



Employing staff in **Mexico**

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This country guide is intended to be a summary of the major areas of employment law & HR practice and does not constitute legal or HR advice. The guidance was correct at the time of publishing and professional advice should always be sought as specific needs arise.

1.0 INTRODUCTION

Mexico is considered a newly industrialised country and an emerging power. It has one of the world's largest economies, with the 15th largest nominal GDP and the 11th largest GDP by purchasing power parity in 2018. The country's currency is Peso (MXN).

Mexico City is its capital and the largest city. Spanish, spoken by the majority of the population, and a large number of indigenous languages are its national languages.

Employment relations in Mexico are regulated primarily by the Federal Labour Law (FLL), which was enacted in 1970, and has undergone several amendments since that time, as well as the Mexican Constitution of 1917. Other notable employment related legislation includes the Social Security Law, 1997 and the National Workers Housing Fund Institute's Law, 1972.

2.0 EMPLOYMENT OF FOREIGNERS

All foreign employees rendering services in Mexico either for a temporary period or on a permanent basis require a visa to work in Mexico. Depending on the characteristics of the job to be performed and the length of their stay, employees must apply for different types of visa.

3.0 EMPLOYMENT CONTRACT

3.1 Form of Employment Contract

In Mexico, written employment contracts are mandatory.

3.2 Written Particulars

Employment contracts must contain the following information:

- > Name, age, nationality, sex, marital status, Unique Population Registry Code, Taxpayer Identification Number and address of the employer and the employee;

- > Whether the labour relationship is for a specific task, a fixed term, or an indefinite term;
- > The probationary period;
- > The service(s) to be provided, to be described with as much precision as possible;
- > The place(s) where the services are to be performed;
- > The daily working hours;
- > The form and amount of salary;
- > The day and location of salary payment;
- > An indication of the occupational training to be given to the employee; and
- > Other employment conditions, such as rest days, vacation, leave and any other terms agreed between the partiesName and address of the parties

3.3 Variations

Any change to the terms and conditions of employment requires the employee's consent. Employers may not vary the terms and conditions of employment unilaterally.

3.4 Internal Labour Regulations

At each undertaking or establishment, a joint employer-employee committee must draw up a set of "Internal Labour Regulations" ("ILR") to establish mandatory rules regarding the development of the duties and work in a company or a facility that would be applicable to both the employer and employees.

The ILR must be registered with the applicable Labour Board. They must be displayed in the employer's facilities and copies must be distributed to the employees.

4.0 PROBATION

Contracts for an indefinite term and for a fixed term of over 180 days could be subject to a probationary period.

Employment contracts for an indefinite time or for a fixed term of over six months could be subject to employees proving the needed skills for the position during the first 30 days. Such period could be extended to 180 days in case of executives (i.e. directors, managers) or persons hired to perform specialised technical or professional activities.

5.0 REMUNERATION

5.1 Basic Pay

Workers engaging in manual labour are entitled to be paid on a weekly basis. For workers engaging in other kinds of work, payment is to be made no more than twice a month.

Salaries may be paid directly to employees in cash and in the currency of legal tender. Other forms of payment such as a cheque or a direct deposit in the employee's nominated bank account is permissible subject to the employee's agreement in writing.

5.2 Other Elements of Remuneration

In addition to regular salary, employees in Mexico are entitled to a Christmas bonus equal to at least 15 days' salary, to be paid by 20th December. Employees who have not completed a full year of service are entitled to a pro-rata amount based on number of days worked that year. In practice, employers often enhance the amount of bonus payable, to 20 or 30 days.

6.0 WORKING HOURS AND TIME OFF

6.1 Standard Working Hours

The maximum daily working hours are 8 hours for day-time work between 6am and 8pm. Mexican labour law provides that the maximum weekly

working hours in Mexico may not exceed 48 hours per week, with at least one rest day a week. However, some sectors such as banking may provide for a maximum working hours of 40 hours per week in the employment relationship.

Employees are entitled to a rest break of at least 30 mins if they are working continuously and without disruption in a work shift. This break is considered to form part of the work shift. Employees who are entitled to a longer rest break during which they can leave the work location, no part of this longer rest break will be considered as part of their working shift and there is no obligation for any additional rest breaks. will not be obligated to grant them any additional rest break.

