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FEATURED Q&A

How Valid Are U.S. Concerns Over Labor in Mexico?



The AFL-CIO labor union, led by Richard Trumka, plans to file complaints under the labor enforcement mechanism of the new U.S.-Mexico-Canada Agreement. // File Photo: AFL-CIO.

Q The American Federation of Labor and Congress of Industrial Organizations, or AFL-CIO, last month said it would file the first two public complaints under the new U.S.-Mexico-Canada Agreement's labor enforcement mechanism.

At least one of the complaints could potentially suspend exports from individual factories in Mexico that violate labor rights provisions, said Richard Trumka, the trade union's head. What's behind the suit, and how valid are the concerns regarding labor rights in Mexico? How well has the USMCA functioned since it came into effect in July, and what can be expected of the new labor enforcement mechanism under the deal?

A Kim A. Nolan, assistant professor in the Democracy, Human Rights and Rule of Law program at FLACSO-Mexico, and Tamara Kay, associate professor of global affairs and sociology at the University of Notre Dame: "The labor enforcement mechanisms of the USMCA directly respond to key failures of the NAFTA labor panels to address the core issue of violations of the rights to freedom of association and collective bargaining, primarily in Mexico. These violations have been the center of nearly every public complaint filed under NAFTA's labor side agreement during the last 25 years. The NAFTA labor chapter lives on in the USMCA as Chapter 23, but with important changes. Primary among them is a new cooperative process that can result in trade sanctions for all types of labor violations. This was not possible under NAFTA. The AFL-CIO is preparing to file its first case under the USMCA's new Rapid Response Labor Mechanism (RRLM). The NAFTA

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TODAY'S NEWS

POLITICAL

Hurricane Delta Makes Landfall on Mexico's Yucatán

Hurricane Delta struck Mexico's Yucatán Peninsula this morning as a Category 2 hurricane. Forecasters had feared it would make landfall as a more powerful storm, but it weakened slightly.

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BUSINESS

Colombia's Rappi Forms Partnership With SafetyPay

Colombia-based delivery app Rappi has formed a partnership with payments company SafetyPay for commercial transactions and payment services.

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POLITICAL

Chile's Piñera Condemns Police Violence Against Demonstrators

Chilean President Sebastián Piñera condemned police violence against demonstrators in Santiago after a video showed a police officer allegedly throwing a teenager off a bridge.

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Piñera // File Photo: Chilean Government.

POLITICAL NEWS

Hurricane Delta Makes Landfall on Mexico's Yucatán

Hurricane Delta struck Mexico's Yucatán Peninsula this morning, making landfall in Puerto Morelos, between the resort towns of Cancún and Playa del Carmen, CNN reported. Delta, a Category 2 hurricane with winds of 110 miles an hour, is expected to cross the Yucatán and then re-emerge in the Gulf of Mexico today. When it is back over open water, the hurricane is likely to gain strength before heading north toward the U.S. Gulf Coast. Hurricane and storm watches will likely be issued today for areas along the U.S. coastline. It is forecast to hit the Louisiana coastline Friday afternoon. The storm had been expected to hit the Yucatán as a more powerful Category 3 storm, but it weakened slightly early this morning. Delta is expected to bring a storm surge of between eight and 10 feet along the coast of the Mexican peninsula. People across the Yucatán prepared on Tuesday night for Delta's arrival, buying supplies at grocery stores, filling jugs with water and using plywood to board up buildings, video from TV Azteca showed. Tourists were also evacuated from hotels in the

area, and some waited for flights out. Several flights were delayed or canceled, however. Carlos Joaquín, the governor of Quintana Roo state, said the state government had prepared for the storm, but he warned residents that it is a "strong, powerful hurricane," the Associated Press reported. He said the area had not seen a hurricane as powerful since Hurricane Wilma in 2005.

BUSINESS NEWS

Colombia's Rappi Partners With U.S.-Based SafetyPay

Colombian on-demand delivery app Rappi has partnered with U.S.-based SafetyPay, which will support commercial transactions and provide payment services to Rappi's customers, SafetyPay announced Tuesday. SafetyPay, which is headquartered in Miami Beach, allows its users to make purchases online via bank transfers or cash without sharing financial information with merchants. "The platform opens the door for e-commerce merchants to tap into a larger consumer base by accepting alternative forms of payment," SafetyPay said in a statement. "With a shared goal of making lifestyles simpler and

NEWS BRIEFS

Chilean President Condemns Police Violence Against Demonstrators

Chilean President Sebastián Piñera on Tuesday condemned police violence against demonstrators in Santiago after a video showing a police officer allegedly throwing a young protester off a bridge went viral and prompted renewed demonstrations, Agence France-Presse reported. "We clearly and categorically condemn any violation of human rights, and we also reject any deviation from the protocols and rules that should govern the actions of our forces of order and security," Piñera said. The officer was charged with attempted murder.

