

**MEDIATION HIGHLIGHTS FOR LABOR TRIALS IN THE STATE OF  
BAJA CALIFORNIA, MEXICO**

In Mexico, the companies that are sued by a worker for unjustified dismissal, have to appear before the Labor Board, prepare the motions for the answer of the lawsuit, offering of evidence and appear to all the evidence hearings, which usually includes the deposition of the company's legal representative(s) deposition, even when the company did not dismiss the worker or the dismissal was with sufficient justified legal reason. This final conclusion will be made by the Labor Authority after completing all the legal stages of the trial.

In order to avoid risks, contingencies and expenses for all the parties involved, the Federal Labor Laws stipulates that all the labor trials begin with a mediation hearing.

In practice, the Local and Federal Labor Authorities with jurisdiction in the State of Baja California, insist in the mediation of the parties during all the trial.

For a better understanding of the referred mediation hearings, we have prepared this document, same that focuses in the mediation of individual labor trials:

1. In all the cases, the starting points of the mediation are the economic status of the companies and meeting with the worker to discuss his/her resignation and/or dismissal. In the case an offer is made by a company to the worker and if such offer is rejected, then the mediation hearing in trial will begin with no less than the rejected amount, usually, plus 50%, considering that the workers pay to their attorneys 30% of the settlement amount as legal fees.
2. In regular basis (in which there was no amount offered to the worker for his/her resignation), most of the workers' offers in the first trial hearing are around 75% of the claimed amounts for Dismissal Indemnification (90 days of salary) and Seniority Indemnification (20 days of salary, per year of work), plus the pending benefits by law.
3. In regular basis, on the second trial hearing or after 2 months of the dismissal, most of the workers accept to reduce their offer and accept around 45 days of salary, plus their pending benefits by law.

We have learned that said circumstance occurs, because in the first trial hearing the workers are usually angry and/or optimistic, but after 2 months without having a salary or other income (in Mexico, a governmental unemployment insurance does not exist), they prefer to accept a lower amount.

4. Considering that after 6 months of the workers' last working date, the major contingency in the labor trial is not the Dismissal Indemnification, but the payment of the caused salaries for all the term that the labor trial lasts, most of the workers returns to their initial offer or position to accept a settlement.

It is our experience that said circumstance occurs, because after a 6 months term, most of the workers are working again and do not have the same economical pressure they had.

5. Unless during the process of the trial, the winning expectation in the case is been inclined in favor of the company, after a term around 10-18 months (mainly depending of the workers' salary), the workers' settlement offers begin to increase.

We have learned that said circumstance occurs, because a long labor trial creates for the workers a huge gap between winning the case and a settlement. For this reason, if the companies' offers are not attractive, most of the workers prefer to take the risk and go for all what they asked in their lawsuits.

6. A fact that we always suggest to bear in mind for settling or not a labor case, is that in case of trial, the final awards pronounced by the Labor Boards, produces contingencies and risks mainly for the companies/employers, since in accordance with the Federal Labor Law, even when the Labor Authority rules in favor of the employer, the workers cannot be condemned to pay trial costs, expenses, attorney's fees or any other amount whatsoever.

In conclusion, we might say that in Mexico, the employers can lose or not lose a labor trial, but never win, and on the contrary, the workers can win or not win the labor trial, but never lose.<sup>i</sup>

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<sup>i</sup> Our comments and opinions mentioned in this document are only general, since material evidence, as well as legal, cultural, ideological, economic and backgrounds, among other factors shall be considered in each particular case.<sup>i</sup>