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LIST OF ABBREVIATIONS

AFORE	Retirement Fund Administrator
BANXICO	Bank of Mexico
CJF	Council of the Federal Judicature
CONASAMI	National Council of Minimum Wages
CONEVAL	National Council for the Evaluation of Social Development Policy
COVID-19	Disease caused by the SARS-CoV2 virus
DOF	Official Journal of the Federation
ILO	International Labor Organization
IMSS	Mexican Social Security Institute
INAI	National Institute for Transparency, Access to Information and Personal Data Protection
INEGI	National Institute of Statistics and Geography
INFONAVIT	Institute of the National Fund for Housing for Workers
ISSSTE	Institute of Security and Social Services for State Workers
LFT	Federal Labor Law
SARS-CoV2	Coronavirus causing a respiratory disease called COVID-19
SCJN	Supreme Court of Justice
SHCP	Ministry of Finance and Public Credit
STPS	Secretary of Labor and Social Prevention
UMA	Units of Measure and Adjustment
USD	US Dollars

1. INTRODUCTION

The year 2021 was primarily marked by the effects of the worldwide Corona pandemic.

It thus figures as one of the four focal points of this report: social security and social protection measures in response to the pandemic; legal reforms, including the entry into force of the 2020 pension reform and labour subcontracting; paternity leave; and the recognition of the human right to social security through judicial decisions, summarized as follows:

1. Due to the pandemic, 2021 was a year of great economic and job insecurity and, therefore, a difficult situation for the Mexican population in terms of social security. It is estimated that one of the effects of the COVID-19 pandemic was the loss of 1.117 million formal jobs in Mexico in 2021 and, as of January 2022, 39% have yet to be recovered.¹

From January to December 2021, Ministry of Health data confirmed that 2,484,330 people have been infected with the SARS-CoV2 virus, increasing the official number of infections since the outbreak of the pandemic to 4,007,208 (1,522,878 in 2020).² Meanwhile, the total number of deaths in 2021 was 299,285.³ It should be noted that several academics claim that these figures contrasted with the official data on COVID-19 deaths reported by the National Institute of Statistics and Geography (INEGI) (345,415 people)⁴. This discrepancy suggests that there may be a higher number of people who have died due to the COVID-19.

¹ The data provided is based on the monthly employment figures provided by the Mexican Social Security Institute: Instituto Mexicano del Seguro Social, *Estadísticas e informes*, IMSS, Mexico, 2021, available at: <http://www.imss.gob.mx/conoce-al-imss/informes-estadisticas>, accessed on 11 January 2022.

² Gobierno de México, *COVID-19 en México*, Gobierno de México, Mexico, 2022, available at: <https://datos.COVID-19.conacyt.mx/#DOView>, accessed on 17 January 2022.

³ Consejo Nacional de Ciencia y Tecnología, *CONACYT, COVID-19 México, Información General*, CONACYT, Mexico, 2021, available at: <https://datos.COVID-19.conacyt.mx/>, accessed on 6 November 2021.

⁴ The information on deaths due to COVID-19 correspond to June 2021. Instituto Nacional de Estadística y Geografía, *Características de las defunciones registradas en México durante 2020*, INEGI, Mexico, 2021, available at: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/EstSociodemo/DefuncionesRegistradas2020preliminar.pdf> and Instituto Nacional de Estadística y Geografía, *Estadística de defunciones registradas de enero a junio de 2021 (preliminar)*, INEGI, Mexico, 2021, available at: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/dr/dr2021.pdf>, accessed on 25 January 2022.

Data provided by the Johns Hopkins University show that Mexico ranks fourth in the world in the total number of deaths from the SARS-CoV2 virus⁵. By contrast, the Mexican Ministry of Health claims that the country ranks ten worldwide if deaths are calculated per million inhabitants.⁶ This indicates that the government is not only manipulating the information it provides on a daily basis, but that the health crisis has not been adequately managed and that, as a result, economic, social, educational, health and labour recovery is far from assured.

Nevertheless, there are some security and social protection measures that have been instrumental in providing health care and income for many Mexicans in this pandemic year.

2. In April, a controversial anti-outsourcing reform⁷ came into force, with a significant economic impact: both negative for many foreign companies, which has contributed to the withdrawal of capital from the country, and positive for many workers who have moved from informality to social insurance. Ministry of Labour and Social Provision estimates indicate that some 300,000 workers hired under outsourcing modalities have been recognized and re-recruited by their direct employers.⁸

3. The recognition of paternity rights continued to gain momentum in 2021, as the number of days for paternity leave was increased for employees of the Federal Judiciary Council (CJF), which is part of the Federal Judiciary (PJF) and the National Institute of Transparency, Access to Information and Personal Data Protection (INAI).

⁵ Johns Hopkins University, *COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU)*, JHU, United States of America, 2021, available at: <https://coronavirus.jhu.edu/map.html>, accessed on 25 January 2022.

⁶ Forbes, *México, lugar 10 en el mundo por muertes de COVID-19: Salud*, Forbes, Mexico, 2021, available at: <https://www.forbes.com.mx/noticias-mexico-decimo-lugar-mundo-muertes-COVID-19-salud/>, accessed on 6 November 2021.

⁷ Diario Oficial de la Federación, *DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo; de la Ley del Seguro Social; de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores; del Código Fiscal de la Federación; de la Ley del Impuesto sobre la Renta; de la Ley del Impuesto al Valor Agregado; de la Ley Federal de los Trabajadores al Servicio del Estado, Reglamentaria del Apartado B) del Artículo 123 Constitucional; de la Ley Reglamentaria de la Fracción XIII Bis del Apartado B, del Artículo 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Subcontratación Laboral*, Secretaría de Gobernación, Mexico, 2021, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5616745&fecha=23/04/2021, accessed on 14 January 2022.

⁸ Secretaría del Trabajo y Previsión Social, *Con el anuncio de las reformas a la subcontratación, más de 300 mil trabajadores ya han sido contratados*, Gobierno de México, Mexico, 2021, available at: <https://www.gob.mx/stps/prensa/con-el-anuncio-de-las-reformas-a-la-subcontratacion-mas-de-300-mil-trabajadores-ya-han-sido-contratado?idiom=es>, accessed on 17 January 2022.

4. Various court rulings upheld the tendency to grant social security benefits beyond the national and state regulations that govern them, based on international instruments such as ILO Convention 102, which supports the recognition of social security as a human right.

2. ECONOMIC, POLITICAL AND SOCIAL SITUATION IN 2021

2.1. Economy

Some of the main consequences of the failure to adequately manage the effects of the COVID-19 health crisis were prolonged lockdowns and the closure of activities considered non-essential. Implemented on 24 March 2020,⁹ the lockdown was originally expected to last a few weeks, but was extended for non-essential activities. Until today, temporary restrictions on capacity and access for public and private activities remain in place.

