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## **Social Security in Mexico**

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## LIST OF ABBREVIATIONS

AFORE	Administradora de Fondos para el Retiro
COFEPRIS	Comisión Federal para la Protección contra Riesgos Sanitarios
CONEVAL	Consejo Nacional de Evaluación de la Política de Desarrollo Social
CURP	Clave Única de Registro de Población
DOF	Diario Oficial de la Federación
IMCO	Instituto Mexicano para la Competitividad
IMSS	Instituto Mexicano del Seguro Social
INE	Instituto Nacional Electoral
INEGI	Instituto Nacional de Estadística y Geografía
INSABI	Instituto de Salud para el Bienestar
ISR	Impuesto Sobre la Renta
ISSFAM	Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas
ISSSTE	Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado
LFT	Ley Federal de Trabajo
LISSSTE	Ley del Instituto Seguridad y Servicios Sociales de los Trabajadores del Estado
LOPJ	Ley Orgánica del Poder Judicial
LSS	Ley del Seguro Social
PIB	Producto Interno Bruto
RCV	Retiro, Cesantía y Vejez
SCJN	Suprema Corte de Justicia de la Nación
SHCP	Secretaría de Hacienda y Crédito Público
SRE	Secretaría de Relaciones Exteriores

STPS -----Secretaría de Trabajo y Prevención Social

UFW ----- United Farm Workers

USD ----- US Dollars

## 1. INTRODUCTION

In 2019 Mexico saw substantial renewals and significant changes in the areas of labour and social security. In that year, policies implemented at the end of 2018 by the new presidential administration showed their first effects.

The country did not experience economic growth, despite the government's high expectations. Once again, one of the most significant revenues came from remittances. Noteworthy is the publication of poverty data in Mexico set forth in a comparative study from 2008 to 2018, which shows a slight percentage decrease in poverty.

In the evolution of the social protection schemes, two criteria of the case law of the Supreme Court of Justice of the Nation (SCJN) stand out. The first one aims at pension compatibility and the second one concerns the analysis of non-discrimination against the male sex in state pension legislation, which grants women a lower number of years of service in order to have access to retirement. The second of the Court's innovative contributions is the criteria issued for the recreational and medical use of marijuana. These include in-depth studies of the principle of proportionality, the right to self-determination and the protection of health. Furthermore, the Court conducted a study on the weighting of individual rights against collective rights in denying an *amparo*<sup>1</sup> to a man who was dismissed for having a swastika tattoo.

In the area of labour law and social security benefits, the first to be mentioned is the important reform to the Federal Labour Law, the progress made in its implementation and compliance in terms of labour procedures. Especially the regularisation of collective agreements as well as the replacement of the Conciliation and Arbitration Boards by Labour Courts at both federal and local levels imply a new form of administration and application of justice not only regarding labour issues, but also as concerns social security. In addition, the Official Mexican Standard on the Prevention of Psychosocial Risks at the Workplace is now in force. The main objectives of this standard are to prevent, identify and punish the possible causes of violence triggered by ailments like occupational stress.

Further, it is interesting to review the preliminary results of the implementation of a programme that seeks to incorporate domestic workers into the obligatory regime of the Mexican Social Security Institute (IMSS).

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<sup>1</sup> In most jurisdictions of the Spanish-speaking world, the *writ of amparo* (also called *recurso de amparo* or *juicio de amparo*) is a remedy for the protection of constitutional rights. The *amparo* remedy is an effective and inexpensive instrument for the protection of individual rights. An *amparo*, generally granted by a Supreme or Constitutional Court, serves a dual protective purpose: it protects the citizens and their basic rights, as well as the constitution itself by ensuring that its principles are not violated by statutes or actions of the state that undermine the basic rights enshrined therein.

Lastly, social programmes are critically analysed, e.g. Youth Building the Future (identifying both its advantages and disadvantages), as well as changes in the management of childcare facility programmes. Also, one of the most controversial reforms, namely the replacement of the People's Insurance by the Institute of Health for Well-Being (INSABI), is being assessed.

## 2. ECONOMIC, POLITICAL AND SOCIAL SITUATION IN 2019

### 2.1. Economy

The topic of the economy is highly controversial since, in early 2019, the International Monetary Fund projected a 2.0% growth for the Mexican economy,<sup>2</sup> while the government estimated a growth by 4.5%.<sup>3</sup> However, in the first half of the year the Gross Domestic Product (GDP) came to a standstill. The third quarter showed a 3.3% increase in primary activities, a 0.1% increase in tertiary activities and a -0.1% decline in secondary activities. Consequently, the real rate of growth was just 0.2%.<sup>4</sup>

One of the most important backbones of the Mexican economy are the remittances that enter the country, representing 2.7% of the GDP,<sup>5</sup> mainly from workers in the United States of America. These amounted to \$668,066,400 million Mexican pesos (\$35.46 billion USD)<sup>6</sup>, which is 5.3% more than in 2018.<sup>7</sup>

### 2.2. Labour Market

In 2019, the number of unemployed people in Mexico increased despite the implementation of social programmes aimed at reducing this indicator. Official information from the INEGI<sup>8</sup> for the third quarter of 2019 report 57,349,577 people as economically active. 60.3% of them were employed, i.e. they spent at least one hour a week in paid or unpaid productive activities, 19.5% were in critical employment conditions. The rate of informal labour

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<sup>2</sup> International Monetary Fund, *Actualización de Perspectivas de la Economía Mundial, enero 2019*, at: <https://www.imf.org/es/Publications/WEO/Issues/2019/01/11/weo-update-january-2019>, accessed on 8 December 2020.

<sup>3</sup> México ¿Cómo vamos?, Crecimiento económico, at: <https://mexicocomovamos.mx/?s=seccion&id=97>, accessed on 11 December 2019.

<sup>4</sup> *Idem*.

<sup>5</sup> El economista, *Alta dependencia de remesas en México, tema de preocupación*, at: <https://www.eleconomista.com.mx/sectorfinanciero/Alta-dependencia-de-remesas-en-Mexico-tema-de-preocupacion-20190923-0029.html>, accessed on 8 December 2020.

<sup>6</sup> The exchange rate used for this report is \$18.84 Mexican pesos = 1 USD, data from the Bank of Mexico on 9 January 2020, available at: Banco de México, Tipo de cambio, Mexico, Banco de México, 2018, <http://www.anterior.banxico.org.mx/portal-mercado-cambiarior/index.html>, accessed on 9 January 2020.

<sup>7</sup> Cfr. BBVA Research, *Migración y remesas 2019*, at: <https://www.bbvarresearch.com/publicaciones/mexico-anuario-de-migracion-y-remesas-2019/>, accessed on 17 January 2020.