Collective agreements or employment contracts usually specify meal and rest periods. It is common to have a meal period of 60 minutes with two 10-15 minutes' rest breaks in a standard working day.

6.2 Overtime

The first 9 hours of overtime (limited to 3 hours per day and no more than three times per week) worked in a week are paid at double the employee's normal hourly rate. Beyond that, the rate of payment increases to triple time for each additional hour worked.

It is possible not to fix a work schedule for employees in trust positions, thereby avoiding the need to pay them overtime premiums.

7.0 LEAVE

7.1 Vacation and Public Holidays

Vacation

Employees with more than one year of service are entitled to at least six days' paid holiday a year. This increases by two days for each subsequent year of service, up to a maximum of 14 days. After the fourth year of service, the holiday entitlement

increases by two days for every five years of service.

In addition to holiday pay, employees are entitled to an extra bonus of 25% of their salary during holidays.

Years of Service	Vacation Entitlement
1 st	6 days
2 nd	8 days
3 rd	10 days
4 th	12 days
5 th – 9 th	14 days
10 th – 14 th	16 days
15 th – 19 th	18 days
20 th – 24 th	20 days
25 th – 29 th	22 days

Generally, employers provide enhanced vacation entitlements under the contract of employment, providing 10 to 15 days (sometimes 20 days for executive employees) from the outset, and keeping the number fixed until the legal requirements catch up.

Public holidays

Employees in Mexico are entitled to paid leave on the following 7 official public holidays:

- > New Year's Day – 1 January
- > Constitution Day – the first Monday of February
- > Benito Juarez Day – the third Monday of March
- > Labour Day – 1 May
- > Independence Day – 16 September
- > Revolution Day – the third Monday of November
- > Christmas Day – 25 December

In addition, every six years, employees receive a paid day off on 1 December for President of the Republic Inauguration Day. State and Federal election days are also considered public holidays.

Other days, although not compulsory, may also be granted, such as Good Friday.

7.2 Sick Leave and Pay

Under the FLL and the Social Security Law of 1997 (SSL) employees are entitled to the following time off:

- > For temporary incapacity, the employee is normally entitled leave of up to 52 weeks.
- > For permanent partial incapacity, an employee is entitled to permanent leave and receives payment through the IMSS, calculated to the amounts established in the FLL.
- > For permanent total incapacity, an employee is entitled to permanent leave and receives payment through the IMSS calculated to the amounts established in the FLL.

Employees must obtain a certificate from the IMSS in the case of illness or injury in accordance with the FLL and Social Security Law, 1997.

Once a certificate has been obtained from the IMSS, the entitlement to sick leave varies, depending on the type of illness and degree of incapacity. The IMSS decides whether sick leave is to be granted, as well as the amount to be paid to employees during the illness or injury. The IMSS pays this amount directly to the employees.

As sick pay is paid by the IMSS, and not the employer, this does not apply in Mexico.

7.3 Family Leave

Maternity

Pregnant and nursing women must not:

- > Work night shifts in industrial plants that have a hazardous work environment.
- > Work after 10.00pm in commercial or service establishments.
- > Do overtime work.
- > Carry out any work that could endanger their health or that of their child.

- > This includes work involving the use of considerable force (for example, lifting or pushing) and standing for long periods of time.

Pregnant employees are entitled to six weeks' statutory maternity leave before and after giving birth. During maternity leave, the IMSS pays the employee's registered salary. If the employee's salary is above the capped registered salary (25 times the minimum daily wage, then the employer pays the difference between that amount and the employee's total wage. Pregnant employees, subject to prior medical approval and authorisation from the employer and IMSS, can transfer part or the entire six weeks, which are supposed to be enjoyed prior to the childbirth, to the moment after the birth.

During the nursing period, the new mother is entitled to two additional 30-minute rest periods every day to feed the child, in an adequate and hygienic place set aside by the employer.

When returning from maternity leave, the employee is entitled to be reinstated, provided that not more than one year has passed since the date of childbirth.

Paternity

Male employees are entitled to paternity leave of five business days with full payment of salary when their child is born or adopted.

7.4 Other leave

Although it is not a statutory requirement, employers commonly grant specific leaves of absence under certain circumstances, such as marriage, bereavement, etc.