To determine whether to open or close these activities, a traffic light monitoring system was introduced as of 1 June 2020 (and is still active). Every two weeks, the system indicates the risk level of each state, limiting the type of activities that can be carried out and the authorized capacity for each one, depending on the colour of the signal light assigned to them.¹⁰

For example, a red light denotes lockdown, online classes at all levels of education and only essential activities to be carried out in person; an orange light indicates social and economic activities restricted to 50% capacity (as in the case of restaurants); a yellow light increases this capacity to 75% and allows schools to reopen under COVID-19 pandemic protocols; and lastly, a green light permits mass events, etc.

⁹ Secretaría de Gobierno, *ACUERDO por el que se establecen las medidas preventivas que se deberán implementar para la mitigación y control de los riesgos para la salud que implica la enfermedad por el virus SARS-CoV2 (COVID-19)*, Diario Oficial de la Federación, 24 de marzo de 2021, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5590339&fecha=24/03/2020, accessed on 11 November 2021.

¹⁰ Gobierno de México, *Nueva normalidad, Reactivación de la economía mexicana de forma responsable y segura*, at: <https://www.gob.mx/COVID19medidaseconomicas/acciones-y-programas/nueva-normalidad-244196>, accessed on 11 November 2021.

Despite the crisis-related challenges, economic recovery and growth forecasts remain close to expectations. The Gross Domestic Product in Mexico recorded a 4.7% growth in real terms in the third quarter of 2021 compared to the same period in 2020.¹¹

Meanwhile, foreign investment increased by 2.6% in the first half of 2021, compared to the same period of the previous year, with a total of 18.43 billion USD.¹²

So far, economic recovery is mainly attributed to tourism, which by the end of 2021, based on data provided by the Mexican Ministry of Tourism, is estimated to have brought an economic revenue of \$127.14 billion USD, which represents an increase of 9.4% compared to the previous year.¹³ Another source of revenue is international remittances, which have reached record levels for the fifth consecutive year, amounting to \$52.74 billion USD, making Mexico the third largest remittance-receiving country in the world.¹⁴

Additionally, the National Minimum Wage Commission (CONSAMI), the decentralized public agency in charge of setting minimum wages in the country, announced an increase of the general and professional daily minimum wages from \$176.72 pesos (\$8.67 USD)¹⁵ in 2020 to \$185.56 pesos (\$9.11 USD) in 2021 for the northern border free zone and from \$102.68 pesos (\$ 5.04 USD) to \$123.22 pesos (\$6.05 USD) for the rest of the country.¹⁶

Unfortunately, economic recovery is not expected to follow the same trend given the latent risks that must be taken into account. First, possible health-related complications as a result of infections with COVID-19. Second, the global semiconductor shortage causing a crisis in several industrial sectors and disrupting the operations of factories that depend on these

¹¹ Instituto Nacional de Estadística y Geografía, *Producto Interno Bruto de México durante el tercer trimestre de 2021*, INEGI, México, 2021, p. 2, available at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/pib_pconst/pib_pconst2021_11.pdf, accessed on 12 February 2022.

¹² Secretaría de Economía, *México mantiene la confianza de inversionistas: atrae 18,433.5 millones de dólares de IED en el primer semestre de 2021*, available at: <https://www.gob.mx/se/prensa/mexico-mantiene-la-confianza-de-inversionistas-atrae-18-433-5-millones-de-dolares-de-ied-en-el-primer-semestre-de-2021?idiom=es>, accessed on 11 November 2021.

¹³ Secretaría de Turismo, *Al cierre de 2021 se espera la llegada de 31 millones de turistas internacionales y el ingreso de más de 18.5 mil mdd*, Gobierno de México, Mexico, 2021, available at: <https://www.gob.mx/sectur/prensa/al-cierre-de-2021-se-espere-la-llegada-de-31-millones-de-turistas-internacionales-y-el-ingreso-de-mas-de-18-5-mil-mdd>, accessed on 17 January 2022.

¹⁴ BBVA Research, *Anuario de Migración y Remesas México 2021*, BBVA Research, Mexico, 2021, available at: <https://www.bbvarresearch.com/publicaciones/anuario-de-migracion-y-remesas-mexico-2021/>, accessed on 11 January 2022. The first place is held by China and the second by India.

¹⁵ The exchange rate used for this report is \$20.36 Mexican pesos = 1 USD, data from the Bank of Mexico on 13 January 2021, available at: Banco de México, Tipo de cambio, México, Banco de México, 2022, <https://www.banxico.org.mx/tipocamb/main.do?page=tip&idioma=sp>, accessed on 13 January 2022.

¹⁶ Comisión Nacional de los Salarios Mínimos, *Tabla de Salarios Mínimos Generales y Profesionales por Áreas Geográficas*, CONASAMI, 2021, Mexico, at: <https://www.gob.mx/conasami/documentos/tabla-de-salarios-minimos-generales-y-profesionales-por-areas-geograficas>, accessed on 14 January 2022.

components to produce electronic devices, household appliances and vehicles.¹⁷ This situation greatly affects the automotive and manufacturing industries operating in Mexico.

2.2. Labour

According to official figures by INEGI, in 2021, the Economically Active Population of the country comprised 57.7 million people, 55.2 million of which are employed. 68.5% are subordinate and paid workers, 22.6% are self-employed, 4.9% are owners of a productive enterprise and even have subordinate employees, and 4% are people who work but do not receive any financial remuneration.¹⁸

As a result of the COVID-19 pandemic in Mexico, 12,460,841 people lost their jobs. The labour market has surprisingly recovered 93% (11,549,808) of these jobs.¹⁹ However, it should be noted that 31 million of them, or 57.7% of the employed population, are informal jobs, a sector that grew by 8.2 million compared to 2020.²⁰ Thus, more than half of the employed people in Mexico depend on their daily work to generate income. Since they do not receive a fixed salary and are not covered by social security, they most likely did not have the option of staying home to protect themselves from the SARS-CoV2 virus.²¹

As regards working conditions, the results of the *National Survey on Employment and Occupation* for the second quarter of 2021 show that 7% of the employed population work less than 15 hours a week, 26.6% work more than 48 hours a week and 44.7% between 35 and 48 hours a week.

¹⁷ El Financiero, *Desabasto mundial de chips ‘enriquece’ a estas ciudades mexicanas*, El financiero, Mexico, 2021, available at: <https://www.elfinanciero.com.mx/empresas/2021/10/11/desabasto-de-chips-eleva-demanda-de-naves-industriales-en-el-pais-por-COVID/>, accessed on 11 November 2021.

¹⁸ Instituto Nacional de Estadística y Geografía, INEGI, *Comunicado de prensa número 457/2021, Resultados de la Encuesta Nacional de Ocupación y Empleo, Nueva Edición*, INEGI, Mexico, 2021, available at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/enoe_ie/enoe_ie2021_08.pdf, accessed on 11 November 2021.

¹⁹ Hernández, Gerardo, *Mercado laboral ha recuperado el 93% del empleo perdido por pandemia*, El Economista, Mexico, 2021, available at: <https://www.eleconomista.com.mx/capitalhumano/Mercado-laboral-ha-recuperado-el-98-del-empleo-perdido-por-la-pandemia-20210527-0119.html>, accessed on 11 November 2021.

