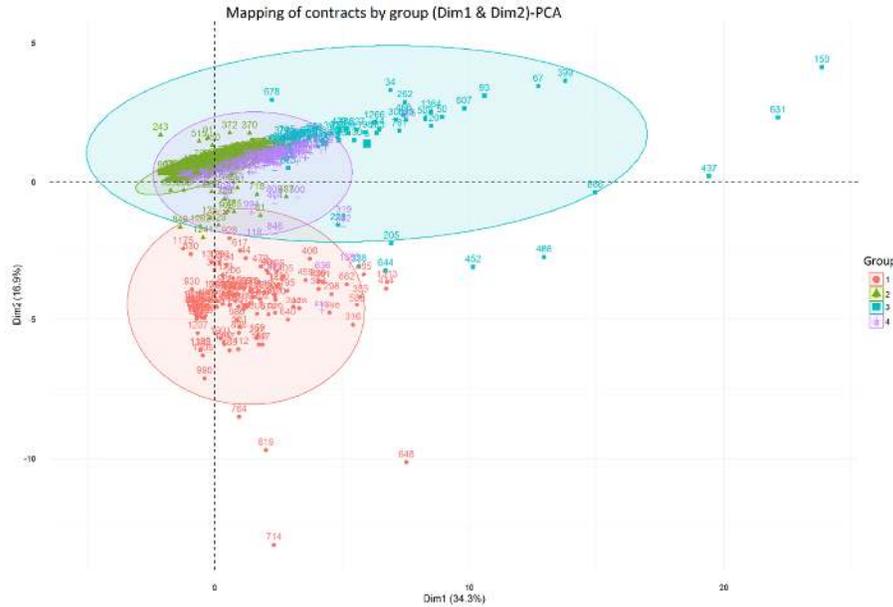
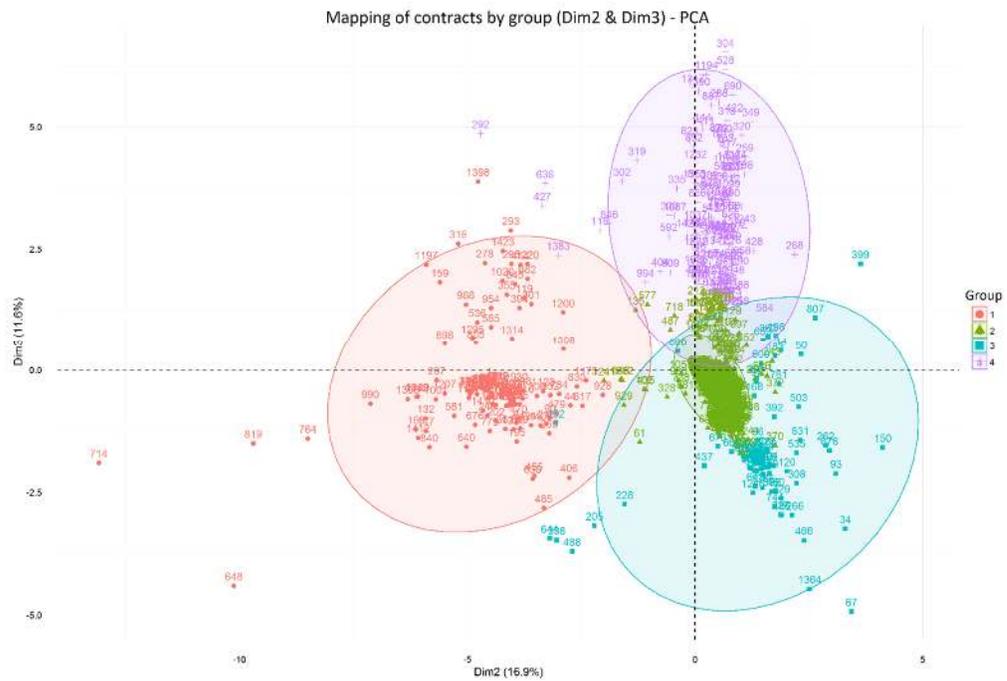


Figure 3:



Finally, it is important to note that the variables identified as differentiating in the most efficient way, statistically, between employer protection CBAs and real CBAs, are easily interpreted intuitively as indicators of low levels of representativity, activity, and benefits to workers. Table 2 illustrates this by showing descriptive statistics of variables in group 2 (deemed by the study, based on the most conservative assumptions possible, to be employer protection contracts) and groups 1, 3, 4 (deemed not to be employer protection contracts).

