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# **Developments in Social Security Legislation in Mexico**

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## LIST OF ABBREVIATIONS

BANXICO	Banco de Mexico
CONAPO	Consejo Nacional de Población
CONASAMI	Comisión Nacional de los Salarios Mínimos
CONEVAL	Consejo Nacional de Evaluación de la Política de Desarrollo Social
DOF	Diario Oficial de la Federación
IMSS	Instituto Mexicano del Seguro Social
INEGI	Instituto Nacional de Estadística, Geografía e Informática
ISSFAM	Instituto de Seguridad Social Para las Fuerzas Armadas Mexicanas
ISSSTE	Instituto de Servicios y Seguro Social para los Trabajadores del Estado
LSS	Ley del Seguro Social
MXN	Peso Mexicano
SAR	Sistema de Ahorro para el Retiro
USD	US-Dollars

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## INTRODUCTION

To better understand the context of the advances made in social security in Mexico in 2015, it is first necessary to take into account the following aspects:

First, in 2011, an important reform was made to the Political Constitution of the United Mexican States in terms of human rights. This represents a watershed in the understanding of what human rights are and opened the door to perceiving social security as a human right. With this reform, the heading of Title 1 Chapter 1 was changed from “*Individual Guarantees*” to “*On Human Rights and Individual Guarantees*”. In addition to the change in nomenclature, this reform came to shape what has been called the “*Constitutional Bloc*”; that is, the legal doctrine that contains a set of international human rights standards that, although not directly enshrined in the constitutional text, forms part of it through the express reference made in the Mexican Constitution itself. In other words, these instruments are given the same legal rank and importance as the Constitution, the supreme law of Mexico. Therefore, for social security, the constitutional recognition of human rights standards extends to the Universal Declaration of Human Rights (1948); the International Covenant on Economic, Social and Cultural Rights (1966); the Declaration concerning the aims and purposes of the International Labour Organization (ILO), 1944; the ILO Income Security Recommendation, 1944 (No. 67); the ILO Medical Care Recommendation, 1944 (No. 69); ILO Social Security (Minimum Standards) Convention, 1952 (No. 102); the ILO Declaration on Social Justice for a Fair Globalization (2008); Social Protection Floors Recommendation, 2012 (No. 202); the American Convention on Human Rights (1969) and the Protocol of San Salvador (1988). This has gradually led courts to emit creative sentences that give benefits to individuals who would have not received such benefits without this human rights reform since these people do not fulfil the requirements established in specific social security laws. Meanwhile, the legislative branch has begun to produce reforms that — without explicitly acknowledging social security as a human right — move in the same direction as that of the judiciary.

Second, legislative changes that had been extensively announced since the beginning of the current government (2012-2018) and that should have materialized in 2015 were eagerly awaited throughout the year. However, these changes have yet to take place. Examples of these reforms include granting non-contributory old-age pensions and unemployment insurance.

Lastly, collective anxiety regarding the imminent changes in the Mexican healthcare system was accentuated in this year. It should be noted that since the 1995 reform to the Law of the Mexican Social Security Institute (IMSS – *Instituto Mexicano del Seguro Social*) and the later 2007 reform to the Law of the Institute of Social Security and Social Services for State Workers (ISSSTE – *Instituto de Servicios y Seguro Social para los Trabajadores del Estado*) opened the opportunity for public and private healthcare services to co-exist in order to grant the right to health in Mexico. However, this change has not taken place. In the second half of 2015, the journalistic world, as well as actions launched by the government (the organization of forums, government agency publications, etc.) heightened the tension among the population by insinuating that the much feared change would soon take place. Everything seems to indicate that this marks the beginning of the privatization of healthcare management for Mexicans, which is not very promising considering the effects of

privatization on the management of the pension system. To illustrate this, financial data for pensions in Mexico in 2015 showed negative numbers since the pension funds lost \$4 billion Mexican pesos<sup>1</sup> in December due to volatility. Meanwhile, the Retirement Fund Administrators (private entities that manage workers' funds) obtained capital gains worth \$165.94 billion pesos.<sup>2</sup>

There have been great expectations in 2015 regarding important social security reforms that have yet to be implemented. Nonetheless, certain interesting changes did take place, such as the entry into force of the Federal Regulations for Safety and Health at Work (*Reglamento Federal de Seguridad y Salud en el Trabajo*), which is a great step forward in the prevention of professional risks.

## 1. THE CURRENT ECONOMIC, POLITICAL AND SOCIAL SITUATION

2015 was marked by violent events that shook the country, several human rights recommendations and little economic growth (2.3%).

In the 2015 tax year, the expenditure for social security was \$501,627,340,000<sup>3</sup> Mexican pesos<sup>4</sup>. In other words, it increased by \$894 billion USD compared to that approved for the 2014 tax year.<sup>5</sup>

In order to better understand the problem of social security coverage in Mexico today, it is necessary to turn to statistical data that help contextualize the magnitude of the problem. This reference frame is deliberately general, and will serve to point out the sources of vulnerability in several segments of society. For parts of the Mexican population, these particular situations of vulnerability have produced a long-term deterioration in the quality of life.

Population: Mexico is a country with a large population. According to the 2015 National Institute of Statistics and Geography (INEGI – *Instituto Nacional de Estadística, Geografía e Informática*) data, Mexico has 121,168,094 inhabitants<sup>6</sup> with more than 33 million children between the ages of 0 and 14<sup>7</sup>. Life expectancy of Mexicans increased from 74.7 years in 2014<sup>8</sup> to 74.95 years in 2015.<sup>9</sup> Of the

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<sup>1</sup> About \$225 million USD. The exchange rate used is 1 USD=\$17.74 MXN (consulted on 8 January 2016).