Military Service

All males over the age of 18 are legally obliged to complete a period of military training. Selection criteria is entirely random and individuals can elect to take this training in one of two ways – either

1 day a week for a whole year, or as an intensive 3 month programme. Whichever route the individual elects to take, the employment relationship is deemed to be suspended, meaning that the employer is not obliged to pay the individual whilst they are undertaking training. By the same token, the employee is not expected to attend or conduct work for the employer during this time.

8.0 SOCIAL SECURITY COVERAGE

8.1 Introduction

The social security system in Mexico is governed by the Instituto Mexicano del Seguro Social (IMSS). It is funded via contributions from employees, employers and the government and provides comprehensive coverage to the Mexican working population. It is a mandatory requirement for employers to affiliate their employees to IMSS to enable them to receive appropriate benefits as and when the need arises:

- > The current social security system separates coverage for life, retirement and death and works on a defined contribution system and individual accounts. The following rates apply on the employees' consolidated income under the SSL and will be withheld by the employer
- > Disability and life insurance: the employer must pay 1.75% and the employee 0.625%
- Unemployment and old age: the employer must pay 5.15% and the employee 1.125%.
- Health and maternity insurance: for medical benefits, the employer must pay 20.4% of the UMA and the employee 0.4%. The maximum monthly earnings used to calculate contributions are 25 times for daily UMA.
- > For cash benefits, the employer must pay 0.7% and the employee 0.25% of monthly covered earnings.

- > Occupational risk: the employer must pay between 0.50% to 15%, depending on risk factors.

Family Allowances: the employer must pay 1% of covered payroll.

8.2 Basic Pension

The retirement age for males and females is 68, although under certain conditions this may be reduced to aged 65.

The retirement benefit is calculated based on salary earned for the contribution period. In order to qualify for full retirement benefit, an individual must have contributed into the social security system for at least 1,250 weeks. For those individuals falling short of the full contribution criteria, a guaranteed pension is payable, equivalent to the minimum wage of the relevant Federal District.

8.3 Basic Health Coverage

Providing that they are enrolled into IMSS, all employees, retirees and their dependant families are entitled to receive reasonable and customary health care services free of charge through government funded clinics and hospitals. These will typically include health, hospitalisation, prescriptions, GP visits, prosthetics, etc. Whilst the cost of treatment is not deemed to be expensive in comparison with westernised countries, individuals can experience long delays in obtaining treatment, due to the increasingly overburdened system.

For this reason, it is very common for individuals to have a private health insurance, whether purchased as an individual or paid for by the employer.

8.4 Unemployment Insurance

IMSS does not provide unemployment benefits or income support.

However, an employer is legally obliged to make severance payments to the employee, in certain situations of dismissal. And unemployed persons may be entitled to withdraw from the retirement fund as per the legal rules.

8.5 Housing Fund (INFONAVIT)

To assist employees with a loan for purchasing or constructing/remodelling a house, employers are obliged to make a contribution equivalent to 5% of the employees' 'integrated salary' (capped at 25x minimum salary) towards a National Housing Fund.

Once the loan has been granted, the employer will, as instructed, make deduction from the employee's pay for loan repayments.

8.6 Mandatory Profit Sharing (PTU)

Employers must distribute 10% of their annual pre-tax profits from the previous year to all current and past employees employed by the legal entity who worked for the company for more than 60 days in the year when the profits were declared. Directors, administrators, general managers, partners, shareholders and staff hired via professional fees agreements are not entitled to receive Profit-Sharing. Other employees in confidential/trust positions are entitled to a share of profits, subject to limits dependent upon the employee's salary level.

The payment must be made before 31st May in the year after the profits were declared.

Distribution of the profit share is determined as below:

- 1) 50% based on the number of days worked by each employee during the year; and
- 2) 50% based on the salary received by each employee during the year.

An exception is made in the following circumstances:

- > New corporations during their first year of operations;
- > New corporations which are devoted to the production of a new product during the first two years of operating;
- > New corporations devoted to an extractive industry during the exploration period.

9.0 WORKERS' COMPENSATION INSURANCE

In principle, employers are directly liable for any occupational hazard towards employees, including travel to and from the place of work. Upon registration and contribution to the mandatory IMSS, employers are released from this responsibility.