**Table 2: Principal Component Analysis Variables**

Variable Name	Group 2	Groups 1, 3, 4
# of employees in the CBA that provide names and signatures in support of the union	26.1	104.55
Length of the CBA casefile in pages	46.36	245.08
# pages generated per year in the CBA casefile	5.3	12.05
# of general revisions of the CBA	1.31	4.72
# of wage revisions in the CBA	0.96	3.85
# of days of vacation a worker has after 30 years' tenure under the CBA MINUS # of days of vacation a worker has after 30 years' tenure under the minimum vacation days mandated by law	-1.46	61.48
# of years in which employees have more vacation pay under the CBA, as compared to the minimum mandated by law	0.17	12.06
# of years in which employees have less vacation pay under the CBA, as compared to the minimum mandated by law	29.83	17.94
Presence in the casefile of explicit court agreement validating the CBA	0.07	0.2
Average # of yearly changes in wage scheme	0.41	0.62
Average # of strike notifications per year	0.005	0.15
Average # of strike notifications in the CBA casefile	0.07	2.31
Average # of submission of demands by the union to the court, in a renegotiation or strike process	0.02	1.15

In conclusion, diagnosing the current enforcement of labor right in Mexico based on scientific evidence shows that while the previous labor law is apparently pro-worker and includes collective bargaining freedoms and rights, its application is highly disadvantageous to workers, while also causing high firing and transaction costs to firms. The equilibrium before the 2019 labor reform is thus sufficiently inefficient that one would expect changes in the right direction to improve the situation of both workers and firms, although this may come at the cost of reducing the rents collected by lawyers and other legal intermediators.

#### **4. The reform.**

The labor reform is comprised of a constitutional reform of labor law, passed in February 2017, and the new Federal Labor Law, passed in May 2019.

The constitutional reform has 4 main elements:

- It moves the first instance of labor justice to the judicial branch of government at the federal and state levels.
- It eliminates the tri-partite, “labor board” nature of the first instance courts.
- It creates a compulsory conciliation stage that must be completed before any lawsuit can be filed.
- It mandates personal, free, and confidential vote to provide “representativity” to union leaders that negotiate on behalf of covered workers.

The new Federal Labor Law complies with the constitutional reform of 2017, except that instead of a compulsory vote on union representativity, when only one union claims representativity, and provides the required documentation, the certificate of representativity can be issued without an election, but the workers must vote to approve the collective bargaining agreement reached between the union and the firm. This structure is in compliance with Annex 23 of the USMCA or new NAFTA agreement.

However, the new labor law goes well beyond complying minimally with the constitutional amendment of 2017 and the labor chapter of the trade agreement. It addresses many of the distorted incentives and poor procedures in the previous law. Here are some highlights of the advances in the new law, many of which are informed by evidence from empirical studies.

1. The new law reduces the incentives for costly “sham” reinstatements in individual labor lawsuits, by changing rules on the distribution of burdens of proof, that provided incentives to engage in fake reinstatements. Evidence from my studies shows that while 35% of employers answer a firing lawsuit by offering reinstatement to the worker, only around 5% of reinstatements result in a continuing labor relationship between the parties.
2. The compulsory conciliation stage includes a formal notification procedure that allows the conciliation authorities to impose a substantial fine on firms that do not attend a conciliation hearing for which they are duly notified. Evidence from field experiments described in Sadka, Seira, and Woodruff (2018) shows that obliging the parties to talk to a conciliator before attending a lawsuit hearing is an effective mechanism for raising settlement rates in already existing suits.
3. To avoid the ills of a formal notification procedure with monopoly rights over the casefile assigned to a single notifier, Article 684-D of the new law mandates that notification occur differently, by constructing intelligent notification routes that are redistributed daily and randomly across notifiers. Experiments I conducted along with David Kaplan (IDB) in the Mexico State Labor Court, during 2012-2015, show that eliminating monopoly power of notifiers over casefiles, as well as eliminating control over backlog, can lead to large increases in successful notifications, since delaying notification is mainly a mechanism to seek bribes, and the rotation scheme prohibitively raises the coordination costs of such bribes.
4. In recognition of evidence on the high percentage of delay due to notification, the law permits all notifications, after the initial notification of a conciliation hearing and the initial court summons for a lawsuit, to be delivered electronically. The law mandates the creation of secure electronic mailboxes for all parties to a labor dispute, at which all subsequent notifications can take place.
5. To reduce misinformation and provide better incentives for conciliation, the new law mandates that the Federal Conciliation Center and all state level conciliation centers should have a specialized office to provide free information to workers and firms that request a conciliation hearing, providing them with information about their rights, the conciliation and

litigation procedure, and allows for the provision of statistical information about how similar disputed concluded.