<sup>2</sup> About \$2.94 billion USD.

<sup>3</sup> Federal Official Gazette [Diario Oficial de la Federación], Decreto del Presupuesto de Egresos de la Federación para el año 2015, available at: [http://www.dof.gob.mx/nota\\_detalle\\_popup.php?codigo=5374053](http://www.dof.gob.mx/nota_detalle_popup.php?codigo=5374053) (accessed on 11 January 2016).

<sup>4</sup> About \$ 2.81 billion USD.

<sup>5</sup> Federal Official Gazette, Decreto del Presupuesto de Egresos de la Federación para el año 2014, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5324132&fecha=03/12/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5324132&fecha=03/12/2013) (accessed on 11 January 2016).

<sup>6</sup> INEGI, Indicadores de ocupación y empleo al tercer trimestre de 2015, 2015, available at: <http://www3.inegi.org.mx/sistemas/temas/default.aspx?s=est&c=25433&t=1> (accessed on 2 December 2015).

<sup>7</sup> CONAPO, 30 de abril día del niño, available at: [http://www.conapo.gob.mx/es/CONAPO/30\\_de\\_abril\\_2015\\_Dia\\_del\\_Nino\\_y\\_de\\_la\\_Nina](http://www.conapo.gob.mx/es/CONAPO/30_de_abril_2015_Dia_del_Nino_y_de_la_Nina) (accessed on 8 January 2016).

<sup>8</sup> INEGI, Cuéntame, esperanza de vida al nacer, available at: <http://cuentame.inegi.org.mx/poblacion/esperanza.aspx?tema=P> (accessed on 7 January 2016).

<sup>9</sup> INEGI, México en cifras, available at: <http://www3.inegi.org.mx/sistemas/mexicocifras/default.aspx> (accessed on 7 January 2016).

total population, 58,728,725 are men and 62,439,369 are women. Of this total number, 72.36% are of working age, which means that more than 87 million people are over the age of 15.<sup>10</sup>

Social security: Mexico has 71,069,169,000 insured individuals entitled to benefits, 60,584,000 of which belong to the IMSS and 12,882,000 belong to the ISSSTE. As of December 2015, 57.29 billion people were covered by the People's Health Insurance programs (*Seguro Popular de Salud* – a healthcare assistance program).<sup>11</sup> On 30 November 2015, 18,187,747 private sector and formal employment positions were registered with the IMSS, 85.5% of which were permanent posts and 14.5% temporary ones. In the last 4 years, these percentages have not varied much.<sup>12</sup> The annual increase in employment was mainly fuelled by the agricultural sector (7.9%), processing industries (5.2%) and communications and transport (5.1%).<sup>13</sup>

Income: The income level of the working population is distributed as follows: 13.47% earned an income equivalent of up to one minimum wage;<sup>14</sup> 24.17%, between one and two minimum wages; 22.24%, between two and three minimum wages; 14.47%, between three and five minimum wages; and only 6.58% earned more than five minimum wages. Lastly, 7.37% do not receive any income and the exact amount of income for the remaining 11.7% is unknown.<sup>15</sup>

Informality: Informality is still a problem in Mexico since it comprises more than 50% of the population. According to National Survey on Occupation and Employment (*Encuesta Nacional de Ocupación y Empleo*) data, 57.92% of the employed population has informal employment while the remaining 42.08% has formal employment.<sup>16</sup>

Trade balance: It should be noted that in 2015, Mexico had a negative trade balance since imports amounted to \$32.59 billion USD while exports amounted to \$31.02 billion USD, a difference of \$1.56 billion USD. The main activities considered for these effects include oil-related, manufacturing, mining and automotive industries.<sup>17</sup>

Migration: As to economic activity, for the first time in Mexico since 2000, the money sent by migrants (remittances) reached \$20.69 billion USD in October 2015, a 5.4% increase from the same

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<sup>10</sup> CONAPO, 1° de mayo día del trabajo, available at: [http://www.conapo.gob.mx/es/CONAPO/1\\_de\\_mayo\\_2015\\_Dia\\_del\\_Trabajo](http://www.conapo.gob.mx/es/CONAPO/1_de_mayo_2015_Dia_del_Trabajo) (accessed on 8 January 2016).

<sup>11</sup> INEGI, Derechohabiencia y Servicios de Salud, available at : <http://www3.inegi.org.mx/sistemas/sisept/default.aspx?t=msoc01&s=est&c=22594> (accessed on 8 December 2015).

<sup>12</sup> IMSS, Puestos de trabajo al 2015, Mexico, available at: [http://www.imss.gob.mx/sites/all/statics/i2f\\_news/091215%20Com%20082.pdf](http://www.imss.gob.mx/sites/all/statics/i2f_news/091215%20Com%20082.pdf) (accessed on 14 December 2015).

<sup>13</sup> Idem.

<sup>14</sup> In 2015, the minimum wage equaled \$2,103.00 a month (about 118.54 USD), available at: [http://www.conasami.gob.mx/pdf/tabla\\_salarios\\_minimos/2015\\_abril/TABULADOR\\_ABRIL\\_2015.pdf](http://www.conasami.gob.mx/pdf/tabla_salarios_minimos/2015_abril/TABULADOR_ABRIL_2015.pdf).

<sup>15</sup> Op. cit. CONAPO, 1° de mayo día del trabajo.