²⁰ Instituto Nacional de Estadística y Geografía, INEGI, *Comunicado de prensa número 457/2021, Resultados de la Encuesta Nacional de Ocupación y Empleo, Nueva Edición*, INEGI, Mexico, 2021, available at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/enoe_ie/enoe_ie2021_08.pdf, accessed on 11 November 2021.

²¹ Instituto Nacional de Estadística y Geografía, INEGI, *Comunicado de prensa número 457/2021, Resultados de la Encuesta Nacional de Ocupación y Empleo, Nueva Edición*, INEGI, Mexico, 2021, available at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2021/enoe_ie/enoe_ie2021_08.pdf, accessed on 11 November 2021.

2.3. Poverty

For 2021, the National Council for the Evaluation of Social Development Policy (CONEVAL), the agency in charge of measuring poverty in the country, did not provide data thereon, because the evaluation and measurement of poverty is undertaken every two years only.

Its latest report shows that, in 2020, 55.7 million people were living in poverty, including 10.8 million in extreme poverty.²² It should be mentioned that this constituted, compared to 2019, an increase of 3.8 million people living in poverty.

However, by the second quarter of 2021, the agency reported significant data on "in-work poverty" in Mexico. That is, the measurement focuses on whether a household's labour income is sufficient to cover the basic needs of all its members. In this regard, the agency states that in the first and second quarters of 2021 "in-work poverty" decreased by 0.9% nationwide, from 39.4% to 38.5%.²³ Likewise, the monthly labour income of employed men in the second quarter was \$4,755.36 pesos (\$233.56 USD) and that of women, \$3,803.92 pesos (\$186.83 USD).²⁴

It should be noted that by the end of 2021, the monthly cost for the basic food basket per person was \$1,844.32 (\$90.58 USD) in urban areas and \$1,344.94 (\$66.05 USD) in rural areas.²⁵ The data contrast with the proposed increase of the general minimum wage for 2022: \$172.87 pesos (\$8.49 USD) a day, which translates into \$5,186.10 pesos (\$254.72 USD) a month – an amount considered sufficient to cover food, social and cultural expenses for an entire family.²⁶

²² Consejo Nacional de Evaluación de la Política de Desarrollo Social, *Medición multidimensional de la pobreza en México*, CONEVAL, Mexico, 2020, available at: https://www.coneval.org.mx/Medicion/MP/Documents/MMP_2018_2020/Pobreza_multidimensional_2018_2020_CONEVAL.pdf, accessed on 11 January 2022.

²³ Consejo Nacional de Evaluación de la Política de Desarrollo Social, *El CONEVAL presenta información referente a la pobreza laboral al segundo trimestre de 2021*, CONEVAL, Mexico, 2021, available at: https://www.coneval.org.mx/Medicion/Paginas/ITLP-IS_resultados_a_nivel_nacional.aspx, accessed on 11 January 2022.

²⁴ *Idem*.

²⁵ Consejo Nacional de Evaluación de la Política de Desarrollo Social, *Evolución de las líneas de pobreza por ingresos*, CONEVAL, Mexico, 2020, available at: <https://www.coneval.org.mx/Medicion/MP/Paginas/Lineas-de-bienestar-y-canasta-basica.aspx>, accessed on 4 January 2021.

²⁶ The Political Constitution of the United Mexican States in its article 123 states that the minimum wages must satisfy the normal needs of a head of family, in the material, social and cultural sphere, and to provide compulsory education of children.

2.4. Government Pandemic Safety and Social Protection Measures

The pandemic has prompted governments to adopt actions and measures to offset the negative consequences.

Mexico had pre-existing problems (labour informality, high rates of comorbidities in its population, high levels of poverty), which the pandemic exacerbated and which have hampered the country's health care efforts and economic recovery. The government, meanwhile, prioritized the implementation of its government plan, conceived as "the fourth transformation".²⁷ Therefore, it continued the projects considered essential in this context, such as the creation of the National Guard, the construction of the General Felipe Ángeles airport, the refurbishment of six refineries and the construction of the Dos Bocas refinery, among others.

However, 187.554 million pesos (\$9,211,886 USD) in resources were allocated to the Ministry of Welfare,²⁸ for government projects (like the social cash transfer programmes that were already part of the government plan before the pandemic) and a few measures to compensate for the damages and consequences caused by the pandemic, which can be summed up as follows:

1. Legislative amendments were confined to Article 330-A of the Federal Labour Law, which addresses the subject of telework and issuing guidelines.
2. Through the Ministry of Labour, the federal executive branch issued guidelines, criteria, protocols and administrative measures to set up the home office modalities.
3. State-level social programmes focused on promoting support measures, but were conditioned by their budgetary availability, which led to disparities among the programmes offered, as they depended on the economic capacity of each state.
4. At a federal level, some measures stand out, such as advancing the payment of existing social programmes. As for new measures, only the *Programa de crédito a la palabra* [Honour Word Programme] for companies was implemented.
5. Tax exemptions mainly consisted of an extension granted by the Ministry of Finance and Public Credit (SHCP) for filing tax returns for 2020 and 2021.

In the area of health, the proper management of the pandemic began with the signing of the Collaboration agreement between the Government of Mexico and the National

²⁷ According to his speech, the three previous transformations in Mexico were Independence (1810-1821), the Reform (the war between liberals and conservatives from 1858 to 1861 and the Revolution (1910-1917).

²⁸ Velázquez Marisol, *Presupuesto 2021: Bienestar (programas sociales, salud, adultos mayores)*, El Economista, Mexico, 2020, available at: <https://www.eleconomista.com.mx/politica/Presupuesto-2021-Bienestar-programas-sociales-salud-adultos-mayores-20200908-0145.html>, accessed on 25 October 2021.

Association of Private Hospitals. In addition to recruiting medical personnel, vaccinating the population (currently with a vaccination rate of 89%)²⁹ and expanding and converting public hospitals to specialize in COVID-19 care, this has prevented extreme cases of lack of care of the population, as happened in other countries.

3. EVOLUTION OF SOCIAL PROTECTION SCHEMES

3.1. Old-Age Schemes

Most importantly, the 2020 pension reform entered into force in January 2021. In addition, the non-contributory old-age pensions was increased, while at the same time the Court set the maximum amount for pensions at 10 Units of Measure and Adjustment (UMA)³⁰ per day, equivalent to \$26,886 pesos (\$1,320 USD) a month, for State employed workers insured with the Institute for Security and Social Services for State Workers (ISSSTE),³¹ as described below:

3.1.1. Old-Age Pension Reform

On 1 January 2021, the Decree amending the Social Security and the Retirement Savings System laws on pension matters (except for the employer's contribution stipulated in the Social Security Law applicable incrementally as of 1 January 2023) came into effect.

Its main contribution consists of raising employer contributions from 5.15% to a maximum of 13.87% of the worker's salary. Additionally, the required number of contribution weeks

²⁹ Secretaría de Salud, *México inicia el año con 81.9 millones de personas vacunadas contra COVID-19*, Gobierno de México, Mexico, 2022, available at: <https://www.gob.mx/salud/prensa/001-mexico-inicia-el-año-con-81-9-millones-de-personas-vacunadas-contra-COVID-19>, accessed on 17 January 2022.