6. To avoid the ineffective first conciliation hearing under the previous law, the new labor law provides that the worker herself must attend the compulsory conciliation hearing, since scientific evidence from Sadka, Seira, and Woodruff (2018) indicates that private lawyers control labor lawsuits and may not have the incentives to share unbiased statistical information with the worker, since such information may result in the worker deciding to settle, against the interests of the lawyer. Similarly, the new law mandates that the firm's legal representative who attends the conciliation hearing must be authorized to negotiate and reach binding agreements for the firm.
7. In response to widespread anecdotal and statistical evidence of procedural fraud, exaggeration, and false evidence in current labor lawsuits, the new law characterizes a long list of "notoriously improper behavior" (Article 48 Bis) that includes forcing workers to sign undated letters of resignation, paying a bribe to any conciliation center or court official, and providing false evidence in a collective proceeding such as the request for a certificate of representativity or a strike notification. While the general prohibition of such improper behavior has existed since the December 2012 labor reform, that reform did not specify these behaviors, and no enforcement of the prohibition has been observed to date.
8. To reduce time to judgment, the new law takes advantage of moving labor dispute litigation to the judicial branch, in order to create a new, more oral, less formalistic, and more agile procedure, with a maximum of two hearings and an almost immediate, orally delivered verdict.
9. Evidence on misbehavior by "expert witnesses" brought by the parties led to the elimination of all but one expert witness, who is appointed by the court without any influence from the parties.
10. The new law addresses enforcement difficulties by instituting electronic consultation of bank account information, through an automated system already run by Mexico's Finance Ministry, of firms that lose a labor lawsuit and refuse to pay the judgment. It also mandates that labor authorities inform the social security administration of judgments, to facilitate that authority collecting back taxes and fines on unregistered workers who establish a labor relationship in a dispute.
11. In addition to the electronic mailboxes and new organization of notifications, the law mandates other steps towards technological and organizational modernization, for example, it mandates that workers and firms should have access to an on-line form for requesting a conciliation hearing, and that both conciliation centers and labor tribunals should have electronic case management systems that facilitate their procedures while allowing immediate communication with other authorities for advisory or enforcement collaboration.
12. To ensure that unions are truly representative of workers, the law allows the Federal Conciliation Center and the labor tribunals to consult with the social security administration through an interoperable data platform, to verify existence of and employment affiliation of workers that support the union.
13. The law requires far more transparency in the bylaws and operation of unions, including the obligation of the Federal Secretary of Labor to develop and announce a detailed protocol for the revision of all existing collective bargaining agreements. These revisions must include voting to ratify or discard existing CBAs.

To give one example of the type of scientific evidence the new law has considered, the following table shows preliminary results from an ongoing field experiment at the Mexico City Labor Court, in which

over 2000 workers have been included in a control group or one of two treatment groups. Group 2 shown in the table are workers who receive detailed information about their labor rights and about procedures for enforcing their rights, as well as statistical information in the form of a “calculator” that predicts the likelihood of recovery and the likely amount recovered, based on the characteristics of the worker’s conflict, using machine learning algorithms on a large database of similar and concluded lawsuits. Workers in group 3 are provided with the same treatment, along with a letter of appointment to invite their employer to a conciliation meeting at the court. It is important to note that treatment 3 is as similar as possible, without being compulsory, to the conciliation stage now mandated under the new law.

Table 3 shows that individuals who follow a procedure similar to the new conciliation stage are 32% more likely (over baseline) to settle their dispute without suing, 31% less likely to file suit, and in case they sue, 27% less likely to hire a lawyer through an informal middleman. This evidence implies that if well managed, the new compulsory conciliation stage will raise prelawsuit settlement very substantially, providing workers with speedy recovery of severance pay, while avoiding high costs for firms due to potentially large judgments at the end of a lengthy litigation process.

Table 3: Preliminary results from ongoing RCT.