<sup>16</sup> Idem.

<sup>17</sup> INEGI, Balanza comercial 2015, available at: <http://www3.inegi.org.mx/sistemas/sisept/default.aspx?t=eext14&s=est&c=24682> (accessed on 7 January 2016).

period in 2014.<sup>18</sup> This means that these remittances surpassed the revenues Mexico received for oil exports (\$20.54 billion USD) and ranked as the highest source of Mexican income.<sup>19</sup>

Poverty: The National Council for Evaluation of Social Development Policy (CONEVAL - *Consejo Nacional de Evaluación de la Política de Desarrollo Social*) presented a detailed study on poverty in Mexico this year. The indicators show that the national level of poverty which had slightly dropped from 46.1% in 2012 to 45.5% in 2013 went up again to 46.2% in 2014. Updated official figures for 2015 are not yet available, but the country still has alarming levels of poverty. Despite the efforts made so far, the social programs and earmarked revenue the level of poverty continues to rise. As to extreme poverty, the percentages did see a considerable decrease from 11.3% of the total population in 2012 to 9.5% in 2014.

## 2. EVOLUTION OF SOCIAL PROTECTION SCHEMES

### 2.1 Old-age Schemes

The hybrid pension system (State with private management) undeniably requires re-engineering. The benefits granted are for old-age, severance at old age and retirement pensions. In 2015, no legislative reforms were implemented. There were only two projects for legislative reform. The first one would end up privatizing the pension fund management system for State workers, while the second one was aimed at granting non-contributory pensions to older persons.

#### 2.1.1. Reform Projects

##### a) Reforms to the ISSSTE

The proposed reform to the ISSSTE Law consists of modifying certain articles regarding worker pensions. This reform aims at turning the National Pension Fund for State Workers (PENSIONISSSTE - *Fondo Nacional de Pensiones de los Trabajadores al Servicio del Estado*) into a private company with majority State control, which would include the creation of a PENSIONISSSTE Administration Board as the administrative and management body. This reform privatizes yet one more part of the State worker pension fund management.

##### b) Pensions to older adults

Heralded in 2013, this reform aimed to grant non-contributory pensions to older adults, but did not materialize in 2015. This legislative initiative, called the Universal Pension Act, passed from the Chamber of Deputies to the Chamber of Senators and has suffered many changes throughout the debates.

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<sup>18</sup> BANXICO, Ingresos por remesas, available at:

<http://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarCuadro&idCuadro=CE81&sector=1&locale=es> (accessed on 8 January 2016).

<sup>19</sup> BANXICO, Balanza de productos petroleros, available at:

<http://www.banxico.org.mx/SieInternet/consultarDirectorioInternetAction.do?accion=consultarCuadroAnalitico&idCuadro=CA188&sector=1&locale=es> (accessed on 8 January 2016).



It currently establishes the creation of a financial support mechanism for older adults, who are not eligible for a pension from a contributory scheme. This new support system called “pension for older adults” is a social assistance program that will replace other programs, like the 70y+ social program, in which cash transfers are made to adults over the age of 70.

### 2.1.2. Case Law

Meanwhile, the Supreme Court has made some interesting rulings on pensions, such as:

**SUB-ACCOUNT WITHDRAWAL.** An IMSS beneficiary has the right to receive the funds in his or her retirement sub-account if a pension is obtained through a pension plan instituted by the employer or collective contract under the social security law regime in force until 1997. Comment: One of the characteristics of the system that entered into force in 1997 is that the worker can know exactly how much he has saved and that the account is inalienable and non-transferrable. If resources are not used as a pension, they must be given to the insured.<sup>20</sup>

**CONTRIBUTIONS TO THE RETIREMENT SAVINGS SYSTEM (SAR - SISTEMA DE AHORRO PARA EL RETIRO).** Contributions must be covered if a labour relation between the actor and the State can be proven. Comment: State agencies, as employers, have the obligation to give their workers the mandatory benefits set forth in the regime, such as medical insurance, a pension fund and a retirement fund, among others. Thus, contributions must unfailingly be made to the Retirement Savings System (SAR). The existence of a labour relationship is often contested under the argument that the relationship consisted in rendering professional services. However, if an employment relationship is proven, the agency is bound to cover the corresponding contributions, since it is a legal obligation of the State employer to do so.<sup>21</sup>

**ISSSTE PENSIONS AND RETIREMENT.** The right to claim increases and any ensuing differences cannot be barred. Comment: The court holds that the right to claim increases and any ensuing differences are exempt from prescription. Notwithstanding, this imprescriptibility excludes the expired amounts of these differences, which correspond to amounts that were generated at a specific time and were not claimed when they were payable. Therefore, any legal action to claim the expired differences is subject to a limitation period of five years as of the date on which they were payable. This court precedent furthermore states that although legal action has a time limit for claiming the pensions themselves, it does not imply a limitation period on the pensioner’s right to claim the increases and any resulting differences.<sup>22</sup>

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<sup>20</sup> Época: Décima Época, Registro: 2008784, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 16, March 2015, Vol. III, Subject(s): Labor Thesis: I.6o.T.126 L (10a.) Page: 2509.

<sup>21</sup> Época: Décima Época, Registro: 2009958, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 22, September 2015, Vol. III, Subject(s): Labor Thesis: I.13o.T.131 L (10a.) Page: 1908.

<sup>22</sup> Época: Décima Época, Registro: 2010159, Instancia: Segunda Sala, Tipo de Tesis: Aislada, Fuente: Semanario Judicial de la Federación, Publication date: Friday, 9 October 2015 11:00 h, Subject(s): (Constitutional) Thesis: 2a. CIV/2015 (10a.).

