

Labor Relationship and types of work contracts

A labor relationship is typically formalized through an **individual contract**, which must include specific elements such as the names, nationalities, ages, sexes, marital statuses, CURP, NSS, RFC, and domiciles of both the employer and the worker. Other crucial details include the type of contract, services to be rendered, working hours, salary form and amount, payment day and place, special clauses, and provisions for training. An employee's file should also contain documentation such as the contract, employment application, RFC constancy, IMSS registration, INE, CURP, birth certificate, INFONAVIT discount notice, and a written record of services.

The sources outline several **types of work contracts**, including:

- Indefinite term contracts
- Fixed-term contracts
- Contracts based on the nature of the work
- Temporary substitution contracts
- Specific project contracts
- Probationary contracts
- Initial training contracts
- Seasonal contracts

Different **types of workers** are also recognized, such as those in positions of trust, minors, pregnant workers, special workers, and foreigners. For instance, **confidence workers** are defined by the nature of their functions (direction, inspection, vigilance, fiscalization) rather than their job title. They have specific conditions regarding profit-sharing (PTU), reasonable cause for termination due to loss of trust, and cannot vote in strikes, though they do have the right to overtime pay. **Minors** can be hired from age 16 if they have completed compulsory education and have written parental authorization. Minors under 18 have a maximum 6-hour workday, require a medical certificate, cannot perform hazardous activities, and are prohibited from working on Sundays, overtime, or mandatory rest days, and are entitled to at least 18 days of vacation and a 1-hour rest. For **pregnant workers**, nighttime work and overtime are prohibited, as is hazardous work. They are also entitled to two 30-minute lactation breaks for 6 months.

Both employers and workers have defined **obligations and prohibitions** within the labor relationship. For example, employers must comply with labor norms, pay salaries and indemnities, provide necessary tools, maintain a safe workplace, and respect workers. Prohibited employer actions include discrimination based on age or sex, forcing purchases at specific locations, demanding money for admission to work, interfering with union activities, or engaging in political/religious propaganda at the workplace. Workers, in turn, must follow work norms, observe safety measures, perform duties as agreed, inform about absences, and conserve tools. They are prohibited from actions such as working while intoxicated, possessing weapons, or using tools for purposes other than their intended use.

The labor relationship can also experience a **suspension**, where neither the worker nor the employer holds responsibility. This can occur due to a worker's contagious disease, temporary incapacity from a non-work-related accident or illness, preventive detention followed by acquittal, arrest, fulfillment of public duties, or lack of necessary documents required by law.

Termination and Rescission of the Labor Relationship

The ending of a labor relationship can occur through **termination (Terminación)** or **rescission (Rescisión)**, with different financial implications:

- **Termination (Terminación):** This occurs without responsibility for either the employer or the worker. Causes include mutual consent, death of the worker, completion of the work or contract term, physical or mental incapacity, and specific cases related to the business's viability like force majeure, notorious unprofitability, exhaustion of raw materials, or bankruptcy. Generally, termination **does not give the right to legal indemnity**, unless the workplace is closed partially or totally. In these cases, the worker is entitled to a **Finiquito**.
- **Rescission (Rescisión):** This involves the unilateral decision of either the employer or the worker to end the relationship based on specific justified causes.
 - **Employer-initiated Rescission without responsibility (Art. 47 LFT):** An employer can rescind the relationship without incurring responsibility if the worker engages in deceit, violence, dishonesty, causes intentional or grave negligent material damage, compromises safety, commits immoral acts, reveals secrets, has more than three unjustified absences in 30 days, disobeys without justification, refuses preventive

measures, is intoxicated, or receives a prison sentence. In this scenario, the worker is generally entitled to a **Finiquito**.

- **Worker-initiated Rescission without responsibility** (Art. 51 LFT): A worker can rescind the relationship without incurring responsibility (meaning they are entitled to an indemnity) if the employer engages in deceit, violence, dishonesty, reduces the worker's salary, fails to pay salary on time, causes malicious damage to tools, or creates a grave danger to the worker's safety or health. In these cases, the worker is entitled to both an **Indemnización** and a **Finiquito**.
- **Unjustified Dismissal by the Patron**: This occurs when the employer terminates the relationship without a just cause. If the employer refuses arbitration or accepts the award, the contract is terminated, and the employer must pay the worker **3 months of salary as indemnity**. If dismissed without just cause, or for joining a union or participating in a lawful strike, the worker has the choice to either enforce the contract or receive **3 months of salary as indemnity**. This scenario leads to a **Liquidación** (which includes the indemnity) and a **Finiquito**.