³⁰ It should be mentioned that on 27 January 2016, through a decree published in the Federal Official Gazette (DOF), the value of the Unit of Measure and Adjustment (UMA) was created to replace the minimum wage as a unit of calculation, index, base and measure or reference to determine the amount for the payment of obligations and charges in Federal, State and Federal District laws and their legal provisions. An UMA is lower than the minimum wage per day and is, among others, used to set pension amounts. For example, in 2022, the current minimum wage per day is \$ 172.87, or \$8.4 USD, while an UMA equals only \$96.2, or \$4.72 USD. Secretaría del Trabajo y Previsión Social, *Entra en vigor incremento al salario mínimo del 22%*, available at: <https://www.gob.mx/stps/prensa/entra-en-vigor-incremento-al-salario-minimo-del-22?idiom=es> and INEGI, UMA, available at: <https://www.inegi.org.mx/temas/uma/>, accessed on 30 July 2022.

³¹ Suprema Corte de Justicia de la Nación, *El cálculo del tope máximo de pensiones jubilatorias de los trabajadores del estado, sujetos al artículo décimo transitorio de la ley del ISSSTE, debe determinarse con base a la uma: segunda sala*, available at: <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6349>, accessed on 17 January 2022.

was reduced from 1250 to 750 for employees to be eligible for severance at advanced age and old-age insurance benefits.

In other words, the contribution weeks required to receive the above-mentioned benefits, as well as their calculation to date, amount to 750 and will be increased by 25 weeks each year to reach 1000 contribution weeks by 2031.

In order to obtain a minimum guaranteed pension, which corresponds to the minimum wage, the following pre-established requirements must be met: to have reached age 60, to have the minimum number of contribution weeks and insufficient resources in their Retirement Fund Administrator (AFORE) to secure a lifelong annuity or a programmed withdrawal.

As of 15 December 2021, the National Commission of the Retirement Savings System (CONSAR) reported that more than 27,396 workers had retired under the new scheme through the reduced number of contribution weeks.³²

3.1.2. Increase in Non-Contributory Old-Age Pensions

The Well-Being Programme for Older Adults has been one of the current administration's most popular programmes. It consists of giving a quarterly non-contributory pension to all people aged 65 or older residing in Mexico, as well as a lump-sum payment in the event of death to the beneficiary's representative. The only requirement to become a programme beneficiary is to have reached the specified age. By 2021, the amount given was increased by 15% from the previous year, so that \$1,550.00 pesos (\$76.12 USD) a month is paid as pension and a lump-sum payment of \$1,550.00 (\$76.12 USD) upon the beneficiary's death.³³

³² Comisión Nacional del Sistema de Ahorro para el retiro, *El Sistema de Ahorro para el Retiro al cierre de 2021*, CONSAR, Mexico, 2022, available at: <https://www.gob.mx/consar/articulos/el-sistema-de-ahorro-para-el-retiro-al-cierre-de-2021-292459?idiom=es>, accessed on 18 January 2022.

³³ Diario Oficial de la Federación, Reglas de Operación del Programa Pensión para el Bienestar de las Personas Adultas Mayores, para el ejercicio fiscal 2021, Secretaría de Gobernación, Mexico, 2020, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5623150&fecha=07/07/2021, accessed on 13 January 2022.

3.1.3. SCJN Criteria Restricting Amounts for Old-Age Pensions

a) Limits on the maximum amount for old-age pensions for State workers:

In Dissenting Opinion 2ª./J.30/2021 (10ª),³⁴ the Second Chamber of the Supreme Court of Justice (SCJN) – contrary to the provisions of the Regulations for Granting Pensions to Workers Subject to the Regime of the 10th Transitory Article of the ISSSTE (the 7th article of which states that the maximum amount for a pension may not exceed ten times the minimum wage)³⁵ – ruled that the maximum amount of a retirement pension must be calculated based on the value of the UMA and not on the minimum wage.

The dispute stems from the fact that UMAs are already used as the contribution base for social security contributions and fees to be paid by workers and employers, as well as to determine the pension amount. However, the ISSSTE Law (strictly applied) literally states that the minimum wage is to be used to calculate the maximum amount of a pension.

Therefore, the Court stressed that the constitutional nature of minimum wage is labour. However, for it to be used as an index, unit, base, measure or reference, it is not adjusted to external factors like inflation, thus ruling out its continued use as a reference for the payment of obligations (of a civil, business, tax or administrative nature); the value of the UMA is used instead, even for social security contributions and fees.

Lastly, the retirement pension is a social security right derived from the existence of a work relationship, subject to compliance with the constitutional requirements, but the matter of its calculation corresponds to administrative and not to labour rules. Therefore, the maximum amount of retirement pensions must henceforth be calculated at a rate of ten times the value of Measurement and Updating Units and not the wage-based contribution, which might be much higher.

³⁴ Tesis: 2ª./J.30/2021 (10ª.) Semanario Judicial de la Federación, Undécima Época 2023299, Segunda sala. Pensión jubilatoria. El monto máximo previsto en la Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado abrogada y en el régimen del artículo décimo transitorio de la Ley del ISSSTE vigente, debe cuantificarse con base en el valor de la unidad de medida y actualización (UMA) y no en el salario mínimo, available at: https://sjf.scjn.gob.mx/SJFSem/Paginas/DetalleGeneralV2.aspx?ID=2023299_&Clase=DetalleSemanarioBusquedaBL, accessed on 11 January 2022.

³⁵ Regulation for the granting of pensions to workers subject to the regime of the 10th Transitory Article of the Decree issuing the Law of the Institute of Security and Social Services for State Workers.

b) Calculation of old-age pension increases for Banrural system workers:

The SCJN³⁶ recognizes the rights governed by labour relations of the workers of the National Bank and Regional Banrural System Banks.³⁷ The Court settled the existing dispute by stating that in accordance to Article 61 of the General Labour Conditions, lifetime retirement pensions will increase proportionally, if the Bank of Mexico's monthly calculations show that the cost of living has increased by at least 10%. In addition, only positive inflation percentages – not deflation indices - should be considered in the calculation.

The dispute arises from the decision issued by the Fourth Chamber of the Federal Court of Conciliation and Arbitration, according to which the Court not only added the positive percentages caused by an increase in the cost of living (inflation), when calculating the pension level for a now retired worker, but also subtracted the negative percentages in those months when there were price decreases, thus contravening the provisions of the applicable law.

This Court ruling, while strictly applying the law, once again privileges workers, even over and above the financial balance that should exist in every social security system.

3.2. Widowhood Pension: Reduction of the Contribution period

Social security laws specify the requirements to qualify for the benefits provided as social security rights. In this sense, some state laws (in this case, the Law of the Social Security Institute of the State of Tabasco) and the Law of the Social Security Institute for the Mexican Armed Forces require longer contribution periods (15 and 20 years, respectively) to have the right to a widowhood pension than those established in Article 65 of ILO Convention 65, ratified by Mexico on 12 October 1961.