## 2.2. Invalidity

Invalidity insurance through the IMSS or the ISSSTE (private sector workers and public servants) did not undergo any changes in 2015. Thus, the invalidity insurance grants benefits for insured persons if their normal earnings capacity based on previous profession or occupation is verifiably reduced by at least 50%. Moreover, this loss in earnings capacity has to result from a non-occupational disease or accident, and the insured person has to meet the contribution requirements (contributions paid for 5 years).

In 2015, the IMSS presented a report of the updated figures of its insurance coverage for the previous year. It showed that it currently pays 27,046 invalidity-related pensions (9,977 of which correspond to temporary invalidity pensions).<sup>23</sup>

Meanwhile, Art. 24 of the Law of the Armed Forces Social Security Institute (ISSFAM - *Instituto de Seguridad Social Para las Fuerzas Armadas Mexicanas*) was amended to establish a certification mechanism for permanent disability for acts that occurred while off-duty; that is, for general illnesses or accidents. This reform states that beneficiaries have the right to the benefits once their disability has been specifically determined by doctors designated by the Ministry of Defence and the Ministry of the Navy.

The Supreme Court of Justice issued several rulings on invalidity worth mentioning:

INVALIDITY PENSION (January 2015). The right to an invalidity benefit of IMSS workers should not be declared as inadmissible on the grounds that the worker continues to work at the date when the certificate of rights is issued if he/she still fulfils the requirements for this benefit. Comment: The purpose of an invalidity pension is to provide income coming from an occupational disability. Thus, the IMSS refused this benefit to its workers if they continued to stay in service, even when unable to perform working activities. This judgment highlights the importance of the right to invalidity benefits and its characteristic as inalienable.<sup>24</sup>

INVALIDITY PENSION (May 2015). If the beneficiary receives family allowances and is later deprived of these allowances, these must also be requested when claiming the reinstatement of his pension. Comment: The state of invalidity gives the beneficiary the right to receive a family allowance, as long as it can be evidenced in the conditions set forth by law. Accordingly, if a beneficiary enjoys the benefit of family allowances due to his being granted invalidity pension and payment of these benefits is discontinued, the beneficiary has to request also the reinstatement of family allowances when claiming the reinstatement of the invalidity pension. If only the pension is claimed, the

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<sup>23</sup> IMSS, Informe al Ejecutivo Federal y al Congreso de la Unión sobre la situación financiera y los riesgos del Instituto Mexicano del Seguro Social, 2014-2015, 2015, p. 108 (Resumen de las proyecciones demográficas de la valuación actuarial del Seguro de Invalidez y Vida), at <http://www.imss.gob.mx/sites/all/statics/pdf/informes/20142015/21-InformeCompleto.pdf> (accessed 8 January 2016).

<sup>24</sup> Época: Décima Época, Registro: 2008349, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 14, January 2015, Vol. III, Subject(s): Labor Thesis: I.8o.T.2 L (10a.) Page: 1961.

authorities are prevented from remitting family allowances, which have to be made explicitly part of the legal action.<sup>25</sup>

### 2.3. Survivors

No changes were recorded for widows or orphans. However, the Supreme Court of Justice of the Nation has issued interesting rulings and opinions.

WIDOW'S PENSION GRANTED BY THE ISSSTE (November 2015). Increases [to this pension] must be granted according to the law in force on the date the pension was granted to the pensioner (deceased), whether retirement, retirement due to age and time of service, old-age severance or invalidity. Comment: According to the current legislation, the widow or widower has the right to have the pension increased based on the law in force at the time the pension was granted to the worker (deceased), whether retirement, retirement due to age and time of service, old-age severance or invalidity. Moreover, this Court reaffirmed the legislative criteria for granting all additional benefits connected to the right to a pension which comprise all the benefits that the survivors received at the time of the beneficiary's death: healthcare, obstetric care and medical preventive services.<sup>26</sup>

WIDOWHOOD PENSION (October 2015). The Pension Act for the State of Jalisco in force until 19 November 2009 did not include benefits for widows, but this does not violate the Right to Social Security and Welfare. Comments: In this isolated ruling, the Court points out that the Pension Law for the State of Jalisco does not violate the right to social security by not including widowhood benefits since it grants benefits and services in other types of financially sustainable social security. Hence, the Court follows a reductionist interpretation which seems hardly compatible with the theory of social security as a human right.<sup>27</sup>

### 2.4. Health Care Provision

Measures that were implemented in 2015 as part of the public policies for the advancement of social security for health include:

#### **The medicine voucher program**

The gradual implementation of the medicine voucher program for IMSS and ISSSTE affiliates took place without any legislative reform, starting in larger cities and hopefully extending its coverage across all parts of Mexico later on. This program, which began in March, serves to protect affiliates

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<sup>25</sup> Época: Décima Época, Registro: 2009236, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 18, May 2015, Vol. III, Subject (s): Labor Thesis: I.13o.T.121 L (10a.) Page: 2289.

<sup>26</sup> Época: Décima Época, Registro: 2010524, Instancia: Plenos de Circuito, Tipo de Tesis: Jurisprudencia, Fuente: Gaceta del Semanario Judicial de la Federación Book 24, November 2015, Vol. III, Subject(s): Labor Thesis: PC.I.A. J/58 A (10a.) Page: 2272.