	Solved conflict	Talked to lawyer	Talked to public lawyer	Informal Lawyer	Sued	Sued w/public
	(1)	(2)	(3)	(4)	(5)	(6)
Treatment 2	0.052*	-0.0070	-0.19***	-0.19***	-0.060**	-0.082*
	(0.028)	(0.028)	(0.038)	(0.053)	(0.027)	(0.046)
Treatment 3	0.16***	-0.20***	-0.34***	-0.13**	-0.12***	0.043
	(0.033)	(0.032)	(0.048)	(0.066)	(0.031)	(0.058)
Constant	0.50***	0.60***	0.69***	0.47***	0.38***	0.51***
	(0.025)	(0.026)	(0.035)	(0.061)	(0.025)	(0.036)
Observations	2057	1814	1014	341	1991	676
R-squared	0.022	0.028	0.076	0.070	0.014	0.017
T2=T3	0.00050	2.4e-09	0.0035	0.31	0.031	0.043
BVC	YES	YES	YES	YES	YES	YES
Source	2m	2w	2w	2m	2m	2m
Obs per group	788/744/525	722/669/423	439/402/173	141/139/61	765/725/501	301/240/135
Days per group	93/106/75	81/91/61	79/88/57	66/71/37	93/106/75	84/88/60

According to the constitutional amendments of 2017, the new labor law was to be passed by February 2018, but the process was complicated by the impending change in government, and by important disagreements about how to implement the voting mandate in collective bargaining, and about how to address a large number of concerns about the inefficiency of the law itself and the poor incentives to negotiate settlements, as well as other undesirable behaviors like fraudulent claims and evidence.

As in the initial impetus to start the labor reform process, external commitments such as free trade agreements played an important role in convincing stakeholders with opposing views to come to an agreement. However, internal concerns and efforts were crucial to reaching the necessary compromises. In May 2018, after the congress had failed to pass a new labor law, a working group was formed at the Mexico City Labor court, including high ranking members of the incoming Secretary of Labor’s office, magistrates and judges from the federal judiciary, academics, union leaders, trade association leaders, state level secretaries of labor, firm lawyers, and worker lawyers. The group met

on a weekly basis for 6 months, and many of the fundamental agreements that shaped the winning proposal for the new law resulted from these meetings. This level of inclusion in the design of a major reform is unusual, especially with an incoming government that swept the presidential elections. It is my belief that the inclusive legislation process indicates that the new labor law embodies a substantive national agreement about how labor justice and labor rights should be upheld and provides hope of real commitment to the transition and enforcement process.

## **5. Implementation.**

This labor reform is by far the most profound that Mexico has undertaken in more than a century. The transition process is similarly ambitious, with a maximum of 4 years for all implementation to take place.

The timeline of the main implementation milestones is as follows:

1. 45 days (16-june-19): Council Coordinating the Implementation should be instated.
2. 90 days (31-july-19): Protocol for verifying elections to ratify existing or extinguish collective agreements should be published.
3. 120 days (30-august-2019): Transition plans to conclude all pending lawsuits should be submitted by existing labor courts.
4. 180 days (29-october-19): Organic Statute of the Federal Center for Conciliation and Registration should be published.
5. 240 days (28-december-19): The Secretary of Labor should publish the auditing mechanism for changes in union statutes and bylaws in relation to democratic elections of the union leaders.
6. 1 year (2-may-20): The Secretary of Labor should publish the auditing mechanism for changes in union statutes on collective bargaining agreement elections.
7. 1.5 years (2-nov-20): Existing labor courts must provide list (database) and scans of all existing collective agreements.
8. 2 years (2-may-21): Federal Center for Conciliation and Registration starts collective agreement registration.
9. 2 years (2-may-21): An interoperable data platform between the Federal Center and the Social Security Administration must be deployed.
10. 3 years (2-may-22): All CBAs must have been physically transferred to the Federal Center.
11. 3 years (2-may-22): State Labor Tribunals and Conciliation Centers start operating.
12. 4 years (2-may-23): The Federal Center starts conciliation functions.
13. 4 years (2-may-23): All existing CBAs must have already been ratified (reviewed and voted on) or extinguished.