<sup>8</sup> This is the acronym for the National Institute of Statistics and Geography.



represented more than half at 56.4%. Meanwhile, the unemployed population amounted to 2.1 million people.<sup>9</sup>

According to information provided by the federal government, 724,287 formal jobs were created in 2019, of which 79.5% are permanent and 20.5% are temporary.<sup>10</sup> Despite this number, the growth of formal employment decreased from 5.4% in 2018 to 3.6% in 2019.<sup>11</sup>

### 2.3. Poverty

In August 2019, the CONEVAL<sup>12</sup> provided new data on the poverty experienced by the Mexican population. It should be mentioned that this governmental institution provides information on poverty metrics every two years. Here, the most recent information on data for 2018 published in 2019 is presented. The report states that the percentage of the population living in poverty dropped from 44.4% to 41.9% between 2008 and 2018, representing an annual average decrease of 0.24%. This decrease also had an impact on the number of persons living in extreme poverty, declining from 12.3 to 9.3 million people between 2008 and 2018. The above-mentioned report establishes a ten-year measurement, which displays that the only year with an increasing poverty rate was in 2014, gradually decreasing again in the measurements for 2016 and 2018.

Poverty studies by the National Autonomous University of Mexico confirm that the proportion of people living in poverty fell by 2.5% between 2008 and 2018. However, in the same period, the absolute number of poor people increased by 2.9 million due to population growth.<sup>13</sup> The figures can be misleading, though, because of a change in measuring poverty. In 2008, poverty was measured only in terms of income, while today it is being measured multi-dimensionally. Several multidimensional indicators for social deficiencies, such as lack of access to healthcare services, housing, or social security, have improved in 2018 (and can be attributed to social policy), but income poverty as such and income inequality still persist. If income poverty would be the only poverty dimension considered, there would not be any decrease in the poverty rate.

Another point that should be mentioned is the territorially uneven distribution, with most of the population living in poverty located in the southwest of the country in Chiapas, Guerrero, Oaxaca and Veracruz.

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<sup>9</sup> INEGI, *Empleo y ocupación*, at: <https://www.inegi.org.mx/temas/empleo/>, accessed on 9 December 2019.

<sup>10</sup> Gobierno de México, *Se generaron más de 76 mil empleos durante el mes de noviembre*, at: <https://www.gob.mx/shcp/gacetaeconomica/es/articulos/se-generaron-mas-de-76-mil-empleos-durante-noviembre-donde-el-74-fue-permanente?idiom=es>, accessed on 17 January 2020.

<sup>11</sup> *Idem*.

<sup>12</sup> This is the acronym for the Consejo Nacional de Evaluación de la Política de Desarrollo Social (CONEVAL).

<sup>13</sup> Gaceta UNAM, *Disminuyó 2.5 la pobreza en México*, at: <https://www.gaceta.unam.mx/disminuyo-2-5-la-pobreza-en-mexico/>, accessed on 20 January 2020.

## 3. EVOLUTION OF SOCIAL PROTECTION SCHEMES

### 3.1. Old-Age Schemes

#### 3.1.1. Non-Contributory Pension for Older Adults

In Mexico there is an assistance programme called “Well-Being Programme for Older Adults” that aims to contribute to the welfare of the elderly population by providing a non-contributory pension.<sup>14</sup>

It should be noted that this programme was implemented nationwide in 2013<sup>15</sup> under a different name. Over time it has undergone several changes, not only relating to its name, but also as regards the amount of pension payments, and the requirements for obtaining this benefit. By January 2019, the above-mentioned programme underwent structural changes that modified the eligibility requirements and the amount of the pension payments, which was set forth in the Rules of Operation of the Well-Being Pensions for Older Adults for the fiscal year of 2019.<sup>16</sup>

These changes were:

1. Increased pension amount: The new monthly amount that beneficiaries receive is \$1,275 Mexican pesos (\$67.67 USD) delivered on a bimonthly basis. This amendment doubles the amount of the pension that the beneficiaries had received in previous years, however without surpassing the monthly minimum wage in Mexico.<sup>17</sup>
2. Age increase: The age of eligibility for the non-contributory pension was raised from 65 to 68 years of age, except for persons living in communities classified as indigenous: they still can access this pension at the age of 65.
3. Universal pension: This modification establishes that all persons have the right to receive the non-contributory pension granted by this programme. It thus eliminates the requirement of not having another pension granted by social security institutes or federal public administration bodies. This modification opened up the possibility for persons who have made payments to some form of contributory pension system to receive a double pension.

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<sup>14</sup> Gobierno de México, *Programa para el Bienestar de las Personas Adultas Mayores*, 2019, Mexico, at: <https://www.gob.mx/bienestar/acciones-y-programas/programa-para-el-bienestar-de-las-personas-adultas-mayores>, accessed on 10 January 2020.

<sup>15</sup> SEDESOL, *Diagnostico del Programa para Adultos Mayores*, SEDESOL, Mexico, at: [http://www.sedesol.gob.mx/work/models/SEDESOL/Sedesol/sppe/dgap/diagnostico/Diagnostico\\_PAM\\_2013.pdf](http://www.sedesol.gob.mx/work/models/SEDESOL/Sedesol/sppe/dgap/diagnostico/Diagnostico_PAM_2013.pdf), accessed on 26 November 2019.

<sup>16</sup> Diario Oficial de la Federación, *Acuerdo por el que se emiten las Reglas de Operación de la Pensión para el Bienestar de las Personas Adultas Mayores, para el ejercicio fiscal 2019*, DOF, Mexico, 2019, at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5551445&fecha=28/02/2019](https://dof.gob.mx/nota_detalle.php?codigo=5551445&fecha=28/02/2019), accessed on 10 January 2020.

<sup>17</sup> For 2019, the general daily minimum wage in Mexico was \$102.68 Mexican pesos (\$5.45 USD); that is, \$3,621 Mexican pesos a month (\$191.19 USD).

These changes are intended to guarantee a pension to all people living in Mexico at a stage of life considered vulnerable, ensuring that they have the essentials for their subsistence. They therefore denote a first step on the ladder of social protection.

### 3.1.2. Compatibility of ISSSTE Retirement and Widowhood Pensions

In September 2019, the Supreme Court of Justice of the Nation (SCJN)<sup>18</sup> declared that a person can receive the full amounts of a widowhood pension and a retirement pension at the same time from the ISSSTE.