<sup>27</sup> Época: Décima Época, Registro: 2010157, Instancia: Segunda Sala, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 23, October 2015, Vol. II, Subject(s): Constitutional Thesis: 2a. XCIX/2015 (10a.) Page: 2089.

when a medication on the list of essential medicine is not available at their respective pharmacy. In this case, the affiliate is given a voucher that can be exchanged at another pharmacy belonging to the same institution or at an exchange centre specifically designated for this purpose. This is simply a measure to solve the problem of medication shortages, a situation that must be improved so that it is no longer be used as an excuse.

### **Free reconstructive surgery for breast cancer survivors in Mexico City**

As of November 2015, the Mexico City government has provided free reconstructive surgery to women who have undergone a mastectomy. This represents a considerable support to breast cancer survivors. However, it may be questioned as a populist measure on behalf of the current Mexico City mayor, since it is not included as a benefit in any law on social security or social service.

### **Home care program for the chronically ill**

This IMSS program provides continuity to the care received by more than 32,000 elderly people with chronic or terminal illnesses. Patients in this program are affiliates who, due to the characteristics of their illness, can continue with their medical treatment at home in a relative's care and with the support of the program's healthcare team. Before being discharged from the hospital, relatives or caregivers are given training on the specific care according to the illness so as to assist in the patient's convalescence, to follow the medical treatment and to effectively incorporate the patient back into the family. Once the patient has been discharged from the hospital, the program's medical and nursing personnel visit the patient's home to advise relatives and to oversee the general care the affiliate is receiving in terms of medication administration, a healthy diet, rehabilitation therapy and mobility.

## **2.5. Maternity Benefits**

The main legislative reforms regarding maternity in Mexico in 2015 were the following:

### **Obstetric care for all pregnant women regardless of affiliation**

The Social Security Act (Art. 89 LSS), the ISSSTE Act (Art. 31 Bis) and the Health Act (Art. 64 Bis Ley de Salud) were reformed to establish the obligation of institutions to provide prompt care to pregnant women presenting an obstetric emergency. Insured persons can request assistance at units with the capacity to attend obstetric emergencies directly or through referral by another medical unit, regardless of their eligibility or affiliation to a specific insurance scheme. Without explicitly recognizing social security as a human right, this reform applies it as such by providing benefits.

### **Introduction of dedicated spaces for nursing mothers**

On 2 April 2015, several reform measures to encourage breastfeeding at the work place were adopted, entailing modifications of the following laws: the General Health Act; the Federal Act for State Workers, the Provisions in Subsection B) of Art. 123 of the Constitution; the Social Security Act; the ISSSTE Act; the Act on the Protection of the Rights of Children and Adolescents; and the General Act on Women's Access to a Life Free of Violence. The reform aims to promote and enhance institutional guidance and oversight, training regarding breastfeeding and nursing by providing

inducement for breast milk to be the sole source of nourishment for six months, a supplement until the second year of life and, if necessary, the direct food assistance that can improve the nutritional condition of infants.<sup>28</sup> The first step was taken on inaugurating dedicated booths for nursing mothers at the Federal Institute of Telecommunications.<sup>29</sup>

## 2.6. Industrial Accidents and Occupational Diseases

As to workplace safety in Mexico, the Federal Labour Safety and Health Regulations (*Reglamento Federal de Seguridad y Salud en el Trabajo*) entered into force on 13 February 2015, replacing the Federal Labour Safety, Hygiene and Environmental Regulations [*Reglamento Federal de Seguridad, Higiene y Medio Ambiente de Trabajo*]. Its importance lies in the increased regulation for the prevention of professional risks, which include not only physical, chemical and biological ones, but psychological risks as well. For the first time ever, psycho-social and ergonomic risk factors are taken into account in regulatory standards. Furthermore, fines are established for employers who do not adhere to the provisions or violate any of them. However, this legislation has yet to be harmonized with the Social Security Law. Despite this, the importance of having established vital concepts to ensure a good labour environment for workers to carry out their work must be highlighted.

The Supreme Court of Justice has adopted the following decision on the burden of proof in occupational risk cases:

OCCUPATIONAL RISK (June 2015). The IMSS is in charge of the burden of proof if a pension for permanent incapacity is going to be suspended. Comment: According to Articles 62 and 65 § III of the Social Security Act (LSS), occupational risks can produce, among other things, partial permanent disability. Therefore, under these circumstances, the beneficiary's right to receive a pension from the Mexican Social Security Institute [*Instituto Mexicano del Seguro Social*] can only be suspended if the Institute presents documented medical evidence of a considerable improvement in the health condition of the person receiving this benefit. As of that moment, it is possible to determine whether the payment should continue or be suspended definitively.<sup>30</sup>

## 2.7. Unemployment and Labour Market Issues

The only reform in 2015 to the Mexico's principal labour law – the Federal Labour Law (*Ley Federal de Trabajo*) – was on child labour. The reform to this law, which comprised Articles 5, 22, 22 Bis, 23, 174, 175, 175 Bis, 178, 179, 191, 372, 988 and 996 Bis increased the working age from 14 to 15 and limited the characteristics of the type of work minors can perform. It also prohibits certain activities and establishes fines to employers that do not comply with these rules.

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<sup>28</sup> Federal Official Gazette, dated 2 April 2015, available at: <http://www.gob.mx/inmujeres/articulos/cabinas-de-lactancia-materna-una-realidad> (accessed on 11 January 2015).

<sup>29</sup> INMUJERES, Cabinas de Lactancia Materna una Realidad, available at: <http://www.gob.mx/inmujeres/articulos/cabinas-de-lactancia-materna-una-realidad> (accessed on 11 January 2016).