Puerto Rico Oversight Board Selects Skeel as New Chairman

The federal Financial Oversight and Management Board for Puerto Rico has selected one of its members, David A. Skeel Jr., a bankruptcy and corporate law professor at the University of Pennsylvania Law School, as its new chairman, *The Weekly Journal* reported. Skeel, whose appointment was effective Tuesday, replaces José Carrión III in that position. The other four members of the board unanimously approved Skeel's designation as chairman.

Bancolombia's Increased Stake in Agromercantil Won't Affect Ratings: Fitch

Bancolombia's recently increased stake in the Guatemala-based Grupo Agromercantil Holding, or GAH, will have no impact on either company's ratings, according to credit ratings agency Fitch, Finance Colombia reported Tuesday. Bancolombia last month announced it had reached a deal to acquire full ownership of GAH, buying the 40 percent stake that it did not own. Regulators in Colombia, Panama, Guatemala and Barbados have already approved the transaction.

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experience suggests that any test case must be chosen strategically and clearly meet procedural criteria; the first cases are opportunities for panels to interpret the application of the rules and will condition how subsequent cases are processed. RRLM panels will interpret key provisions as they adjudicate the first test cases, including when and how exports can be suspended, and whether an export ban can be extended through all Mexican facilities of a given manufacturer, or just the plant that is the subject of the case. A case that does not meet RRLM criteria, or fails to demonstrate violations of the union procedures listed in Annex 23, risks an

unexpected outcome and could discredit the new RRLM panel as yet another futile experiment in enforcing labor rights commitments though trade agreements."



Antonio Ortiz-Mena, senior vice president at Albright Stonebridge Group: "The USMCA will provide less certainty for U.S.

investors than NAFTA. One reason has to do with the Rapid Response Labor Mechanism (RRLM), which provides for expeditious and enforceable dispute settlement. If a panel established under the RRLM finds that a company has violated a USMCA commit-

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less complicated, the partnership with Rappi supports SafetyPay's mission of adding value to customer transactions and strengthening relationships." The partnership between Rappi and SafetyPay was recently launched in Brazil, Mexico and Ecuador. SafetyPay's service will be available to Rappi customers in Costa Rica, Peru and Chile later this year, SafetyPay said.

Brazil's Magazine Luiza Accused of Discrimination

Brazil's federal public defender's officer has filed a lawsuit against Magazine Luiza, one of the country's largest retailers, accusing it of discrimination after the company implemented several practices aimed at targeting racial disparities in its management ranks, Reuters reported Tuesday. Public defender Jovino Bento Júnior alleged the retailer was exclusively looking at skin color in its recruitment process, which would be discriminatory, according to a document dated Sept. 28, in which he also proposed a lawsuit against Magazine Luiza. Additionally, the civil suit says the company's all-Black trainee program is a "business marketing strategy" and seeks 10 million reais (\$1.8 million) for damages, Bloomberg News reported. Magazine Luiza last month announced an initiative designed to bring more diversity to the company's leadership, including the 12-month trainee program, to start in January. Candidates have to identify as Black or mixed race to qualify for the program. The lawsuit says that ensuring minorities are included cannot mean denying equal opportunities to all workers, Bloomberg News reported. The retailer declined to comment. A group of 11 other public defenders who specialize on ethnic and racial issues publicly rejected Bento's complaint. Brazil has the second-largest Black population globally, with approximately 116 million people who identify as Black or mixed race, the equivalent to 56 percent of the population. However, Black Brazilians are largely underrepresented in professional jobs, and they earn about 56 percent of what white people make, according to government statistics agency IBGE, Reuters reported.

HEALTH BRIEFS

Number of Transplant Procedures Plunges in Brazil

Brazil performed less than half the number of organ and tissue transplants from April to June as compared to early in the year, Folha de S.Paulo reported last month. The 61 percent decline in the number of procedures led to a sharp rise in the deaths of patients registered on transplant waiting lists, up by 44.5 percent. In the first half of the year, the number of transplants fell by 32 percent, and deaths increased by 34 percent, as compared to the same period a year earlier. Additionally, the Brazilian Transplant Association has forecast a drop this year in donations and transplants of the heart, liver, pancreas, lung, kidney, cornea and bone marrow. At the rates registered in the first six months of the year, the amount of procedures could decrease by as much as 20.5 percent by the end of 2020, according to the report.