The court found that the current Article 12 of the Regulations for Granting Workers' Pensions violates the right to social security and the principle of social provision, since this article limits the maximum pension amount to ten times the minimum wage for those who receive two different pensions, notably for widowhood and retirement. As a result, the persons concerned suffered a considerable decrease in their individual and family income.

From August 2017 to August 2019, five people had filed an *amparo* against the Regulations, which, from the plaintiffs' point of view, violated their right to receive both pensions without limitation. Although all *amparos* filed had their own particular characteristics, they shared the feature that the pensioners could not cumulate the amount of both pensions they were entitled to, but saw their pension payments reduced to a maximum amount of 10 times the minimum wage.

Those *amparos* were decided along the same lines, establishing a constant case law by the Court. The SCJN decided that allowing beneficiaries to receive both pensions at the full amount is tightly connected to the obligation of both the State and the social security institutions to establish a comprehensive system that ensures the personal well-being to workers and their families, and that is necessarily aimed at improving living standards. The right of a widow to receive a pension is therefore one of the purposes of the principle of social provision. It should also be noted that retirement is part of this same principle of social provision as it ensures that after having worked for a certain number of years, people can leave their jobs with the confidence that they will receive a pension that allows them to live in dignity.<sup>19</sup>

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<sup>18</sup> Tesis jurisprudencial 2ª./J.128/2019 (10ª.).

<sup>19</sup> Amparo en revisión 204/2017, Quejosa: Sara Castro Martínez y recurrente: Presidente de la República (Autoridad Responsable).

### **3.1.3. Affirmative Action Regarding Pensions**

In November 2019, the SCJN<sup>20</sup> ruled that pension law provisions on the different treatment of female workers by requiring fewer years of service to obtain a retirement pension do not violate the principle of legal equality.

Various state provisions establish that access to retirement pensions for women require fewer years of service or a lower retirement age than for men. As of 2007, collegiate courts expressed four independent opinions concluding that such pension legislation violated the human rights of equality and non-discrimination, as well as the constitutional guarantee of equality before the law by treating men less favourably than women.

However, in November 2019 the SCJN issued a contradictory opinion in a new case filed by a female worker who had not been granted a retirement pension by the collegiate district court. The SCJN ruled that the difference of treatment regarding the retirement of women and men in terms of age and/or years of service was intended to recognise and ensure that female workers enjoy retirement earlier than men. The opinion also took into account that in most cases women's participation in the labour market implies combining work with maternity and subsequent child-raising responsibilities. This results in a double work load, as well as in physical and mental stress when performing gainful activities.

Furthermore, the Court observed that the difference in the years of service required for men and women to obtain the highest percentage of a pension, does not violate the constitutional principle that "women and men are equal before the law" since the privilege granted seeks to establish real and not merely formal equality. This is a clear case of affirmative action for the benefit of women.

## **3.2. Health Care Services and Public Health Law**

### **3.2.1. New Institute of Health for Well-Being (Instituto de Salud para el Bienestar)**

On 29 November 2019, the Decree reforming, adding and repealing various provisions of the General Health Law and the Law of the National Health Institutes ordered the replacement of the People's Insurance by the Institute of Health for Well-Being (INSABI), which came into effect on 1 January 2020. The reforms endow the new institute as a decentralised body of the Federal Public Administration with its own legal personality and assets, linked to the Ministry of Health.<sup>21</sup>

It should be mentioned that the People's Insurance began operating in 2003 and provided medical care to people who were not included into any of the social security institutions

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<sup>20</sup> SCJN, Tesis 2ª./ J. 140/2019(10ª.) Décima época, libro 72, noviembre de 2019, Tomo I, p. 607.

<sup>21</sup> Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley General de Salud y de la Ley de los Institutos Nacionales de Salud.

such as the IMSS or the ISSSTE. This insurance was subject to the Ministry of Health and provided a basic social protection floor that encompassed the services to which its beneficiaries were entitled to regarding the free first and second healthcare level, as well as the third level of care paid for in stages. It was funded by a federal subsidy and was governed by the Operating Rules and the Management and Evaluation Indicators for the People's Insurance.

Replacing the People's Insurance by INSABI as a new healthcare system is accompanied by some uncertainties regarding operational changes, the exact nature of which remains unclear to date since new operating rules have not yet been implemented. Despite this uncertainty, the changes evident to date are the following:

- a) In accordance with Article 4 of the Political Constitution of the United Mexican States, all persons in the country who do not have social security have the right to receive free public health services, medication and associated supplies if they require care regardless of their social status.<sup>22</sup> Previously, this right was only granted to all Mexicans. Now, medical care can be provided to migrants within the country regardless of their legal status. However, as stated above, the rules are not clear.
- b) Affiliation to the INSABI is not necessary, unlike it was the case with the People's Insurance, because the only requirement is to present official identification: by the Population Register (CURP), by the National Electoral Institute (INE), a birth certificate or the documents stipulated in the Regulations.<sup>23</sup> This could be a disadvantage of the reform because not having a register of beneficiaries could lead to not generating a medical file on users and a lack of control over the number of people who are being treated. This amendment also reduces the target group, because migrants and many Mexicans from extremely poor communities have difficulty in accessing official identification documents.

Due to the absence of clear INSABI regulations it is not yet possible to formulate a comprehensive comparative analysis of the advantages and disadvantages of its implementation. However, within the first fortnight of January, deficiencies were observed as a result of the disappearance of the People's Insurance, mainly: the collection of recovery fees – which had not been carried out before – from patients, as well as a shortage of medicines. To this, the President of Mexico declared that by 1 December 2020 at the latest, 50% of the population that do not have social security will have free medical services and medicines.<sup>24</sup>

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<sup>22</sup> *Idem.*

<sup>23</sup> *Idem.*

<sup>24</sup> *Cfr.* Conferencia mañanera del Presidente Andrés Manuel López Obrador, Tuesday, 14 January 2020.

### 3.2.2. Supreme Court of Justice of the Nation on the Use of Marijuana (Cannabis)

Since 2016, the SCJN has ruled in favour of the use and consumption of marijuana for recreational purposes. However, the exercise of this right continued to depend on filing an *amparo*. Only in 2019 some important case law was issued on the subject and the SCJN finally decided on the use of cannabis for medicinal purposes.