This issue has been a matter of deliberation for the SCJN on several occasions. In 2021, two judgements were issued:

³⁶ Tesis: PC.I.L. J/1 L (11a.). Gaceta del Semanario Judicial de la Federación. Undécima época. Pleno de circuitos. Pensiones jubilatorias de los trabajadores del sistema BANRURAL, available at: <https://sjf2.scjn.gob.mx/detalle/tesis/2023334>, accessed on 17 January 2022.

³⁷ Article 61 of the General Labour Conditions states that “when it is proven that the cost of living index has increased by at least 10% according to the statistical calculations done by the Bank of Mexico, lifetime retirement pensions shall be increased in the same proportion to the reported increase, as long as the amount does not exceed the tabulated wages of active workers who hold the positions held by the pensioners at the time of their retirement.

The first was Court Opinion PC.I.A. J/165 A (10a.), published on 30 April 2021.³⁸ The original dispute was initiated in 2016 when the surviving spouse of a serviceman who died off-duty filed an *amparo* after being denied a lifetime pension for not meeting the requirement of 20 years of service. She argued for the application of Article 63 of ILO Convention No. 102 on Minimum Standards of Social Security,³⁹ which requires a minimum of 15 years of contributions to be entitled to a pension, considering that her husband had accrued a total of 16 years, one month and 7 days of service. She claimed that according to the *pro persona* or *pro homine* principle, the international standard granting her greater protection should be applied in her favour and not the national standard of 20 years.

The second was Court Opinion X.2o.T.2 L (10a.), published on 19 November 2021,⁴⁰ in which the disputed act once again stems from the Social Security Institute of the State of Tabasco's

³⁸ Tesis: PC.I.A. J/165 A (10a.). Gaceta del Semanario Judicial de la Federación. Décima época. Pleno de circuitos. Miembros de las fuerzas armadas mexicanas (personas finadas). les es aplicable el artículo 63 del convenio número 102 de la organización internacional del trabajo, relativo a la norma mínima de la seguridad social, atendiendo al principio pro persona, available at: <https://sif2.scjn.gob.mx/detalle/tesis/2023044>, accessed on 17 January 2022.

³⁹ Article 63

1. The benefit specified in Article 62 shall, in a contingency covered, be secured at least

- (a) to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence; or
- (b) where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least--

- (a) to a person protected whose breadwinner has completed, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or
- (b) where, in principle, the wives and children of all economically active persons are protected, to a person protected whose breadwinner has completed a qualifying period of three years of contribution and in respect of whose breadwinner, while he was of working age, half the yearly average number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected whose breadwinner has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution or employment but is less than 15 years of contribution or employment; a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

5. In order that a childless widow presumed to be incapable of self-support may be entitled to a survivor's benefit, a minimum duration of the marriage may be required.

⁴⁰ Tesis X.2º.T.2L (10a.) Gaceta del Semanario Judicial de la Federación, libro 7, Noviembre de 2021, Tomo IV, página 3398 Pensión por viudez reducida. Conforme al convenio 102 de la OIT, procede otorgarla cuando no se cumplió con el periodo mínimo de cotización (inconventionalidad del artículo 65 de la Ley del Instituto de

requirement of having fifteen or more years of contributions to qualify for a widowhood pension, without providing for reduced pensions, as set forth in the Convention.

In both cases, the Court ruled that when the payment of a widowhood pension is sought without the minimum contribution period required by local legislation, the international standard should be followed and, if applicable, a reduced pension should be granted based on the minimum percentage stipulated in the ILO Convention to calculate the proportion to be paid, depending on the years of contribution and the last salary earned.

3.3. Health Care Provision and Sickness Benefits

The SCJN protected the right to health of persons belonging to vulnerable groups through Case Law VII.2o.T. J/68 L (10a.) of 19 February 2021.⁴¹

A worker who worked as a nurse breastfeeding her 8-month-old daughter filed a lawsuit requesting the protection of the law for preventive measures to mitigate and control the effects of the disease caused by the SARS-CoV2 virus, as continuing to work normally would have endangered not only the worker but also her dependents.

The Court considered this case and held that although the effects of the pandemic are not stipulated in Article 126 of the *Amparo* Law (which establishes the cases in which the suspension of an act may be granted), this provision must be interpreted in the light of Articles 4 (right to health) and 22 (prohibition of punishments or acts that endanger the health and physical integrity of persons) of the Political Constitution⁴² in order to prevent possible impairment or damage to health that may cause irreparable harm to persons.

Seguridad Social del Estado de Tabasco, Abrogada). The Court Opinion can be consulted at: <https://sjf2.scjn.gob.mx/detalle/tesis/2023824>, accessed on 12 January 2022.

⁴¹ Tesis VII.2o.T. J/68 L (10a.). Gaceta del Semanario Judicial de la Federación. Tribunales Colegiados de Circuito. Suspensión de plano en el juicio de amparo. procede concederla a los empleados del sector salud que formen parte de un grupo vulnerable durante el fenómeno de salud pública derivado del virus sars-cov2 (COVID-19), available at: <https://sjf2.scjn.gob.mx/detalle/tesis/2022736>, accessed on 17 January 2022.

⁴² Cfr. Diario Oficial de la Federación, *Suspensión de plano en el juicio de amparo. Procede concederla a los empleados del sector salud que formen parte de un grupo vulnerable durante el fenómeno de salud pública derivado del virus sars-cov2 (COVID-19)*, Gaceta del Semanario Judicial de la Federación, Mexico, 2021, available at: <https://sjf2.scjn.gob.mx/detalle/tesis/2022736>, accessed on 13 January 2022.

3.4. Occupational Diseases

The two most important developments in this regard were:

3.4.1. Recognition of a SARS-CoV2 Infection as an Occupational Hazard

In a press release dated 28 January 2021,⁴³ the Ministry of Labour and Social Provision recognized that being infected with the SARS-CoV2 virus may constitute an occupational disease, pursuant to Article 513 of the Federal Labour Law, specifically Section 136 on viral infections (hepatitis, enterovirus, rabies, psittacosis, viral pneumonia, infectious mononucleosis, poliomyelitis and others).

Similarly, the Mexican Social Security Institute (IMSS)⁴⁴ classified COVID-19 as an occupational disease under certain conditions. If the person was infected as a result of performing the permitted work activities under the traffic light monitoring system, the worker is entitled to receive the corresponding occupational risk insurance, which is granted as follows:

- a. 100% of the wage base with which the worker is registered at the IMSS shall be paid.
- b. In the event of consequential damage, the worker may be entitled to compensation or a pension.
- c. Upon finishing treatment, the worker has the right to be reinstated. If the worker is unable to perform the regular activities, the Federal Labour Law protects⁴⁵ the worker so that they may be reinstated in tasks they can perform.
- d. If prostheses and/or orthotics are required, they shall be covered by the occupational hazard insurance, and
- e. In the event of death, the beneficiaries or family members shall be entitled to the financial benefits established in the Social Security Law for occupational hazards.