Mexican States Look to Ban Sales of High-Calorie Packaged Foods, Sugary Drinks to Minors

Several Mexican states are looking to ban the sale of high-calorie packaged foods and sugary drinks to minors, partly in response to the coronavirus pandemic, which has laid bare the prevalence of high-risk underlying factors such as obesity and diabetes, NPR reported last month. Lawmakers in several states are pushing legislation to prohibit the sale of junk food to those who are underage, following the example of Oaxaca's state legislature, which earlier this year banned selling high-calorie package foods and sugary drinks to minors. Tabasco state has also approved the prohibition, and at least a dozen other states are considering similar legislation, according to the report. Mexico has registered more than 70,000 deaths related to Covid-19, the fourth-highest death toll in the world, according to Johns Hopkins University. Two-thirds of those who died had an underlying condition such as obesity, diabetes, hypertension and cardiovascular problems, according to Health Department officials. However, critics of President Andrés Manuel López Obrador and his Morena party say its leaders are using pre-existing health conditions in Covid-19 deaths to distract from a weak government response to the novel coronavirus outbreak, NPR reported. [Editor's note: See related [Q&A](#) in the Sept. 28 issue of the Advisor.]

Peru Announces New Health Policy Through 2030

Peru's government last month announced a new policy through 2030 aimed at improving the health of Peruvians, state news agency Andina reported. The government approved the National Multisectoral Health Policy, dubbed "Peru, a Healthy Country," under which the state will implement measures to "promote healthier habits, improve access to health systems as well as reduce the social and economic vulnerability of the population" over the next 10 years, said the Ministry of Health. The policy is meant to "confirm the state's responsibility to regulate, monitor and promote the health of the population." Peru has struggled with one of the worst coronavirus outbreaks in the world, with more than 30,700 deaths, according to a tally by Johns Hopkins University. Peru is among the countries in Latin America and the Caribbean with the lowest expenditure in health as a percentage of GDP, according to World Bank data. [Editor's note: See related [Q&A](#) on Peru's health care system in the July 23 issue of the Advisor.]

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ment, it can recommend the imposition of import restrictions on the goods involved in the dispute. Manufacturing (autos, aerospace, electronics) and agribusiness could be especially vulnerable. The current U.S. Republican administration has stated it will take action 'early and often' via the RRLM, while the AFL-CIO has signaled its intent to file a case under the RRLM. As if this weren't enough to generate uncertainty, the U.S. Department of Labor has set up a 'hotline' to receive confidential complaints on alleged USMCA labor violations. The new RRLM and hotline, which have not been tested and could yield unintended results, and the highly charged political environment in the United States, which will likely remain so over trade and labor regardless of the presidential election result, will combine to deter outsourcing and keep some U.S. companies on edge about how the new labor rules will play out. I hope, for the benefit of both workers and management, that frivolous claims are avoided and that cooler heads prevail over the months ahead."

A Sarah Kirwin, associate at Akin Gump: "Mexico's ability to adequately enforce its labor reform law has been of particular concern for U.S. congressional Democrats and key labor groups such as the AFL-CIO, which prompted the creation of the USMCA's facility-specific Rapid Response Labor Mechanism (RRLM). The AFL-CIO has not yet shared the subject of its complaints, but the RRLM addresses 'priority sectors,' including aerospace, auto and auto parts, cosmetic, industrial baked goods, steel, aluminum, glass, pottery, plastic, forgings, cement and mining. Mexican officials have

emphasized significant compliance efforts undertaken by both the government and private sector in these areas, so the legitimacy of the AFL-CIO's concerns with respect to any particular Mexican facility will ultimately be determined under the RRLM. These ongoing tensions over labor compliance are indicative of the overall state of USMCA



These strains could imminently lead to a number of dispute settlement cases..."

— Sarah Kirwin

implementation, and labor complaints may only serve to further exacerbate issues in other areas. In their haste to complete a politically driven renegotiation, none of the USMCA parties conducted a thorough legal scrub of the agreement's text. So, it is unsurprising that they continue to disagree about their respective implementation of the auto rules of origin, de minimis treatment for express shipments, dairy market access and food labeling commitments and other topics, in addition to more systemic trade irritants such as lumber and seasonal produce imports. These strains could imminently lead to a number of dispute settlement cases, which is hardly a good omen for a new agreement—lauded by U.S. officials as a 'gold standard'—between historically close trading partners."

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