Finiquitos and Indemnizaciones (Liquidación)

The sources clearly distinguish between a **Finiquito** and an **Indemnización** (often referred to as Liquidación in the context of unjustified dismissal):

- **Finiquito**: This term is used when the labor relationship ends **without responsibility for the employer** (e.g., termination by mutual consent, or rescission by the employer for a justified cause). It represents "saldar o terminar una cuenta". The payment typically includes:
 - **Accrued and unpaid salaries** (Salarios devengados y no pagados).
 - **Proportional part of Christmas bonus** (Aguinaldo).
 - **Proportional part of vacation days**.
 - **Proportional part of vacation premium**.
 - **Profit-sharing** (PTU).
 - **Seniority premium** (Prima de antigüedad), which is 12 days of salary per year of service, only if applicable (e.g., after 15 years of service or certain types of justified termination).

- **Indemnización (Liquidación):** This term is used when the employer is obliged to make an **extraordinary payment to compensate for a caused harm**. It typically occurs in cases of **rescission without responsibility for the worker** (i.e., when the worker resigns due to employer fault) or **unjustified dismissal** by the employer. The "Liquidación" payment includes all the concepts of a Finiquito, plus additional indemnities:
 - **Accrued and unpaid salaries.**
 - **Accrued salaries** (Salarios caídos).
 - **Proportional part of Christmas bonus.**
 - **Proportional part of vacation days.**
 - **Proportional part of vacation premium.**
 - **Profit-sharing** (PTU).
 - **Seniority premium** (Prima de antigüedad): 12 days of salary for each year of service.
 - **Constitutional indemnity:** Equivalent to **3 months of salary**. This is mandated by the Constitution of the United Mexican States (Art. 123 Fracc. XXI and XXII CPEUM) in cases where the employer refuses arbitration, rejects an award, or dismisses a worker without just cause or for union/strike activities.
 - **Indemnity for non-reinstatement** (Indemnización por no reinstalación) (Art. 50 LFT): This variable indemnity depends on the duration of the contract:
 - For **fixed-term contracts less than one year**: Import of salaries for half the time of services rendered.
 - For **fixed-term contracts greater than one year**: Import of 6 months' salary for the first year, plus 20 days' salary for each subsequent year.
 - For **indefinite-term contracts**: Import of 20 days' salary for each year of service.

Calculation Base for Indemnities: The **integrated daily salary** (Salario Diario Integrado) is used to determine the amount of indemnities. This includes cash payments for daily quotas, gratuities, perceptions, housing, premiums, commissions,

benefits in kind, and any other amount or benefit given to the worker for their work (Art. 84 LFT). For fixed salaries, it's the daily salary at the time the right to indemnity arises, including the proportional part of other benefits. For variable salaries, it's the average of salaries obtained in the 30 days effectively worked before the right arose. The amount used as the basis for indemnities cannot be less than the minimum wage. If the worker's salary exceeds **double the minimum wage** for the geographical area, that doubled amount is considered the maximum salary for indemnity calculation (Art. 486 LFT). Indemnities are based on payments that are fixed, permanent, determined in money without objection, and do not depend on future events.

Legal bases and components that determine the final payment amount, which are directly tied to the reason for the employment termination.

1. Base for Calculation: Integrated Daily Salary (Salario Diario Integrado)

The foundational element for calculating both types of payments, especially indemnities, is the **Integrated Daily Salary (Salario Diario Integrado)**. This salary is not merely the base daily wage but includes all cash payments and benefits received by the worker for their labor:

- **Daily quota (cuota diaria).**
- **Gratuities (gratificaciones).**
- **Perceptions (percepciones).**
- **Housing benefits (habitación).**
- **Premiums (primas).**
- **Commissions (comisiones).**
- **Benefits in kind (prestaciones en especie).**
- **Any other amount or benefit delivered to the worker for their work.**

The method for determining this integrated daily salary depends on the worker's pay structure:

- For **fixed salaries**, the integrated daily salary is the one corresponding to the day the right to the indemnity arises, encompassing the daily quota and the proportional part of the aforementioned benefits.

- For **variable salaries**, it is calculated as the average of the salaries obtained during the 30 days effectively worked prior to the right to the indemnity arising.

Crucially, the sources establish specific limits for this base salary for indemnity calculations:

- The base amount for indemnity payments **cannot be less than the minimum wage**.
- If the worker's salary **exceeds double the minimum wage** for the geographical area, this doubled amount is considered the **maximum salary for indemnity calculation**.