After a collegiate court had refused to authorise the entire chain of personal consumption of marijuana – that is, from the import and acquisition of seeds to the sowing, cultivation, harvesting, preparation, conditioning and final consumption of cannabis and its derivatives – the SCJN delivered a judgment on these issues in February 2019 regarding the unconstitutionality of several articles of the General Health Law. The main argument was that the law established a prohibitionist policy, which unduly limits inter alia the fundamental rights to personal identity, self-conception, free development of personality and self-determination, all of which are related to the principle of human dignity.<sup>25</sup> Thus, the SCJN established four important criteria on the matter, attending to the principle of proportionality, the pursuit of a constitutionally valid purpose, appropriateness, necessity and proportionality in the strict sense of the word (i.e. the measure must not be disproportionate to the objective pursued), which are summarised below:

#### 3.2.2.1. Recreational Use of Marijuana

(a) The absolute prohibition of the recreational use of marijuana pursues constitutionally valid purposes: The Supreme Court stresses that legislators intended to safeguard the health of drug users and protect society from the harmful consequences of drug use, given that this activity is believed to have harmful effects on both the consumer and on society in general. In this regard, it should be noted that both aims are constitutionally valid and are enshrined in the General Health Law.<sup>26</sup>

(b) The absolute prohibition of the recreational use of marijuana provided for in the General Health Law is unconstitutional<sup>27</sup>: In following and widening the above opinion, the Court ruled that the absolute prohibition of the recreational use of marijuana as contemplated in the General Health Law pursues valid ends. However, the way in which it is done is unconstitutional because it unnecessarily and disproportionately affects the right to the free development of one's personality, since there are other preventive measures apt to protect health and public order.

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<sup>25</sup> Amparo en revisión 547/2018, Zara Ashley Snapp Hartman y Otros, Décima época, primera sala, Gaceta del Semanario Judicial de la Federación, Libro 63, febrero 2019, Tomo I, p. 411.

<sup>26</sup> Tesis: 1ª./J.7/2019 (10ª), Gaceta del Semanario Judicial de la Federación, Décima época, primera sala, libro 63, febrero de 2019, Tomo I, p. 454. Prohibición absoluta del consumo lúdico de marihuana, ésta persigue finalidades constitucionalmente válidas.

<sup>27</sup> Tesis: 1ª./J.10/2019 (10ª), Gaceta de Seminario Judicial de la Federación, Décima época, primera sala, libro 63, febrero 2019, Tomo I, p. 493, Jurisprudencia Constitucional, Inconstitucionalidad de la prohibición absoluta al consumo lúdico de la marihuana prevista por la Ley General de Salud.

According to this interpretation, the constitution guarantees a broad protection of a person's freedom in order to enable the enjoyment of certain goods that are regarded as indispensable for the choice and fulfilment of an individual's life plans. Moreover, both international treaties and the constitution itself recognise a catalogue of rights of freedom that translate into the permission to carry out certain actions deemed valuable for the autonomy of individuals.<sup>28</sup>

(c) The absolute prohibition of the recreational use of marijuana is not necessary to protect health and the public order.<sup>29</sup> The Supreme Court also stated that the absolute prohibition of marijuana is not a necessary measure to protect the constitutional purposes pursued by legislators, because there are equally suitable alternatives to ensure the protection of health and public order that affect the free development of the personality to a lesser extent. Some examples of such measures are discouraging certain behaviours or establishing prohibitions in specific cases, like prohibiting the operation of vehicles or dangerous instruments while under the influence of the substance, consuming it in public places or inducing third parties to also consume it. Thus, the articles of the General Health Law that contain an absolute prohibition are an unnecessary measure to achieve this purpose.

(d) The absolute prohibition of the recreational use of marijuana is not a proportional measure to protect health and public order.<sup>30</sup> In the last stage of the analysis of the principle of proportionality, the Court compared the degree of intervention in the fundamental right with the degree of satisfaction of the constitutional aim pursued. It consequently held that the "system of administrative prohibitions" seriously affects the right to free development of the personality, whereas the degree of protection of health and public order that such a measure achieves was minimal.

The most important aspect of these three Court rulings is that they culminate – unprecedentedly – in the Draft Decree reforming Articles 235 and 247 of the General Health Law, on which the Senate has yet to express an opinion.

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<sup>28</sup> Amparo en revisión 547/2018, Zara Ashley Snapp Hartman y Otros, Décima época, primera sala, Gaceta del Semanario Judicial de la Federación, Libro 63, febrero 2019, Tomo I, p. 411.

<sup>29</sup> Tesis: 1ª./J.25/2019 (10ª), Gaceta de Seminario Judicial de la Federación, Décima época, primera sala, libro 63, febrero 2019, Tomo I, p. 1127, Jurisprudencia Administrativa, Prohibición absoluta del consumo lúdico de marihuana. No es una medida necesaria para proteger la salud y el orden público.

<sup>30</sup> Tesis: 1ª./J.9/2019 (10ª), Gaceta de Seminario Judicial de la Federación, Décima época, primera sala, libro 63, febrero 2019, Tomo I, p. 496 Jurisprudencia constitucional, Prohibición absoluta del consumo lúdico de marihuana, no es una medida proporcional para proteger la salud y el orden público.

### 3.2.2.2. Medical Use of Marijuana for a Minor

In September 2019, the SCJN issued a judgment that allows and protects a minor to use cannabis therapeutically as a treatment for epilepsy in order to control his seizures, decrease the length of intensive therapy and, therefore, improve his quality of life.<sup>31</sup>

Through his legal guardian the minor filed an *amparo trial* to be granted permission for the medical use of marijuana because of his medical condition from birth as well as other ailments that emerged throughout his childhood and adolescence (constant status epilepticus and the regression of his cognitive development). His paediatric neurologist recommended that he be given a pharmacological oil containing cannabidiol (CBD) gained from cannabis. Prior to this, the child's parents had obtained two permits from the Federal Commission for the Protection against Sanitary Risks to purchase the above-mentioned oil. However, the minor became resistant to the component and the improvements diminished. In the absence of a regulation on THC<sup>32</sup> and its derivatives, his mother obtained cannabis seeds online to prepare her own mixture and requested an *amparo trial* for its medical use.

Based on the above, the SCJN in granting the *amparo* found that the effects of the sentence are as follows:

- I. The Ministry of Health is ordered to comply with the obligation of adapting its legislation to include the medical use of cannabis (it did not comply with a 2017 decree mandating it to design and implement public policies regulating the medical use of THC).<sup>33</sup>
- II. The guidelines should include the entire production chain, from seed procurement and storage, cultivation, harvesting, processing, transportation, marketing and in general all activities directed exclusively at its medical use.

This Court judgment, despite its single nature, could lead to the implementation of public policies and legislative reforms and therefore become binding legislation for society in general, since the judgment obligates the corresponding authorities to take the relevant measures to guarantee the right to health of people who, due to various ailments, need to use cannabis and its derivatives without this being regarded unlawful.