⁴³ Secretaría del Trabajo y Previsión Social, La Secretaría del Trabajo y Previsión Social reconoce que el contagio por SARS-Cov-2 puede constituir una enfermedad de trabajo, Gobierno de México, Mexico, 2021, available at: <https://www.gob.mx/stps/prensa/comunicado-o005-2021>, accessed on 17 January 2022.

⁴⁴ Acuerdo ACDO.AS2.HCT.240620/173.P.DPES, published in the Diario Oficial de la Federación on 29 July 2020.

⁴⁵ Applicable legal basis:

Article 42 Section I; 43 Section I; 45 Section I; 447 Section VI and 499 of the Federal Labour Law.

Article 498: The employer is obliged to reinstate the worker who suffered an occupational risk in his/her position, if qualified, provided that he/she returns within one year from the date of determination of incapacity to work. The provisions of the preceding paragraph do not apply if the worker received compensation for total permanent disability.

3.4.2. Criteria Delimiting the Causal Link Between Workers' Activities and Occupational Diseases

The SCJN issued a criterion to protect the rights of workers who are exposed to an occupational risk and, as a result, have some type of occupational disease which, in due course, is easily verified in the corresponding medical reports.

The criterion originated when a retired Petróleos Mexicanos Pemex Petroquímica worker filed a lawsuit before the Conciliation and Arbitration Board for the payment of 100% payment of his retirement pension as well as the recognition of various ailments, which he claimed to be occupational diseases, as confirmed in a medical report submitted for their assessment and appraisal. After analysing the matter, the Board ruled in favour of the worker. However, the employer, disagreeing with the judgment, filed several amparo proceedings on the grounds that the medical opinion submitted by the worker as proof of occupational diseases did not include detailed arguments to prove the relationship between cause, effect and harm of the diseases and that these could be caused by work-related activities.

Due to the importance of the case and to establish a single criterion on the issue, the plenary of the SCJN took charge of the case. After careful analysis, the SCJN determined that medical reports do not need to comply with a certain length or contain overly detailed explanations and/or arguments in order to be admitted as expert medical evidence as required by the Federal Labour Law. This decision is based on Article 899-E Section IV of said law, which in itself does not stipulate requirements of length or argumentation for reports of this nature. According to this article, the physician is only asked to indicate the effects of the employee's work activities in order to certify the occupational origin of the diagnosed disease(s).⁴⁶

3.5. Unemployment

A pre-existing measure that was widely promoted at the beginning of the pandemic is the Partial Unemployment Withdrawal.⁴⁷ This is not part of the actual unemployment insurance, but a measure provided for in the Retirement Savings System, which permits a worker, once in every five years, to withdraw part of the amount accrued in his/her

⁴⁶ Tesis PC.X. J/1 L (11a.). Gaceta del Semanario Judicial de la Federación. Pleno de Circuitos. Riesgos de trabajo. el artículo 899-e, fracción iv, de la ley federal del trabajo (en su texto adicionado por decreto publicado en el diario oficial de la federación el 30 de noviembre de 2012), no exige como requisito de los dictámenes médicos para su calificación y valuación una determinada extensión en los razonamientos del perito para justificar el nexo causal entre la actividad desarrollada por el trabajador o el medio ambiente de trabajo, con las enfermedades detectadas, available at: <https://sif2.scjn.gob.mx/detalle/tesis/2023601>, accessed on 25 January 2022.

⁴⁷ Article 191 Section II of the Social Security Law.

individual retirement savings account for reasons of unemployment. In 2021, this income protection measure made it easier for 1.9 million workers to withdraw funds from their Afores.⁴⁸ Withdrawals of 22.04 million pesos (\$1,097 billion USD)⁴⁹ were reported for that year.

The amount depends on the applicable modality:

Modality A: For accounts open for less than three years and with two years of IMSS contributions, 30 days of the worker's base contribution wage can be withdrawn with a limit of 10 Units of Measure and Adjustment, equivalent to \$2,688.60 Mexican pesos (\$132.05 USD) for 2021.

Modality B: For accounts open for more than five years, either 90 days of the worker's Base Contribution Wage in the last 250 weeks (or the number of eligible weeks) or 11.5% of the funds accrued in the Retirement, Severance at Old Age and Old-Age sub-account, whichever is less.⁵⁰

3.6 Family Benefits

3.6.1 Increased Paternity Leave

On 29 September 2021, two general agreements were published in the DOF. The first one is the General Agreement of the Plenary of the Council of the Federal Judiciary, which amends and repeals several provisions-related to granting paternity leave. The second is the Agreement approving modifications to paternity leave set forth in the Guidelines on Human Resources, Professional Service and Designated Personnel at the National Institute for Transparency, Access to Information and Personal Data Protection (INAI), as well as the INAI Civil Servant Salaries Manual.

Both agreements increase the number of days granted for paternity leave to the workers of these institutes. For public servants in the Council of the Federal Judiciary (CJF) the right to

⁴⁸ Current Mexican Social Security legislation regulates the individual capitalization system for pensions. Consequently, the funds for old-age and severance at advanced age pensions, which belong exclusively to insured workers, are managed by private companies called Retirement Fund Administrators (AFORE), which however charge commissions for handling these individual accounts.

⁴⁹ Comisión Nacional del Sistema de Ahorro para el Retiro, the Retirement Savings System as of the end of 2021, CONSAR, Mexico, 2022, available at: <https://www.gob.mx/consar/articulos/el-sistema-de-ahorro-para-el-retiro-al-cierre-de-2021-292459?idiom=es>, accessed on 17 January 2022.

⁵⁰ Instituto Mexicano del Seguro Social; individuals who lost their jobs during a health emergency can apply for Partial Unemployment Retirement: IMSS, IMSS, Mexico, 2020, available at: <http://www.imss.gob.mx/prensa/archivo/202006/368>, accessed on 7 January 2021.

paternity leave is increased from 5 to 90 calendar days with full pay.⁵¹For INAI workers, paternity leave was extended from 5 to 15 calendar days.⁵²

In the same vein, General Administration Agreement No. X/2021, signed by the President of the SCJN, was published in the DOF on 30 September 2021, stating that SCJN officials, like CJF employees, are entitled to paternity and adoption leave for a period of 90 days.

3.7. Social Assistance

3.7.1. Assistance Programme for the Well-Being of Children of Working Mothers

On 28 December 2020, the agreement issuing the Rules of Operation for the Assistance Programme for the Well-Being of Children of Working Mothers was published in the DOF for the 2021 tax year.⁵³ This programme created by the Mexican government is designed to provide single mothers, fathers or guardians seeking employment, working or studying, with access to childcare and assistance for their children while they pursue their activities. It provides direct financial support in cash under two modalities.

Under Modality A, working mothers received in 2021 1,600.00 pesos (\$78.58) per child aged 1-5 years every two months, and 3,600.00 pesos (\$176.81) per child with a disability. Modality B is to assist children, adolescents and young people who have lost their mothers.⁵⁴ The amounts guaranteed under this modality are related to the age of the beneficiaries, as shown in the table on the next page.

