



Background screening is rather commonplace in Mexico. However, there are diverse legal and cultural considerations that companies should be aware of before implementing a background screening program in this particular country. This whitepaper will highlight the legal landscape and outline checks available.

### **Legal Landscape**

Employers need to understand the different laws that may impact background screening. In particular, analyzing the data protection landscape in conjunction with labor legislation is important when designing a background screening program.

### **Data Privacy**

On the federal level, Mexico has had a comprehensive data protection law – the Federal Personal Data Protection Law (Ley Federal de Protección de Datos Personales) – in place since 2010. There are also Personal Data Protection Rules (Reglamento de la Ley Federal de Protección de Datos Personales en Posesión de los Particulares) in effect.

Under the Law, individuals (referred to as data owners) must consent to the processing of personal data unless an exception exists. Consent is considered express when communicated verbally, in writing, by electronic or optical means or via other technology, or by unmistakable indications. Express consent is required to process data related to financial information and for sensitive personal data.

Under the Law, sensitive personal data includes: racial or ethnic origin, present or future health conditions, genetic information, religious, philosophical or moral beliefs, trade union membership, political opinions and sexual orientation. The Law also provides for tacit consent which occurs when the individual receives a copy of a privacy notice and does not object to processing.

The Law affords individuals “ARCO rights” which are the right to access, rectify, cancel (i.e., erase) and/or object to personal data processing. In addition, individuals have the right to revoke consent. These are referred to as ARCO rights (access, rectify, cancel or object). Regarding data transfers, individuals must consent to domestic or foreign transfers of data unless limited exceptions are met (such as the transfer is done in accordance with a law or treaty).

Enforcement of the Law is through the Federal Institute for Information Access and Data Protection (Instituto Federal de Acceso a la Información y Protección de Datos or IFAI) which acquired new authority and changed its name to National Institute of Transparency, Access to Information, and Personal Data Protection (INAI, Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales).

Capital	Mexico City
Currency	Peso
Population	119,530,753
Area	1,972,550 km <sup>2</sup>
Language	Spanish
Time Zone	UTC -7 to -5
Calling Code	+52



Additionally, individuals must be presented with a Privacy Notice prior to personal data collection. In 2013, Privacy Notice Guidelines were passed strengthening this requirement. The purpose of the Privacy Notice is to provide the scope, terms and conditions of data processing to the individual so he or she can make an informed decision.

Under the current guidelines, three versions of the Privacy Notice must be prepared: Short, Simplified and Full (or Comprehensive). How the personal data will be used determines which version of the Privacy Notice must be distributed. For example, the full notice must be presented when collecting personal data from the individual (and consent must be obtained). The full notice must include details such as the type of data being collected, the mechanisms through which individuals can exercise their ARCO rights, notice that consent is required, the purpose behind collection and processing, and how an individual can limit the use, disclosure or transfer of data including the opportunity to disable cookies before automatic personal data collection. Each version of the notice must be provided in Spanish in clear language that is easy to understand. The full and simplified notices may be provided in print or electronically (or by other technological means). The short notice is typically used when space is limited such as an ATM message. The INAI's website includes sample privacy notices as well as FAQs companies may find useful.

### **Discrimination Protection**

In 2003, the Federal Law to Prevent and Eliminate Discrimination (FLPED) was passed. However, the FLPED was not without controversy as there are no effective enforcement mechanisms in place. In 2012, the Federal Labor Law was amended to better protect employees from discrimination on the basis of ethnic or national origin, gender, age, disabilities, social standings, health conditions, religious beliefs, migratory status, opinions, sexual preferences or marital status. It is important for companies to remember that HIV and pregnancy testing are prohibited in Mexico.

### **Background Screening – Available Checks**

**Bankruptcy**

**Civil Records**

**Criminal**

**Directorship**

**Education**

**Employment**

**Global Search**

**ID Verification**

**Motor Vehicle Records**

**Passport Check**

**Professional License Verification**

**References**



In general, the most commonly conducted checks in Mexico include reviewing an individual's past education and employment history, conducting a criminal records check and checking professional references. Other checks, such as reviewing an individual's credit history and motor vehicle records, are available; however, they tend to be used only when directly relevant to the position being filled and may not be suitable for every position in every industry.

### **Education**

In Mexico it is common to verify only the highest degree obtained by a candidate. Educational institutions will be contacted to verify dates of attendance, graduation date and degree information.

### **Employment**

It is common to verify the last seven years of employment for candidates in Mexico. Employers will be contacted to verify the individual's title, dates of employment and if the candidate is eligible for rehire.

### **Criminal**

The recommended criminal search in Mexico is on the state level. A certificate from the State Attorney General of the state that the subject has lived in (Procuraduría General de Justicia del Estado de México). A hard copy of the certificate is not available as that is provided to the candidate only. Third parties will receive an electronic copy of the certificate. Additional information such as the individual's mother's maiden name will be required.

A nationwide federal criminal repository search is also available; however, some states have discontinued providing daily feeds so this search should be considered limited in terms of scope.

### **ID Verification**

The search verifies identity through the Voter's Registration Card via the Federal Electoral Institute (or Instituto Federal Electoral, IFE).

### **Motor Vehicle Records**

The motor vehicle records search will confirm if the individual possesses a driver's license and is conducted at the state level. Details of the driving record including major offenses (such as DUIs) may be provided if available.

### **Miscellaneous**

Other searches in Mexico include: Bankruptcy Records, Civil Records, Directorship, Passport Check, Global Search (sanctions and watch lists), Professional License Verification and Professional References.

*It is important to note that the following is offered as general educational information and is not intended to constitute legal advice. Given the intricacies of the pertinent laws and regulations, consultation with qualified legal counsel is recommended.*