The rate of contribution is determined by the level of perceived risk in the workplace, ranging from 0.25% to 15% of covered earnings and is based on earnings of up to 25 times the minimum salary.

Benefits received under IMSS for work-related accidents and injuries include:

- > 70% of salary in the event of total disability;
- > 100% of salary for a maximum of 78 weeks in cases of temporary disability;
- > 40% of the employee's accrued work-related disability pension payable to a widow in the event of employee death, 20% of accrued pension payable to a dependent child and 30% to an orphan;
- > A lump sum funeral grant equivalent to 2 month's minimum wage.

10.0 SUPPLEMENTAL BENEFITS

10.1 Health Insurance

Since access to medical treatment via the public health system can be lengthy, individuals are keen to source provision of a private medical insurance. It is generally expected that an employer will

provide this insurance coverage. Coverage is usually extended to an employee's family (spouse and dependent children).

The most common plans provide an insured sum on a per person basis, under which each illness carries a deductible (excess) amount, and the insured individual is subject to a co-payment of approximately 10%. The value of the deductible and agreed co-payment amount will determine the premium level (the smaller the deductible and the higher the co-payment percentage, will result in reduced premiums). Common factors which influence the premiums include:

- > The deductible amount;
- > The chosen hospital network;
- > The chosen doctor network (which is based on their individual service charges);
- > Geographical Zone of usual residence;
- > Other additional benefits.

Dental insurance plans are usually sourced independently of the medical insurance.

There are some benefits that are not available in a group arrangement that can be found in individual plans, and vice versa. Group arrangements require a minimum headcount of 10 employees and where the headcount is lower than this, then individual plans would usually be secured.

10.2 Company Sick Pay

Many employers elect to pay for the first 3 days of sickness absence. It is also commonplace for employers to enhance the 60% IMSS sickness provision, by paying the difference between 60% – 100% of salary; the duration does differ from employer to employer, but this arrangement does not usually continue beyond 52 weeks.

10.3 Occupational Pension

Multinational companies often provide private defined contribution pension. Some plans only

provide a benefit equivalent to the Termination Indemnity at retirement benefit.

Employer and employee contributions vary depending on the type of plan, typically employer matches employee contributions in the range 3-6%.

Occupational pension plans are tax efficient.

10.4 Death & Disability Insurance

Life Insurance

Life insurance is a tax deductible benefit. Common provision is a lump sum pay out equivalent to 24 or 36 times monthly salary in the event of employee death.

Group schemes enable employees to be enrolled without the need for medical underwriting; individual schemes, however, do require each employee to undergo this process. Premiums will be determined by the employees' age and health status.

Disability and dismemberment are very popular riders to a life insurance scheme. Since there is no unemployment provision under IMSS, any individual unable to work due to disability will rely on other insurances to provide for their family, particularly if they are the main breadwinner.

10.5 Company Car

Company cars are a common benefit for senior managers and are treated as a benefit in kind. Tax treatment of the company car can be made more favourable to the employer by adopting certain internal measures, which can include:

- > Not assigning the car to any one individual and ensuring it is used solely for business use;
- > Ensuring that the car is kept in a pre-determined place overnight;

- > Not exceeding the maximum value advised by the authorities, which is changed from time to time.

10.6 Others

Savings Plans

Savings Plans are a common vehicle for providing employees with access to a short-term savings fund. Employer contributions are free of social security and housing and education taxes, which typically represent approximately 2.3% of payroll for the company, and additional income of 5% for the employee. They generally operate on a matched basis, with contributions capped at 13% of salary.

Food Coupons

Provision of food coupons is extremely common in Mexico for employees below senior management level.

11.0 TERMINATION OF EMPLOYMENT

11.1 Means of Termination

Termination of employment is permitted on a number of grounds which include:

- > Mutual consent of the parties;
- > Death of the employee;
- > Conclusion of the specific task for which the employee was hired or expiry of the fixed term;
- > The employee's physical or mental disability, making it impossible for him to perform his duties;
- > Force majeure.

When employment is terminated between both parties, senior employees who have at least 15 years' of service may be entitled to a seniority premium of twelve days' salary for each year of

service, capped at twice the minimum daily salary in force.