<sup>30</sup> Época: Décima Época, Registro: 2009325, Instancia: Tribunales Colegiados de Circuito, Tipo de Tesis: Aislada, Fuente: Gaceta del Semanario Judicial de la Federación Book 19, June 2015, Vol. III, Subject(s): Labor Thesis: I.6o.T.132 L (10a.) Page: 2332.

Mexico does not yet provide a social insurance for unemployment. However, a legislative reform on this issue is expected. Currently the Congress of the Union<sup>31</sup> focuses on the creation of an Unemployment Insurance Act based on initiatives that did not prosper when they were presented in 2007. This proposal is currently at a standstill in the Chamber of Senators.<sup>32</sup> It was originally intended as a federal law, but it has been reduced to a reform of the Social Security Act. The objective of the unemployment insurance is to provide support to unemployed workers in order to mitigate the negative impact caused by the loss of income on their and their families' well-being. Only the workers affiliated to the mandatory scheme of the Social Security Act are to be covered.<sup>33</sup>

## 2.8. Family Benefits

There were no changes in social security regarding benefits granted to families. These benefits were reduced to financial subsidies associated with the payment of invalidity pensions, old-age severance and old-age pensions (Art. 138 LSS).

The LSS includes a specific section to regulate family allowances and welfare aid referring to beneficiaries of invalidity pensioners. Nevertheless, this benefit is applicable to other insurance branches. For example, the Act orders that all permanent total incapacity pensions take into account family allowances and welfare aid. In summary, these consist of a complementary payment to severance at old age, old age and retirement pensions as well as disability and permanent disability caused by occupational risks. This payment is added to the pension and is equivalent to a percentage of this amount, with the following totals: 15% for the spouse or domestic partner; 10% for each child under 16 years of age; if the pensioner does not have family members, the surviving dependents will receive 15%.

In addition to this, there are welfare programs that support families in covering their specific needs, like providing food items or complete meals in community canteens. There are also programs to assist women against violence by earning income through productive projects, caring for their children so they can work, or awarding them a life insurance policy that protects their families in their absence.

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<sup>31</sup> The Chamber of Deputies approves in general the Universal Pension Act and establishes the Unemployment Insurance, <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2014/Marzo/18/3211-Aprueba-Camara-de-Diputados-en-lo-general-Ley-de-la-Pension-Universal-y-establece-Seguro-de-Desempleo> (accessed 29 November 2014).

<sup>32</sup> Civil servants put forward Unemployment Insurance and Universal Pension proposals to senators, <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/11622-exponen-funcionarios-a-senadores-propuesta-de-seguro-de-desempleo-y-pension-universal.html> (accessed 29 November 2014).

<sup>33</sup> In order to gain access to this insurance, the reform bill defines the following requirements:

1) Effective contributions for at least 2 years over a period not exceeding 3 years. 2) Period of unemployment for at least 45 natural days. 3) No other retirement or pension income. 4) Fulfillment of the requirements included in the promotion, placement and training programs managed by the Secretariat of Work and Social Security (*Secretaría del Trabajo y de Previsión Social*, STPS). Once these requirements are fulfilled, the unemployed worker will receive monthly payments for no longer than 6 months. In the first month, the payment will be for an amount equal to 60% of the base salary subject to contribution (*salario base de cotización*, SBC) that the worker has received on average in the past two years; in the second month, it will be lowered to 50%, and in the following four months, the percentage is reduced to 40%. It is important to mention that the benefit can only be received once over the course of 5 years.

## 2.9. Social Assistance (Minimum Income Support)

Social assistance in Mexico is mainly regulated through the Social Assistance Law, which establishes a series of actions aimed at modifying and improving the social circumstances that obstruct an individual's comprehensive development. This law also offers physical, mental and social protection to people in need, in conditions of vulnerability, or with physical and mental disabilities until they are able to lead a full and productive life. The work toward this goal is done through social inclusion programs organized by various State ministries, including the Ministries of the Economy, Social Development and Health. These programs offer benefits aimed at reducing poverty and filling basic and targeted needs.

It is important to explain that each of these programs has its own operating rules that set the bases for its operation. According to Art. 19 of the Organic Law of the Federal Public Administration [*Ley Orgánica de la Administración Pública Federal*], these regulations are issued by the Head of the Federal Executive branch, Federal Ministers or those responsible for each of the decentralized bodies and state-owned companies. In order to become mandatory, these regulations must be published in the Federal Official Gazette.

In 2015, the main programs in force were:<sup>34</sup>

- a) Programs targeted at vulnerable population groups:
  - Elderly: Pension Program for Older Adults [*Programa Pensión para Adultos Mayores*]
  - Children: National Scholarship Program [*Programa Nacional de Becas*]
- b) Programs targeted at women:
  - Support program for women's groups [*Programa de Apoyo a las Instancias de Mujeres*]
  - Programs for the prevention of violence against women [*Programas de Prevención de la Violencia contra las Mujeres*]
- c) Programs for the promotion of employment:
  - Productive Options [*Opciones Productivas*]. In 2016, this program and the Program for the Promotion of Social Economy were combined.<sup>35</sup> As a single program, it seeks to solve the problem of persons living on incomes below the poverty line and whose limitations result in constraints on their developing capacities and the means for productive, labour and financial inclusion.<sup>36</sup>
  - Mexican Fund for Craft Development Programs [*FONART - Programas del Fondo Nacional para el Fomento a las Artesanías*]
  - Agricultural Day Labourer Assistance Program [*Programa de Atención a Jornaleros Agrícolas*]
  - Temporary Employment Program [*Programa de Empleo Temporal*], with its Rules of Operation

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<sup>34</sup> DOF, Reglas de operación de los Programas Sociales 2015, available at: <http://www.dof.gob.mx/reglas2015.php> (accessed on 12 January 2016).

