

Mexico Says US Must Vaccinate Migrant Workers Under Pact

By Jennifer Doherty

Law360 (January 13, 2021, 8:25 PM EST) -- Mexico's top diplomat called on the U.S. to include unauthorized immigrants in ongoing COVID-19 vaccination campaigns in a speech Wednesday, saying Mexico would consider exclusion of migrant workers a violation of the U.S.-Mexico-Canada Agreement.

Citing two sections from Chapter 23 of the 2018 trade deal concerning labor conditions and migrant workers, Secretary of Foreign Affairs Marcelo Ebrard said workers had the "established right" to protection from contagion.

"Delivering the vaccine is a responsibility for both countries, to ensure that all workers, notwithstanding their immigration status, receive the vaccine," Ebrard said in Spanish. "Therefore, we consider that any exclusion of Mexican workers is a violation of the free trade agreement."

Ebrard's remarks came after Nebraska Gov. Pete Ricketts told reporters this month that unauthorized migrants would not be a part of the push to vaccinate workers at the state's meatpacking facilities.

"You're supposed to be a legal resident of the country to be able to be working in those plants, so I do not expect any illegal immigrants will be part of that, the vaccine, with that program," Ricketts said during a COVID-19 status briefing on Jan. 4.

The comment sparked an outcry from both U.S. and Mexican officials.

U.S. Rep. Alexandria Ocasio-Cortez, D-N.Y., slammed Ricketts in a tweet that included video of his remarks.

"Imagine being so racist that you go out of your way to ensure that the people who prepare *your* food are unvaccinated," the congresswoman wrote.

The following day, Mexican Consul Guadalupe Sanchez called Ricketts' remarks "extremely concerning" in a letter warning the governor that failure to vaccinate unauthorized immigrants would "certainly have a direct impact on the Nebraskan communities they live in."

"It is an undisputable fact that a high percentage of meatpacking workers in Nebraska are undocumented immigrants and many of them are Mexican nationals," the diplomat wrote. "As you know an extremely high number of these essential workers have unfortunately lost their lives while

attempting to maintain the Nebraskan and United States food supply chain, and 16 of them were Mexican nationals."

Ricketts followed up on his earlier remarks the same day the letter was issued, telling reporters, "Just like any other vaccine, your citizenship is not checked before you receive a vaccine."

Ebrard emphasized migrant workers' precarious status in his remarks Wednesday, quoting from the USMCA in Spanish.

"The parties recognize the vulnerability of migrant workers with respect to labor protections. Accordingly, in implementing Article 23.3 (Labor Rights), each Party shall ensure that migrant workers are protected under its labor laws, whether they are nationals or non-nationals of the party," he read.

If U.S. officials insisted on excluding unauthorized migrants from vaccination campaigns, Mexico would take action under the terms both countries had agreed to, Ebrard said, calling on U.S. labor unions to take up the cause.

Jackson Pai, counsel in Crowell & Moring LLP's international trade group, told Law360 that Mexico was free to activate the dispute settlement procedures under Chapter 31 of the USMCA but that its path forward would be uncertain.

"It is not immediately clear how Mexico may allege violations of the USMCA by the U.S., given the vague requirements under the cited provisions of the USMCA to eliminate discrimination and to protect migrant workers under domestic labor laws," Pai said in a statement.

If Mexico does move forward with its claims, it could press the U.S. into consultations, followed by a dispute panel ruling if bilateral discussions were unsuccessful. If the two countries still could not reach an agreement based on the panel's findings, Mexico could move to suspend certain benefits the U.S. enjoys under the trade agreement, including preferential tariff treatment.

A representative for the AFL-CIO, the largest federation of labor unions in the U.S., expressed support for universal vaccinations in a statement to Law360 on Wednesday.

"The AFL-CIO believes all workers, regardless of immigration status, should be vaccinated and enjoy respect for their fundamental labor rights in the workplace," the spokesperson said.

--Editing by Aaron Pelc.