Termination by the employer

In Mexico, an employee may only be dismissed by an employer for just cause. The Federal Labour Law sets forth the reasons which constitute just cause. These include, among others:

- > Deceiving the employer about his skills and qualifications (termination on this ground is only possible within the first 30 days of employment);
- > Being guilty of dishonest or dishonourable actions, violence, threats or ill-treatment towards the employer or other colleagues, except in the case of provocation or self-defence;
- > Revealing trade secrets;
- > Absence without permission or sufficient reason for more than three days over a period of 30 days;
- > Refusal to obey the employer's orders without sufficient reason;
- > Attending work under the influence of alcohol or non-prescribed drugs;
- > Having reasonable cause to lose confidence in an employee holding a position of trust.

An employee is protected from unjustified dismissal from the moment that he starts employment. Employees with over 20 years' service enjoy additional protection.

11.2 Notice of Termination

There is no statutory requirement for notice period in Mexico, nor is it usual to stipulate any contractual notice period.

However, where an employee is being dismissed, the employer must still provide the employee with a written termination notice stating the reasons

and circumstances for dismissal. Failure to provide the written notice will render a dismissal unjustified. In the event that an employee refuses to receive the written notice, the employer must then file it with the proper Conciliation and Arbitration Board and request the Board to serve the notice on the employee.

11.3 Redundancy

The Federal Labour Law stipulates that, in case of layoffs and/or downsizing, the employer is required to follow specific rules which include formal request to the Conciliation and Arbitration Board (Labour Court) for authorisation to implement the layoff, downsizing or closing down of the business, providing evidence to prove its financial situation and the need to implement the requested measures, first in last out selection rules, etc.

In case of a massive layoff or downsizing, employees are entitled to the following:

- > An indemnity of three months' integrated salary;
- > The seniority premium, which is 12 days of salary (capped at twice the minimum wage in effect at the place of work) for every year of service (prorated for periods less than one year).

11.4 Severance Pay

It has become common practice to pay the employee a severance pay upon termination where an employer wishes to avoid any disputes with the employees that may arise from the termination. The severance pay is 'twenty days' of integrated salary for each full year of service.

Past practices dismissing employees would also set a precedent in defining the severance formula.

11.5 Settlement Agreements

Unjustified dismissal claims can be settled out of court via settlement agreements. To be valid, such agreements must be in writing, and must be

ratified and approved by the Conciliation and Arbitration Board.

11.6 Post-Employment Restrictions

Post-termination non-competition agreements are unenforceable under Mexican law. The Mexican Constitution and Federal Labour Law specifically direct that such restrictions are void; no person can be prevented from devoting himself to the profession, industry, trade, or work that he desires, provided the work is legal. Case law has consistently held unenforceable even the lesser restraint of a covenant not to solicit customers.

11.7 Providing References

On termination of employment, or if the employee requests it, an employer is obliged to provide a written statement of employment, which in practice covers dates of hiring and termination, and job position. Additional information over and above these basics is usually provided verbally, covering such aspects as the employee's skills, responsibility, attendance record, productivity, punctuality etc.

Employers have a duty to ensure that the information provided in the written statement is true; whilst the verbal statement is not regulated by legislation, the employer must still ensure it is truthful since, if it contains false information, the employer may be criminally liable or subject to civil action from the employee.

12.0 DISCRIMINATION

Discrimination on grounds of ethnic or national origin, gender, age, disabilities, social standings, health conditions, religious beliefs, migratory situation, opinions, sexual preferences, marital status or any other that threatens human dignity is prohibited.

13.0 INDUSTRIAL RELATIONS

Collective agreements are common in Mexico, notably in manual labour industries. Employers may be required to enter into a collective agreement, if they hire employees who are union members and who request to have an agreement executed.

For companies, whose employees are already unionised, any new recruits must join the existing union if this is required by the collective bargaining agreement..