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<sup>31</sup> Amparo en revisión 57/2019 resuelto por la segunda sala de la Suprema Corte de Justicia de la Nación.

<sup>32</sup> This acronym is used to refer to the compound tetrahydrocannabinol.

<sup>33</sup> Decreto que reforma los artículos 237, párrafo primero; 245 fracciones I, I y IV; 290, párrafo primero y se adicionan el artículo 235 Bis y un segundo párrafo a la fracción V del artículo 245 de la Ley General de Salud de 2017.



### 3.2.3. General Health Law Regarding Overweight, Obesity and Food Labelling

According to the Mexican Institute of Competitiveness (IMCO) more than half of the Mexican population (52% ranging from children to adults)<sup>34</sup> suffers from some type of obesity, which is a risk factor that triggers other diseases like diabetes or hypertension to name a few. This generates high costs for the public health system. As a result, on November 8, the reform to Articles 2, 66, 111, 114, 115, 159, 210, 212 and 215 of the General Health Law regarding overweight, obesity and the labelling of food and non-alcoholic beverages was published in the DOF.

The reform envisages a new way of labelling food and beverages, which has to visibly include easily understandable nutrition information about the product; further, if the product exceeds the maximum limits for sugar, saturated fat, and sodium, a “warning” label must be displayed on the front.

### 3.3. Family: Leave Provisions for Working Parents of Children with Cancer

On 5 June 2019, a decree adding various provisions to the Federal Labour Law, the Social Security Law and the Law of the Institute of Security and Social Services for State Workers came into force. These social security regulations grant protection for care leave of insured working parents who wish to provide medical care to children up to the age of 16 diagnosed with cancer of any kind. Parents may take leave from work when the minor requires care and/or support in his or her treatment, without the risk of losing their jobs and, thus, experiencing economic hardship. The institute in charge of the minor’s treatment has to issue a certificate attesting the oncological condition and the length of the treatment in order for the workplace to be notified.

It should be specified that this leave may not be granted to both parents, but only to one or, if this is impossible, to a person with parental authority. The leave is granted for a period of one to twenty-eight days but can be renewed if needed, for up to a maximum of 364 days. Parents may take the leave in a discontinuous way within a period of three years. This leave will lose its effect when the minor is no longer in a critical phase, when the minor turns 16, when the father, mother or guardian on leave changes the workplace, or upon the death of the minor.<sup>35</sup>

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<sup>34</sup> IMCO, Kilos de más, pesos de menos: los costos de la obesidad en México.

<sup>35</sup> Secretaría de Gobernación, *Diario Oficial de la Federación*, México, 2019, at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5561817&fecha=04/06/2019](https://dof.gob.mx/nota_detalle.php?codigo=5561817&fecha=04/06/2019), accessed on 25 August 2019.

## 3.4. Labour and Social Security Benefits

### 3.4.1. Reforms to the Federal Labour Law

Lastly, the various attempts to reform labour law since 2016 came to a result on 1 May 2019, with the Decree reforming, adding and repealing articles in the Federal Labour Law, the Social Security Law and the Organic Law of the Judiciary in matters of labour justice, freedom of association and collective bargaining.<sup>36</sup> While this decree came into force on 2 May of the same year, the most important modifications have different deadlines for their implementation, as in the case of:

- a) Legitimation of the existing collective contracts (1 August 2019)
- b) The creation of Labour Courts to replace the Conciliation and Arbitration Boards (1 May 2022)
- c) The creation of the Federal Conciliation and Labour Registration Centre, which will oversee conciliations in federal matters and all collective labour contracts (1 May 2021)
- d) The creation of the Conciliation Centre at state level (1 May 2022)

It is necessary to clarify that the Implementation Plan for the Labour Reform consists of, in addition to the above dates, specific deadlines for each state. These were divided into three blocks; the states of Baja California Sur, Chiapas, Durango, Estado de México, Guanajuato, Hidalgo, San Luis Potosí, Tabasco, Tlaxcala and Zacatecas have to begin by 2020; the states of Aguascalientes, Baja California, Campeche, Colima, Guerrero, Michoacán, Morelos, Oaxaca, Quintana Roo, Sinaloa and Yucatán have to start operations by 2021; and lastly, operations in Chihuahua, Coahuila, Jalisco, Mexico City, Nayarit, Nuevo León, Puebla, Querétaro, Sonora, Tamaulipas and Veracruz have to be running by May 2022.

Among the measures that have already been implemented, three are mentioned below:

#### 3.4.1.1. Protocol for the Legitimation of Existing Collective Agreements

In accordance with transitory Article 11 of the Decree of 1 May 2019 of the Federal Labour Law, all labour unions must legitimise their collective labour contracts within a maximum period of four years. Therefore, on 31 July the Protocol for the Legitimation of the Existing Collective Labour Contracts was published in the DOF. This protocol establishes the rules and

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<sup>36</sup> Secretaría de Gobernación, *DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo, de la Ley Orgánica del Poder Judicial de la Federación, de la Ley Federal de la Defensoría Pública, de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores y de la Ley del Seguro Social, en materia de Justicia Laboral, Libertad Sindical y Negociación Colectiva*, México, 2019, at: [https://www.dof.gob.mx/nota\\_detalle.php?codigo=5559130&fecha=01/05/2019](https://www.dof.gob.mx/nota_detalle.php?codigo=5559130&fecha=01/05/2019), accessed on 2 September 2019.

procedures for the legitimization of the collective labour contracts that already exist and that will only be in effect until the Federal Conciliation and Labour Registration Centre begins operations.

One of the purposes of this protocol is to guarantee free, safe and secret vote to the workers for the approval of their collective contract by making it mandatory for an attesting official or a labour authority to be able to verify the assembly where the voting takes place. This is to ensure that the workers are aware of and approve the content of the contract.

It also stipulates the procedure to be followed for such legitimization. The procedure will begin with a call published ten days before the assembly is scheduled. This meeting has to be held in an accessible and safe place. A record of attendees will be presented, and the result of the vote will be recorded in the official minutes of the meeting, which must be signed, visibly posted within the workplace and validated by the Ministry of Labour and Social Prevision. If most of the workers approve the contract and the authority does not make any objections, the contract will be considered legitimate.<sup>37</sup>

#### **3.4.1.2. Labour Inspection**

Labour inspection is one of the fundamental means to guarantee that labour law and workers' labour and social security rights are respected and observed. Given the new rules that employers, workers and unions must abide to, the federal government decided to increase its staff of labour inspectors by 27%.<sup>38</sup> Based on the Labour Reform Implementation Plan,<sup>39</sup> the number of federal inspectors will rise from 478 to 610, in addition to the 192 that are expected to work at the Federal Conciliation and Labour Registration Centre. In addition, there are approximately 519 local inspectors.<sup>40</sup>

#### **3.4.1.3. Budget for the Implementation**

In early 2019, there was still no certainty that the much-announced labour reform would be approved. Therefore, the cost of its implementation was not considered for this tax year. Notwithstanding, the Federal Expense Budget for 2020 does contemplate resources to implement the reform in question.