<sup>35</sup> Federal Official Gazette dated 27 November 2015, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5417699&fecha=27/11/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5417699&fecha=27/11/2015) (accessed on 8 January 2016).

<sup>36</sup> Idem.

- Microfinancing for Rural Women (FOMMUR - *Microfinanciamiento a Mujeres Rurales*). This program was replaced in late 2015 by a new program called the National Financing Program for Micro entrepreneurs and Rural Women at the behest of President Enrique Peña Nieto to meet one of the objectives of his Mexico Prospera work plan.<sup>37</sup>
  - Childcare Centre Program for Working Mothers [*Programa de Estancias Infantiles para Apoyar a Madres Trabajadoras*]
  - Program to Support Employment [*Programa de Apoyo al Empleo*]
  - The Promotion of Social Economy [*Fomento a la Economía Social*]
- d) Social development and the fight against poverty:
- Joint Social Investment Program [*Programa de Coinversión Social*]
  - Social Milk Program [*Programa de Abasto Social de Leche*], managed by Liconsa, S.A. de C.V.<sup>38</sup>
  - Food Support Program [*Programa de Apoyo Alimentario*]. At the end of 2015, this program went on to form part of the PROSPERA social inclusion program as both are priorities in the Crusade against Hunger.<sup>39</sup>
  - Provisions to Rural Areas Program [*Programa de Abasto Rural*] managed by Diconsa, S.A. de C.V.
  - PROSPERA Social Inclusion Program
  - Program for Persons with Disabilities [*Programa de Atención a Personas con Discapacidad*]
- e) Healthcare for persons without access to social security:
- *Médico Siglo XXI*, for the 2015 tax year
  - People's Health Insurance [*Seguro Popular de Salud*]

It must be noted that some of these programmes underwent modifications. Most of these were mergers with similar program in an effort to avoid any duplication of functions and to enable easier access to these services.

## 2.10. Housing Benefits

The 2006 Housing Act (*Ley de Vivienda*) underwent a significant reform in 2015. Its glossary was expanded to establish that inhabitable spaces are housing structures where people can gather or rest and that have minimum dimensions in terms of surface area, height, natural ventilation and lighting. Moreover, it must have at least one bathroom, a kitchen, a living room-dining room area and two bedrooms, according to the minimum characteristics and conditions necessary as established by law and the Mexican Official Standards (Art. 4 § IV). This definition is very important because, until now, the right to decent and dignified housing – as established in Art. 4 of the Constitution – has not been

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<sup>37</sup> Federal Official Gazette dated 29 December 2015, Reglas de Operación del Programa Nacional de Financiamiento al Microempresario y a la Mujer Rural para el ejercicio fiscal 2016, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5421617&fecha=29/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5421617&fecha=29/12/2015) (accessed on 12 January 2016).

<sup>38</sup> Sociedad Anónima de Capital Variable, a Mexican type of public limited company or corporation.

<sup>39</sup> Federal Official Gazette, Reglas de Operación del Programa Prospera, available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5421756&fecha=30/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5421756&fecha=30/12/2015) (accessed on 12 January 2016).



clearly defined. Meanwhile, the reform of Art. 71 of the Housing Act stresses the need to offer a healthy environment to the inhabitants of such homes to reduce disease vectors. This should be achieved with technical measures such as drainage, electrical energy, heating or air conditioning. These reforms mark a step in the direction of fulfilling this right, which had existed only in theory for many Mexicans.

It should also be mentioned that social programmes for housing underwent changes that enter into force in 2016. The Decent Housing program was merged with the Rural Housing and Rescue of Public Spaces Programs [*Programas de Vivienda Rural, y Rescate de Espacios Públicos*] in order to have a better planned budget structure, to attend their target population effectively, to encourage transparency and to simplify accountability.<sup>40</sup>

### 3. OCCUPATIONAL BENEFITS

On 4 June 2015, the Mexican president issued the Regulations for the Law of Food Aid for Workers [*Reglamento de la Ley de Ayuda Alimentaria para los Trabajadores*].<sup>41</sup> This regulation deals with the standards that employers have to comply with when providing food aid and food vouchers to their workers, as well as cafeterias and arrangements with restaurants that offer this service at the employers' cost. It also determines that the food and non-alcoholic beverages must consist of a balanced diet and must be prepared following good hygienic practices. This provision advocates a healthy diet and contributes to solving the problem of obesity, which shows alarming rates in Mexico: it is second place in adult obesity worldwide and first place in childhood obesity.

### 4. JUDICIAL PROTECTION OF SOCIAL SECURITY AND WELFARE RIGHTS

Some of the important rulings on the protection of the right to social security established by the Supreme Court of Justice are:

PECUNIARY RESPONSIBILITY OF THE STATE RESULTING FROM DEFICIENT PROVISION OF HEALTHCARE SERVICES AT THE ISSSTE. In order to demand financial compensation, claims must be made as established in the Federal Law on Administrative Procedures [*Ley Federal de Procedimiento Administrativo*]. Comment: The Court ruled that even though the ISSSTE has administrative remedies contained in the Medical Complaints and Reimbursement Claims Regulations for the Institute of Security and Social Services for State Workers [*Reglamento de Quejas Médicas y Solicitudes de Reembolso del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado*], in the event

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<sup>40</sup> Federal Official Gazette, Reglas de operación del programa apoyo a la vivienda, para el ejercicio fiscal 2016 available at: [dof.gob.mx/nota\\_to\\_doc.php?codnota=5421787](http://dof.gob.mx/nota_to_doc.php?codnota=5421787) (accessed on 12 January 2015).