⁵¹ Cfr. Diario Oficial de la Federación, *ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma y deroga diversas disposiciones en relación con las licencias de paternidad*. DOF, Mexico, 2021, available at: http://dof.gob.mx/nota_detalle.php?codigo=5631193&fecha=29/09/2021, accessed on 13 January 2022.

⁵² Cfr. Diario Oficial de la Federación, *ACUERDO mediante el cual se aprueba la modificación del permiso de paternidad, previsto tanto en los Lineamientos en materia de Recursos Humanos, Servicio Profesional y Personal de Libre Designación del INAI como en el Manual de Percepciones de los Servidores Públicos del Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*, DOF, Mexico, 2021, available at: https://dof.gob.mx/nota_detalle.php?codigo=5631203&fecha=29/09/2021, accessed on 13 January 2022.

⁵³ Diario Oficial de la Federación, *ACUERDO por el que se emiten las Reglas de Operación del Programa de Apoyo para el Bienestar de las Niñas y Niños, Hijos de Madres Trabajadoras, para el ejercicio fiscal 2021*. DOF, Mexico, 2020, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5609027&fecha=28/12/2020, accessed on 17 January 2022.

⁵⁴ Diario Oficial de la Federación, *ACUERDO por el que se emiten las Reglas de Operación del Programa de Apoyo para el Bienestar de las Niñas y Niños, Hijos de Madres Trabajadoras, para el ejercicio fiscal 2021*, DOF, 2021, Mexico, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5609027&fecha=28/12/2020, accessed on 14 January 2022.

Age	Monthly Amount
New-born - 5	\$ 360.00
6-12	\$ 600.00
13-15	\$ 845.00
16-18	\$ 1,090.00
19-23	\$ 1,200.00

3.7.2. National Labour & Employment Programme for Persons with Disabilities

On 25 June 2021, the decree creating the 2021-2024 National Labour and Employment Programme for Persons with Disabilities was published in the DOF. It aims at promoting the inclusion of people with disabilities into the workforce as well as actions that favour their employability⁵⁵ in decent working conditions. Therefore, it is not a programme that provides economic benefits.

The programme is run by the Ministry of Labour and Social Provision (STPS), the authority in charge of monitoring and implementing strategies for this population group. It supports labour intermediation, the identification of comprehensive profiles and employment counselling, job training, the promotion of affirmative action to reduce wage gaps as well as benefits and incentives, among others. The intended activities under this programme include the preparation of statistical records with information on workplaces so as to encourage labour inclusion. It should be mentioned that this programme is mandatory for federal public administration agencies and entities.

⁵⁵ Diario Oficial de la Federación, *PROGRAMA Nacional de Trabajo y Empleo para las Personas con Discapacidad 2021-2024*, Secretaría de Gobernación, Mexico, 2021, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5622244&fecha=25/06/2021, accessed on 14 January 2022.

3.7.3. Update of Social Programme Pay-Outs

Part of the work plan of the current federal administration aims to increase the amounts paid out by social programmes. In 2021, the following stand out:

Increase in Cash Transfers Under Social Programmes in Mexico 2021

Programme name	Target population	Transfers in 2020	Increase for 2021
Pension for the Well-Being of Persons with Permanent Disabilities	Children and young people up to 29 years old with a permanent disability, as well as people between 30 and 64 years who live in municipalities or areas with a predominantly indigenous or Afro-Mexican population or with a high or very high level of marginalization.	\$1,343.00 pesos (\$65.96 USD) every two months	\$2,700 pesos (\$132.61 USD) every two months
Youth Building the Future Programme	People between 18 and 29 years of age who do not study and do not work	\$3,748 pesos (\$184.08 USD) a month	\$ 4,310 pesos (\$211.68 USD) a month
Programme for the Well-Being of Older Adults	Persons 65 years of age or older residing in Mexico	\$1,310.00 pesos (\$64.34 USD) a month	\$1,550.00 pesos (\$76.12 USD) a month

Based on the operational rules of each of the programmes as published in the Diario Oficial de la Federación, available at: https://dof.gob.mx/nota_detalle.php?codigo=5624455&fecha=21/07/2021, https://www.dof.gob.mx/nota_detalle.php?codigo=5608583&fecha=23/12/2020, https://www.dof.gob.mx/nota_detalle.php?codigo=5608583&fecha=23/12/2020, https://www.dof.gob.mx/nota_detalle.php?codigo=5623150&fecha=07/07/2021

4. LABOUR REFORMS AND THEIR IMPACT ON SOCIAL SECURITY

4.1. New Subcontracting Provisions

On 23 April 2021, the decree amending, adding and repealing various legal provisions in different federal laws of the country on labour subcontracting was published⁵⁶ with the aim of protecting, *inter alia*, the human right to social security.

With this reform, subcontracting personnel is prohibited, except in the case of individuals or companies that provide specialized services or perform specialized work and are also registered with the Ministry of Labour and Social Provision (STPS). To be registered, they must be up to date with tax and social security obligations.⁵⁷

Thus, on 24 May 2021, the provisions for specialized subcontracting companies to enrol in the Registry of Specialized Service or Specialized Work Providers (Repse) of the STPS were published,⁵⁸ allowing a period of three months to regularize.

According to the latest IMSS report No. 389/2021,⁵⁹ this has resulted in a migration of 2,745,000 workers from subcontracting schemes to the "real" employer, with an average salary increase of 12%.⁶⁰ With this, worker-employer relations were brought in line with the formal employment model, which includes social security benefits and access to adequate profit-sharing.

⁵⁶ Diario Oficial de la Federación, *DECRETO, Por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo; de la Ley del Seguro Social; de la Ley del Instituto del Fondo Nacional de la Vivienda para los Trabajadores; del Código Fiscal de la Federación; de la Ley del Impuesto sobre la Renta; de la Ley del Impuesto al Valor Agregado; de la Ley Federal de los Trabajadores al Servicio del Estado, Reglamentaria del Apartado B) del Artículo 123 Constitucional; de la Ley Reglamentaria de la Fracción XIII Bis del Apartado B, del Artículo 123 de la Constitución Política de los Estados Unidos Mexicanos, en materia de Subcontratación Laboral*, Gobierno de México, 2021, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5616745&fecha=23/04/2021, accessed on 12 January 2022.

⁵⁷ Art. 15 of the Federal Labor Law.

⁵⁸ Diario Oficial de la Federación, *ACUERDO por el que se dan a conocer las disposiciones de carácter general para el registro de personas físicas o morales que presten servicios especializados o ejecuten obras especializadas a que se refiere el artículo 15 de la Ley Federal del Trabajo*. Gobierno de México, Mexico, 2021, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5619148&fecha=24/05/2021, accessed on 12 January 2022.

⁵⁹ Instituto Mexicano del Seguro Social, *Migran 2.7 millones de trabajadores del outsourcing a empresas reales: IMSS*, IMSS, Mexico, 2021, available at: <http://www.imss.gob.mx/prensa/archivo/202109/389>, accessed on 13 January 2022.