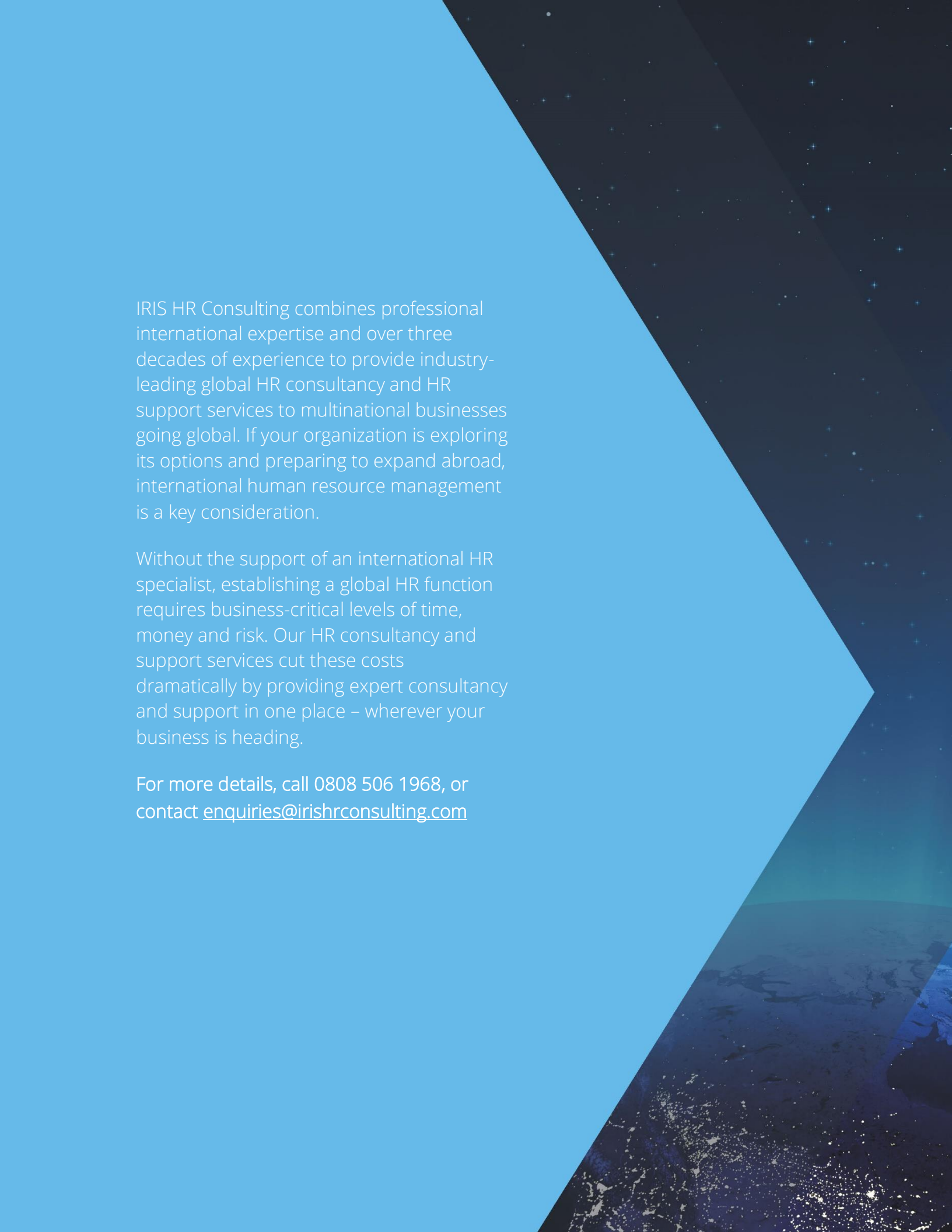
14.0 DATA PROTECTION

Federal Institute of Access to Information and Data Protection (*Instituto Federal de Acceso a la Información y Protección de Datos*) (the "IFAI") is the national regulatory authority for data protection in Mexico. No registration or notification is required.

All data controllers must designate a person or a department to deal with the exercise of the data subject's rights and promote compliance.

In order to process personal data, the data controller must obtain the consent of the data subject through a Privacy Notice, except in situations prescribed by law (for example, where the processing of personal data is made to comply with the obligations deriving from a contract between the data controller and the data subject).

For domestic and international data transfers, data controllers must provide, in the relevant privacy notice, notice of the transfers and their specific purposes, and obtain the data subject's consent, except in situations prescribed by law (such as data transfer within the same group company). For international transfers, the transferor must also enter into an agreement or legal instrument, or include a clause to establish the same obligations, to ensure that the use of the personal data continues to be subject to the same level of protection.



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