Besides this demanding timeline, implementation is complicated by several factors. The labor jurisdiction includes federal and state level disputes, and at each level will require close cooperation between judiciary and executive branches, including compatible case management systems allowing for automatic and secure information sharing. At both the federal and state levels, the conciliation centers are brand new agencies that must be designed from scratch. These institutions require careful design in both technical, procedural, and organizational terms, in order to be successful. The volume of labor lawsuits is a serious challenge, with over 1 million lawsuits currently open. Due to the volume of disputes, if the compulsory conciliation stage is a failure, federal and state labor courts will soon be hopelessly backlogged. The process of acquiring a compatible list and database of more than half a million current CBAs, along with scans of over 100 million pages of CBA casefiles, is beyond the state

capabilities of many of the provinces. Resistance to real supervision of union elections to validate revised contracts of exiting unions will be strong, so that the authorities must supervise the organization and implementation of elections in thousands of locations across the country.

Of the implementation steps mentioned above, the instatement of the Council for the Coordination of the Implementation of the Labor Reform has already occurred, on 30 May 2019, more than 15 days ahead of schedule. This is a good sign about the government's commitment to implement. In addition to instating the Council, in the first meeting the Council's bylaws were approved, along with a national strategy for implementation. Note that this Council includes the Federal Secretary of Labor as well as representatives of the Federal Judiciary, the state level judiciaries, state level secretaries of labor, the Federal Secretary of Finance, and the National Association of State Governors. This interinstitutional body is designed with the goal of guaranteeing the necessary cooperation and coordination to forward the implementation of the reform.

The national strategy divides the implementation into 9 main goals and specifies actions and institutions that must work together for each goal. It includes detail beyond the transitional articles of the Federal Labor Law, such as the responsibility of the Secretary of Labor at the federal level to provide specific guidelines to the Federal and state labor courts on the list or database of existing CBAs that each court must provide to the Secretary of Labor, as the basis for the revision of collective agreements. Finally, it mentions a matrix of indicators to be developed by the Council. The Council's guidelines mandate a report to be provided each semester for at least the next 4 years, by the president of the Council (the Federal Secretary of Labor) to the Council, detailing the progress in the implementation of the labor reform and the enforcement and effectiveness of agreements made within the Council. This semesterly report, that must be presented to and approved by the Council, will be made available publicly.

## **6. Conclusions.**

The history and process of this reform indicates a substantive and meaningful national agreement to radically change the way labor justice and labor rights are enforced, and as such we observe strong intentions to implement the reform in a timely and effective manner. However, the path to implementation is complicated due to the depth of the reform itself, the creation of new public agencies at the federal and state levels, the large number of existing disputes and collective bargaining agreements, the degree of cooperation necessary between different branches and levels of government, and the limitations on existing state capacity, especially at the subnational level. Implementation starts during a fairly bleak point in the business cycle, with the Mexican economy predicted to grow at only around 1% in 2019, along with severe cuts in most areas of public spending. In this context, monitoring and aiding in the transition, especially in the development, use, and reporting on specific milestones and indicators of implementation, may be crucial to the success of the reform.

## **References:**

1. Centeno and Novo (2012), *Labour Economics*, vol. 19, Issue 3, pp. 320-328.
2. García-Martínez and Malo (2007), *European Journal of Law and Economics*, vol. 23, Issue 2, pp 151-167.
3. Kaplan and Piras (2019), *Revista de Economía Mexicana*, no. 4, pp. 138-165.

4. Kaplan, Sadka, and Silva-Mendez (2008), *Journal of Empirical Legal Studies*, vol. 5, Issue 2, pp. 309-350.
5. Kaplan and Sadka (2008), World Bank Policy Research Working Paper No. 4483, <http://documents.worldbank.org/curated/en/413761468049752151/Enforceability-of-labor-law-evidence-from-a-labor-court-in-Mexico>
6. Kaplan, David and Joyce Sadka (2010), Inter-American Development Bank Working Paper Series, <https://publications.iadb.org/publications/english/document/The-Plaintiff-Role-in-Enforcing-a-Court-Ruling-Evidence-from-a-Labor-Court-in-Mexico.pdf>
7. Levy and Székely (2016), *Trimestre Económico*, vol. 83, no. 332, pp. 499-548.
8. Sadka (2016), *Federal Collective Bargaining Agreements in Mexico: Determination of the Incidence of Employer Protection Contracts using Principal Component Analysis*.
9. Sadka, Seira, and Woodruff (2018), NBER Working Paper No. 25137, <https://www.nber.org/papers/w25137>