It is proposed that \$481 million Mexican pesos (\$25,530,785.56 USD) will be granted for the initial phase, of which \$105.7 million Mexican pesos (\$5,573,248.44 USD) will be earmarked for the Federal Conciliation and Labour Registration Centre, and \$375.3 million Mexican

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<sup>37</sup> Cfr. DOF, Protocolo para la legitimación de contratos colectivos de trabajo existentes, Mexico, 2019.

<sup>38</sup> El economista, *STPS incorpora inspectores para cumplir reforma laboral*, at: <https://www.eleconomista.com.mx/empresas/STPS-incorpora-inspectores-para-cumplir-reforma-laboral-20191023-0012.html>, accessed on 25 November 2019.

<sup>39</sup> STPS, *Plan de implementación de la reforma laboral*, at: [https://www.gob.mx/cms/uploads/attachment/file/499403/Plan\\_Trabajo\\_JFCA.pdf](https://www.gob.mx/cms/uploads/attachment/file/499403/Plan_Trabajo_JFCA.pdf), accessed on 25 November 2019.

<sup>40</sup> El economista, *STPS incorpora inspectores para cumplir reforma laboral*, (supra at Fn. 38).

pesos (\$19,904,458.61 USD) will be used for the creation of the Labour Courts. Furthermore, the budgets at state level must provide for the implementation of the courts and local conciliation centres accordingly.<sup>41</sup>

### **3.4.2. Prevention of Psychosocial Risks for Workers**

On 23 October 2019, the Official Mexican Standard NOM-035-STPS-2018 on the prevention of psychosocial risks in the workplace came into force. This standard aims to establish the elements to identify, analyse and prevent psychosocial risk factors, as well as to promote a favourable organisational environment in the workplace.<sup>42</sup>

The social risk factors involved are those related to conditions in the work environment, the workload, working hours and interference with the work-family relationship, including poor leadership and workplace violence (harassment, bullying, abuse).

This Mexican standard establishes the commitment to the prevention of psychosocial risk factors, the prevention of workplace violence, and the fostering of an environment that is conducive to an adequate working environment as obligations for the employer. Workers are also required, among other responsibilities, to comply with the prevention measures, avoid practices that undermine the organisational climate and encourage acts of violence, and participate in the identification of psychosocial risk factors.<sup>43</sup>

This standard will enter into force in two stages: the first runs from 2019, when policies, prevention measures, identification of workers exposed to severe traumatic events, and the circulation of information must be established in the workplaces. The second runs from 23 October 2020, when the identification and analysis of psychosocial risk factors, the evaluation of the organisational climate, control measures and actions, medical exams, and the corresponding records will be undertaken.<sup>44</sup>

### **3.4.3. Incorporation of Domestic Workers into the Social Security Institute**

Originally, domestic workers were enrolled in the Mexican Social Security Institute (IMSS) on a voluntary basis only, which moreover depended on the will of the employer. Coverage was limited to two branches of insurance. In April 2016, a domestic worker filed a lawsuit before the Local Conciliation and Arbitration Board of Mexico City, demanding the benefits of constitutional compensation, payment of unpaid wages, Christmas bonus, vacation pay, vacation bonuses, seniority bonuses and overtime, as well as retroactive enrolment in the IMSS. As she did not succeed in her claims at the court of the first instance, she moved for an

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<sup>41</sup> Cfr. El financiero, *Insuficiente, presupuesto para reforma laboral, expertos*, at: <https://www.elfinanciero.com.mx/economia/insuficiente-presupuesto-para-reforma-laboral-expertos>, accessed on 8 December 2019.

<sup>42</sup> Norma Oficial Mexicana NOM-035-STPS-2018, Art. 1.

<sup>43</sup> Cfr. Norma Oficial Mexicana NOM-035-STPS-2018.

<sup>44</sup> Cfr. Guía Informativa NOM-035-STPS-2018.

*amparo* trial because she believed that her human rights had been violated, arguing that Article 13 of the Social Security Law was unconstitutional (it did not obligate employers to insure their domestic workers). Because of its importance, the Supreme Court of Justice took the case and made a recommendation of historical importance to an autonomous fiscal body (IMSS), establishing that the IMSS must create a pilot programme within a period not exceeding 18 months and has to propose to the Congress of the Union the legal adjustments needed to incorporate domestic workers into a new special social security system within a period not exceeding three years.

Due to the above, in February 2019, the programme was launched at the IMSS and on 30 March the related “Agreement on the general rules for the pilot programme for the incorporation of domestic workers into the Mandatory Social Security System” entered into force. This programme consists of a first phase in which domestic workers or their employers go to the IMSS to enrol, however, without there being any inspections or sanctions for those who do not. Moreover, Section IV was added to Article 12 of the Social Security Law to include domestic workers as subjects of the obligatory system, thus providing the whole range of insurance coverage: occupational hazards; illnesses and maternity; disability and life; severance at advanced age, old age and retirement; and childcare and social benefits.

However, the results are not at all encouraging since at the end of the third quarter of 2019, only 11,947 of the 2.4 million persons engaged in domestic work were affiliated with the IMSS, of whom 76% were women and 24% were men.<sup>45</sup>

#### **3.4.4. No Amparo after Dismissal for Having a Swastika Tattoo**

A worker sued his former employer in a civil lawsuit for moral damages, claiming that he was a victim of discrimination because he had a tattoo. When the worker showed up at the company on the first day of work with a visible tattoo of a swastika on his neck, he was asked to cover up or remove the tattoo, since other workers – who were Jewish – felt offended, attacked or insulted, as well as because the owner of the company was Jewish and had very strict opinions on the subject. The plaintiff refused and as a result, his contract was terminated after severance pay, a settlement, and the signing of his resignation were concluded. In the civil suit for moral damages the respondent company stated that the tattooed symbol was a swastika, an expression of anti-Semitism. This made the other workers of the company feel frightened or threatened because they were Jewish and of Hebrew origin.