Furthermore, for a payment to be included in the integrated salary for indemnification purposes, it must meet specific criteria:

- It must be paid in a **fixed or permanent form**.
- It must be **determined or determinable in money without objection**.
- It **should not depend on any future event** to be earned.

2. Calculation of a Finiquito

A **Finiquito** is calculated when the labor relationship ends **without responsibility for the employer**. This typically occurs in scenarios such as mutual consent between parties, the death of the worker, the completion of a contract term or specific project, or situations like physical or mental incapacity of the worker, or certain cases of force majeure or economic unviability as detailed in Article 434 LFT. It represents the "saldar o terminar una cuenta" (settling or closing an account).

The calculation of a Finiquito includes the proportional parts of benefits the worker has accrued but not yet received:

- **Accrued and unpaid salaries** at the moment of the finiquito.
- Proportional part of the **Christmas bonus (aguinaldo)**, based on Article 87 LFT.
- Proportional part of **vacation days**, based on Article 79 LFT.
- Proportional part of the **vacation premium**, based on Article 80 LFT.
- **Profit-sharing (PTU)**, based on Article 117 LFT.

- **Seniority premium (Prima de antigüedad)**, which corresponds to **12 days of salary for each year of service, in case it applies (en caso de que aplique)**, based on Article 162 LFT. The condition "in case it applies" is specifically noted for the Finiquito.

The sources also clarify that in cases of **justified rescission by the worker**, they would receive a Finiquito along with other payments. If the **employer justifies the rescission**, the employer must pay the Finiquito and the seniority premium.

3. Calculation of an Indemnización (Liquidación)

An **Indemnización** is defined as an employer's obligation to provide an **extraordinary payment to the worker as economic reparation for a suffered harm or prejudice**. The sources use the term **Liquidación** to refer to the comprehensive payment made in cases of **rescission without responsibility for the worker** (e.g., when the worker resigns due to the employer's fault, as per Art. 51 LFT reasons like employer deceit, violence, salary reduction, or danger to safety) or **unjustified dismissal by the employer** (as per Art. 47 LFT). The term "Liquidación" implies the full settlement, which *includes* the indemnities.

A Liquidación payment **includes all the concepts of a Finiquito, plus significant additional indemnities**:

- **Accrued and unpaid salaries** at the moment of the liquidación, based on Article 84 LFT.
- **Accrued salaries (salarios caídos)**, based on Article 48 LFT. These are salaries the worker would have earned had the employment continued.
- Proportional part of the **Christmas bonus (aguinaldo)**, based on Article 87 LFT.
- Proportional part of **vacation days**, based on Article 79 LFT.
- Proportional part of the **vacation premium**, based on Article 80 LFT.
- **Profit-sharing (PTU)**, based on Article 117 LFT.
- **Seniority premium (Prima de antigüedad)**, which is **12 days of salary for each year of service**, based on Article 162 LFT. This is consistently included in the Liquidación.
- **Constitutional indemnity**: This is a **fixed amount equivalent to 3 months of salary**. It is based on Article 123, sections XXI and XXII of the Political

Constitution of the United Mexican States and Article 89 LFT. This indemnity **does not depend on the duration of the labor relationship**.

- **Indemnity for non-reinstatement (Indemnización por no reinstalación):**

This is a **variable indemnity** determined by the type and duration of the contract, based on Article 50 LFT:

- For a **fixed-term contract less than one year**: The amount of salaries for **half the time of services rendered**.
- For a **fixed-term contract greater than one year**: The amount of **6 months of salary for the first year, plus 20 days of salary for each subsequent year**.
- For an **indefinite-term contract**: The amount of **20 days of salary for each year of service**.

The sources explicitly state that in cases of **unjustified dismissal by the employer**, the employer must pay the Indemnización, Finiquito, and seniority premium. If the **worker rescinds without responsibility for themselves**, they should receive the Indemnización, Finiquito, and seniority premium.

In conclusion, the core distinction in payment calculation between a Finiquito and an Indemnización (Liquidación) is the **reason for termination**. A Finiquito settles accrued but unpaid benefits when the employer is not at fault. In contrast, a Liquidación, as the full payout, includes these Finiquito components plus additional, significant indemnities (constitutional and non-reinstatement) when the termination is due to an unjustified dismissal by the employer or a justified rescission initiated by the worker due to employer fault. The calculation for both fundamentally relies on the **integrated daily salary**, with specific rules for its determination and limits.