<sup>41</sup> Federal Official Gazette, Reglamento de la Ley de Ayuda Alimentaria para los Trabajadores, available at [http://dof.gob.mx/nota\\_detalle.php?codigo=5395249&fecha=04/06/2015](http://dof.gob.mx/nota_detalle.php?codigo=5395249&fecha=04/06/2015) (accessed on 12 January 2015).

of pecuniary responsibility due to the deficient provision of healthcare services, the claim shall be presented as set forth in the Federal Law on Administrative Procedures.<sup>42</sup>

AMENDMENT OF DEFICIENT PLEADINGS ON LABOR MATTERS IN FAVOR OF PENSIONERS. The amendment of deficient pleadings applies in favour of ISSSTE pensioners when the correct quantification of their retirement pension is claimed, as it is a fundamental right protected by Art. 123 of the Political Constitution of the United Mexican States. Comment: The principle of legal procedure in an amendment of deficient pleadings is the judge's redress for the omissions, errors or deficiencies committed by workers who do not have the means to defend themselves adequately, due to ignorance of the technical rigor or the lack of adequate defence. Despite these factors, the Court also extends this protection to pensioners.<sup>43</sup>

## 5. INTERNATIONAL AGREEMENTS IN SOCIAL SECURITY

Under this heading, only two events stand out:

- a) The signing of the Memorandum of Understanding and Cooperation [Memorándum de Entendimiento de Cooperación] between the IMSS and the Italian National Social Security Institute in an effort to strengthen social security in both countries by means of sharing knowledge and scientific and technological research. Moreover, it seeks to improve the efficiency and effectiveness of administrative actions through mutual collaboration programs through the use of information and communication technologies. It also establishes the exchange of experiences, information and good practices in the area of social security, managerial coordination, administrative and operational agreements, as well as improvements in individual and corporate performance, and
- b) the ratification of the Minimum Age Convention, 1973 (No. 138) on 10 June 2015. With this, Mexico is bound by 7 out of 8 fundamental ILO conventions.

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<sup>42</sup> Época: Décima Época, Registro: 2009602, Instancia: Segunda Sala, Tipo de Tesis: Jurisprudencia, Fuente: Gaceta del Semanario Judicial de la Federación Book 20, July 2015, Vol. I, Subject(s): Administrative Thesis: 2a./J. 82/2015 (10a.) Page: 781.

<sup>43</sup> Época: Décima Época, Registro: 2009745, Instancia: Plenos de Circuito, Tipo de Tesis: Jurisprudencia, Fuente: Gaceta del Semanario Judicial de la Federación Book 21, August 2015, Vol. II, Subject (s): Ordinary Thesis: PC.XII.A. J/1 A (10a.) Page: 1723.

## 6. SELECTION OF IMPORTANT MONOGRAPHS OR ARTICLES

- Briceño Ruiz, Alberto, *Derecho de la Seguridad Social*, Ed. Oxford University Press, 2<sup>nd</sup> ed., México 2015.
- Coello Cetina, Rafael, *Esquemas en los Procedimientos de Derecho del Trabajo Previstos en la Ley Federal del Trabajo*, Ed. Tirant Lo Blanch, México 2015.
- De Buen Lozano, Néstor, *Los Contratos Colectivos de Protección*, Revista Latinoamericana de Derecho Social, Núm. 20, enero-junio de 2015, pp. 109-112.
- Hernández Herrera, Juan, *Derecho Laboral y la Administración de Recursos Humanos*, Ed. Grupo Editorial Patria, México 2015.
- Hernández Pulido, Ricardo, *La Justicia Social desde un Nuevo Enfoque de la Justicia. Análisis del Mandato de la Organización Internacional del Trabajo Conforme al Concepto Moderno de la Justicia*, Revista Latinoamericana de Derecho Social Núm. 21, julio- diciembre 2015, pp. 85-120.
- Mejía Rivera, Joaquín, *Elementos para una Teoría de los Derechos Económicos Sociales y Culturales desde el Sistema Interamericano de Derechos*, Ed. UBIJU, México, 2015.
- Mendizábal Bermúdez, Gabriela, Escalante Ferrer, Ana Esther and Ibarra Uribe, Luz Marina, *Acoso laboral en las instituciones de educación superior, una visión desde el género*, Ed. Porrúa, México, 2015.
- Pérez Chávez, José and Fol Olguín, Raymundo, *Compendio de Seguridad Social Artículo por Artículo*, Ed. Tax Editores Unidos, ed. 15, México 2015.
- Reynoso Catillo, Carlos, *La Precarización Jurídica del Trabajo*, Revista Alegatos No. 89 enero- abril 2015, pp. 21-36
- Romero Reyes, Alejandro, *Beneficios de Asegurar ante el IMSS a Tripulaciones de Embarcaciones Menores Mexicanas en Caso de Siniestros Marítimos*, Revista Latinoamericana de Derecho Social, Núm. 20, enero-junio de 2015, pp. 143-168.
- Ruiz Moreno, Ángel Guillermo, *Nuevo Derecho de la Seguridad Social*, Ed. Porrúa, ed. 14°, México 2015.

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