The judgment delivered in the first instance, handed down by the Third Civil Judge of Mexico City, was in favour of the plaintiff’s interests and sentenced the company to pay

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<sup>45</sup> ADN Noticias, *Casi 12 mil trabajadoras del hogar están afiliadas a seguridad social en el IMSS*, at: <https://www.adn40.mx/noticia/poder/notas/2019-12-05-07-27/gobierno-federal-presento-avances-del-programa-para-inscribir-a-las-trabajadoras-domesticas-al-imss>, accessed on 8 December 2019.

compensation for moral damages and other benefits. However, the second instance's judgment by the Seventh Civil Chamber of the Superior Court of Justice of Mexico City revoked the first ruling, holding *that the plaintiff did not prove unlawful the act* on which the civil liability was grounded. The dismissed worker challenged this decision by way of a direct *amparo*, in which the Fourteenth Collegiate Court in Civil Matters of the First Circuit granted him the *amparo* and the protection of the Mexican justice system, ruling, among other things, that it had not been demonstrated that the plaintiff had engaged in any anti-Semitic behaviour; that is, that *his manifested will or intention in the private relationship existing at the moment of his entry into the defendant's premises was for the purpose of discriminating against the personnel.*

Finally, in the appeal court, the First Chamber of the Supreme Court of Mexico, Justice Norma Lucía Piña Hernández revoked the decision of the Collegiate Court. The Mexican justice system did not protect the worker, among other considerations, on the grounds that the tattoo represented racist (anti-Semitic) hate speech, which, in the specific circumstances of the case, entailed a restriction on the constitutional and conventional protection of the rights of free development of personality and the freedom of speech invoked by the plaintiff.<sup>46</sup>

### 3.5. Social Services and Assistance

#### 3.5.1. Childcare Facility Programme

The childcare facility programme to help working mothers and/or single fathers is a federal social assistance programme that supports mothers and single fathers who are working, seeking employment or studying, and take care of children aged 1 to 4, or 1 to 6 if they have a disability.

In this context, the current administration has made a significant change to this programme. Based on the operating regulations published on 28 February 2019 in the DOF, it is established that the support the beneficiaries will receive will be given directly to the parent beneficiaries of the programme and not to those who manage childcare facilities, as had previously been the case. Previously, the State had covered the cost of childcare services by awarding \$70,000 Mexican pesos (\$3,715.49 USD) to set up a centre, and had paid the person in charge \$950 Mexican pesos (\$50.42 USD) a month for each child taken care of between 1 and 4 years of age. In the case of a child with some kind of disability, the person was paid \$1,800 Mexican pesos (\$95.54 USD) per child. However, under the new operating rules, the amount of the support given directly to the beneficiaries will only be \$1,600 Mexican pesos (\$90.23 USD) bimonthly, which may be increased to \$3,600 Mexican pesos (\$191.08 USD) bimonthly per child in the case of a disability.

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<sup>46</sup> Amparo directo en revisión 4865/2018, Ponente Ministra Norma Lucía Piña Hernández.

With this reform, the responsibility of childcare falls on the parents, and with the amount given, they will have to solve the problem themselves, regardless of whether this money is paid to the grandparents or any other person, no matter what their training is or whether they have the adequate infrastructure for childcare, as no inspection or monitoring is considered.

### 3.5.2. Youth Building the Future Programme

At the beginning of 2019, the social assistance programme for job training was implemented for young persons between 18 and 29 years of age who do not work or study, regardless of their level of education. The programme consists of training at a workplace of their choice for one year. For this, they receive a monthly scholarship of \$3,600.00 Mexican pesos (\$191.08 USD), in addition to their enrolment in social security through the IMSS insurance.

The controversial programme, colloquially called “NEET”<sup>47</sup> scholarship, has yielded both positive and negative results after eleven months of operation.

The positive results are:

- The training programme has been useful for young persons’ development and generated opportunities for future employment for young people without specialised education.
- One million and three thousand young people (interns) who were previously not studying or working have joined the programme, which results in a lower unemployment rate among the Mexican youth.<sup>48</sup>
- All young people in the programme are enrolled in the Mexican Social Security Institute that provides them with medical care for occupational risks and illnesses.
- There are 157,070 registered workplaces in public and private sectors, as well as social organisations.<sup>49</sup>

The negative results are:

- Given the late creation of the programme’s operating rules, as well as the ambiguities and the lack of checks and balances that were apparent at the start of its

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<sup>47</sup> A NEET is a young person who is “Not in Education, Employment or Training”.

<sup>48</sup> STPS, *Jóvenes construyendo un futuro en números*, at: <https://jovenesconstruyendoelfuturo.stps.gob.mx/datos/>, accessed on 25 November 2019.

<sup>49</sup> *Idem*.

operation, there were some cases that presented anomalies, especially as regards the registry of workplaces that did not exist or which lacked verifiable information.<sup>50</sup>

- There were some cases of companies that dismissed employees to later include them as programme interns.<sup>51</sup>
- The interns do not have full social security coverage, but only medical care coverage and protection for occupational hazards.
- Out of the total number of young people registered, 15,000 interns have been hired by companies. This represents no more than 1.5% of the total number since its beginning.<sup>52</sup> Moreover, since there is no commitment to collaboration once the year of training is over, entry of the interns into the labour market is not guaranteed.
- There is no real labour-related connection in the case of young people with undergraduate or postgraduate studies, since most of them are engaged in activities unrelated to their studies.

#### 4. INTERNATIONAL SOCIAL SECURITY

Mexico signed an agreement with the United Farm Workers of America to benefit Mexican farm workers in the United States.

On 25 November 2019, a historic agreement to benefit Mexican farm workers was signed by Undersecretary for North America, Jesús Seade, on behalf of the Mexican Ministry of Foreign Affairs (SRE) and United Farm Workers (UFW), represented by its president Teresa Romero. This instrument is part of the February 2019 Migrant Protection Strategy, which seeks to implement the following measures:

- To adopt assistance to Mexicans abroad as its main tenet.
- To train the Mexican foreign service personnel in dealing with the public and vulnerable groups.
- To install comprehensive mobile consulates to serve the more vulnerable communities.

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<sup>50</sup> Mexicanos contra la corrupción y la impunidad, Jóvenes construyendo un futuro: un programa con datos improbables, incompletos e inverificables, at: <https://contralacorrupcion.mx/jcf-datos/>, accessed on 25 November 2019.

<sup>51</sup> Cfr. El Contribuyente, Programa jóvenes construyendo el futuro podría precarizar el empleo para los jóvenes, 6 November 2019, at: <https://www.elcontribuyente.mx/2019/11/programa-jovenes-construyendo-el-futuro-podria-precarizar-empleo-para-los-jovenes/>, accessed on 6 December 2019.

<sup>52</sup> El universal, *De un millón de becarios sólo 15 mil han sido contratados STPS*, at: <https://www.eluniversal.com.mx/nacion/politica/de-un-millon-de-becarios-solo-15-mil-han-sido-contratados-stps>, accessed on 26 November 2019.



- To expand the network of lawyers and organisations specialised in the defence of the rights of Mexican migrants.<sup>53</sup>

As part of the last point mentioned, an agreement was signed with one of the most important trade union organisations for farm workers in the United States of America, in which a commitment was made to strengthen collaboration to defend the rights of workers regardless of their immigration status, to reinforce the current collaboration of the consular network with the UFW, especially in the states of California and Washington, and to train Mexican consular officials on how to combat violations of agricultural labour rights.<sup>54</sup>

## 5. SELECTION OF IMPORTANT PUBLICATIONS

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<sup>53</sup> Gobierno de México, *El canciller Marcelo Ebrard presenta la estrategia de protección al migrante del Gobierno de México*, at: <https://www.gob.mx/sre/es/articulos/el-canciller-marcelo-ebard-presenta-la-estrategia-de-proteccion-al-migrante-del-gobierno-de-mexico-193226?idiom=es>, accessed on 20 January 2020.

<sup>54</sup> SRE, *México firma acuerdo con Unión de Campesinos de América a favor de trabajadores mexicanos agrícolas en EU*, at: <https://www.gob.mx/sre/prensa/mexico-firma-acuerdo-con-union-de-campesinos-de-america-a-favor-de-trabajadores-mexicanos-agricolas-en-eu?idiom=es>, accessed on 20 January 2020.

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## 5.2. Articles

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## 6. ANNEXES IN SPANISH LANGUAGE

### 6.1. Supreme Court Rulings Discussed, in Order of Appearance

PENSIÓN POR JUBILACIÓN. LAS LEYES BUROCRÁTICAS QUE BENEFICIAN A LAS MUJERES AL ESTABLECER MENOS AÑOS DE SERVICIOS DE LOS EXIGIDOS A LOS HOMBRES PARA ACCEDER AL PORCENTAJE MÁXIMO DE AQUÉLLA, NO VIOLAN EL PRINCIPIO DE IGUALDAD ANTE LA LEY, NI EL QUE ORDENA QUE A TRABAJO IGUAL CORRESPONDERÁ SALARIO IGUAL, SIN TENER EN CUENTA EL SEXO, PREVISTOS EN LOS ARTÍCULOS 4o., PRIMER PÁRRAFO, Y 123, APARTADO B, FRACCIÓN V, DE LA CONSTITUCIÓN FEDERAL, RESPECTIVAMENTE.

Las leyes burocráticas que prevén un trato diferenciado en favor de la mujer trabajadora, en el sentido de que se le exigen menos años de servicios que a los hombres para obtener el máximo de una pensión de retiro, y la consecuente diferencia porcentual que se mantiene entre ambos sexos en un orden decreciente, resulta acorde con las diferencias que corresponden a cada uno. Localización: [J]; 10a. Época; 2a. Sala; Gaceta S.J.F.; Libro 72, Noviembre de 2019; Tomo I; Pág. 607. **2a./J. 140/2019 (10a.).**

INCONSTITUCIONALIDAD DE LA PROHIBICIÓN ABSOLUTA AL CONSUMO LÚDICO O RECREATIVO DE MARIHUANA PREVISTA POR LA LEY GENERAL DE SALUD.

Los artículos 235, último párrafo, 237, 245, fracción I, 247, último párrafo, y 248, todos de la Ley General de Salud, en las porciones normativas que establecen una prohibición para que la Secretaría de Salud emita autorizaciones para realizar las actividades relacionadas con el autoconsumo con fines lúdicos o recreativos. Localización: [J]; 10a. Época; 1a. Sala; Gaceta S.J.F.; Libro 63, Febrero de 2019; Tomo I; Pág. 493. **1a./J. 10/2019 (10a.).**

PROHIBICIÓN ABSOLUTA DEL CONSUMO LÚDICO DE MARIHUANA. ÉSTA PERSIGUE FINALIDADES CONSTITUCIONALMENTE VÁLIDAS.

La finalidad de la prohibición absoluta del consumo lúdico de marihuana prevista en los artículos 235, último párrafo, 237, 245, fracción I, 247, último párrafo, y 248 de la Ley General de Salud, consiste en proteger la "salud" y el "orden público", puesto que de una interpretación sistemática del ordenamiento, así como de los distintos procesos de reforma a la ley, puede desprenderse que el legislador tuvo la intención de procurar la salud de los consumidores de drogas y proteger a la sociedad de las consecuencias perniciosas derivadas del consumo de drogas. Localización: [J]; 10a. Época; 1a. Sala; Gaceta S.J.F.; Libro 63, Febrero de 2019; Tomo I; Pág. 495. **1a./J. 7/2019 (10a.)**.

PROHIBICIÓN ABSOLUTA DEL CONSUMO LÚDICO DE MARIHUANA. NO ES UNA MEDIDA PROPORCIONAL PARA PROTEGER LA SALUD Y EL ORDEN PÚBLICO.

En la cuarta y última etapas del test de proporcionalidad, corresponde comparar el grado de intervención en el derecho fundamental frente al grado de satisfacción de la finalidad constitucional perseguida. En este contexto, en el caso de la prohibición absoluta al consumo lúdico de la marihuana contenida en los artículos 235, último párrafo, 237, 245, fracción I, 247, último párrafo, y 248 de la Ley General de Salud, Localización: [J]; 10a. Época; 1a. Sala; Gaceta S.J.F.; Libro 63, Febrero de 2019; Tomo I; Pág. 496. **1a./J. 9/2019 (10a.)**.

PROHIBICIÓN ABSOLUTA DEL CONSUMO LÚDICO DE MARIHUANA. NO ES UNA MEDIDA NECESARIA PARA PROTEGER LA SALUD Y EL ORDEN PÚBLICO.

La prohibición absoluta del consumo lúdico de la marihuana prevista por los artículos 235, último párrafo, 237, 245, fracción I, 247, último párrafo, y 248 de la Ley General de Salud, no constituye una medida necesaria para proteger los fines constitucionales que persigue el legislador, toda vez que existen medidas alternativas que son igualmente idóneas para alcanzar dichos fines, pero que afectan en menor grado el derecho al libre desarrollo de la personalidad. Localización: [J]; 10a. Época; 1a. Sala; Gaceta S.J.F.; Libro 64, Marzo de 2019; Tomo II; Pág. 1127. **1a./J. 25/2019 (10a.)**.

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