⁶⁰ *Ídem*

It is important to mention that the Federal Labour Law stipulates that the contracting party itself must ensure that its contractor complies with all social security and tax obligations, so as not to be subject to "joint and several liability". This measure encourages companies to comply with the legal framework and safeguards workers' rights.

4.2. Telework Reform

On 11 January 2021, the decree amending Article 311 and adding Chapter XII Bis of the Federal Labour Law in matters of Telework was published in the DOF.⁶¹ This reform seeks to regulate the work carried out under the telework or home office modality and is aimed at workers who do more than 40% of their activities at home or at a place other than the employer's place of work. The reform establishes the rights and obligations applicable to workers and employers who implement this modality, highlighting those measures that allow for a work-life balance; respect for the worker's working hours based on the right to digital disconnection; decent treatment through equal pay; training and enrolment in the mandatory social security system.⁶²

5. ORGANISATIONAL REFORMS

5.1 Social Security for Self-Employed Workers

On 13 January 2021, the General Rules of the Pilot Programme of the Simplified Model for the Voluntary Incorporation of Self-Employed Workers into the public social security system were published in DOF No. ACDO.AS2.HCT.260820/216.P.DIR.

Workers in the activities listed in Article 196 of the Regulations of the Social Security Law on Affiliation, Classification of Companies, Collection and Supervision, i.e. mainly in agriculture, mining, manufacturing, and textile industries, qualify for this pilot programme.

⁶¹ Diario Oficial de la Federación, *DECRETO por el que se reforma el artículo 311 y se adiciona el capítulo XII Bis de la Ley Federal del Trabajo, en materia de Teletrabajo*, Gobierno de México, Mexico, 2021, available at: https://www.dof.gob.mx/nota_detalle.php?codigo=5609683&fecha=11/01/2021, accessed on 18 January 2022.

⁶² Secretaría del Trabajo y Previsión Social, *Entra en vigor reforma que regula el teletrabajo en México*, Gobierno de México, Mexico, 2021, available at: <https://www.gob.mx/stps/prensa/entra-en-vigor-reforma-que-regula-el-teletrabajo-en-mexico?idiom=es>, accessed on 18 January 2022.

Its aim is to establish simplified administrative procedures to incorporate – on a voluntary basis – self-employed workers into the public social security system, thereby guaranteeing their right to health and social security.

5.2 Social Security for Digital Platform Workers

On 30 September 2021, the IMSS signed agreements with the various representatives⁶³ of digital platforms dedicated to passenger transportation and food distribution services in Mexico (Beat, Didi, Rappi and Uber), allowing the independent workers who provide their services on these platforms to voluntarily join the public social security system.⁶⁴

The agreements allow these digital platform workers to insure themselves against the following risks: illness and maternity, occupational risks, disability and life, retirement and old-age severance, old-age and day-care, and social benefits. Moreover, these benefits can be extended to their spouses, ascendants and descendants.

It should be pointed out that the signing of these agreements does not regularize workers' labour situation since the companies concerned do not recognize the existence of an employment relationship, which has in turn led to discontent among workers.

6. INTERNATIONAL SOCIAL SECURITY

6.1. Ratification of Domestic Workers Convention No. 189

On 12 December 2019, the Mexican Senate ratified the International Labour Organization (ILO) Domestic Workers Convention No. 189.⁶⁵ To this end, the Mexican government

⁶³ Enrique Mendoza López, general director of Beat México; Juan Andrés Panamá, general director of DiDi México; María-Pía Lindley, general director of DiDi Food México; Alejandro Solís, general director of Rappi México; Kathleen McInerney, Global Head of Public Affairs & Policy at Rappi; Gretta González, general director of Uber México; Ana Arroyo, general director of Uber Eats México; and Isabel Davara, secretary of Asociación de Internet MX. At: IMSS, IMSS firma convenios con plataformas de servicios digitales para promover la incorporación voluntaria de personas trabajadoras independientes, Sitio Web "Acercando el IMSS al Ciudadano", Mexico 2021, available at: <https://www.imss.gob.mx/prensa/archivo/202109/432>, accessed on 13 January 2022.

⁶⁴ *Cfr.* IMSS, IMSS firma convenios con plataformas de servicios digitales para promover la incorporación voluntaria de personas trabajadoras independientes, Sitio Web "Acercando el IMSS al Ciudadano", Mexico, 2021, available at: <https://www.imss.gob.mx/prensa/archivo/202109/432>, accessed on 13 January 2022.

⁶⁵ Senado de la República, *Senado ratifica Convenio 189 de la Organización Internacional del Trabajo*, Senado de la República, Mexico, 2021, available at: <http://comunicacion.senado.gob.mx/index.php/informacion/boletines/47233-senado-ratifica-convenio-189-de-la-organizacion-internacional-del-trabajo.html>, accessed on 13 January 2022.

deposited the ratification of the Convention with the Director-General of the International Labour Office on 3 July 2020. However, it was not until 3 June 2021 that this instrument entered into force to promote, protect and guarantee the human rights of the country's domestic workers, who have historically been denied the recognition of their labour rights, as well as decent work.

The entry into force of this Convention makes it possible to establish provisions in accordance with national legislation, taking into account the specific characteristics of domestic work, to ensure the progressive application of social security protection.⁶⁶

The ratification also ensures that domestic workers can assert their nationally recognized rights endorsed by this international instrument.

6.2. Mexico-U.S. Framework for Security, Public Health and Safe Communities

On 8 October 2021, the governments of Mexico and the United States of America signed a partnership framework on security, public health and safe communities, which aims to build safe communities with better health services to benefit citizens of both nations.⁶⁷ It should be noted that this agreement replaces the Merida Initiative, signed by both governments in 2008, which expired in July 2021.

This framework establishes the need to address the root causes of violence and crime, an aim that shall be approached through shared responsibility to achieve a better protection of health and safety in both countries. It is worth mentioning that at the close of the year, concrete guidelines for its implementation had yet to be established. It is expected that specific mechanisms will be in place by early 2022.

6.3. Memorandum of Understanding between the Ministry of Health of Mexico and the European Centre for Disease Prevention and Control

On 21 June 2021, the government of Mexico, represented by the Minister of Health, Jorge Alcocer Varela, and the Director of the European Centre for Disease Prevention and Control, Andrea Amman, signed a Memorandum of Understanding to strengthen collaboration between the European Union and Mexico on emerging health threats that could affect both partners.⁶⁸

⁶⁶ *Idem.*

⁶⁷ Gobierno de México, *Entendimiento Bicentenario sobre Seguridad, Salud Pública y Comunidades Seguras entre México y los Estados Unidos*, Gobierno de México, Mexico, 2021, available at: <https://www.gob.mx/sre/documentos/hoja-informativa-entendimiento-bicentenario>, accessed on 14 January 2022.

⁶⁸ Gobierno de México, *Comunicado conjunto: Salud-Relaciones Exteriores “Firman memorando Secretaría de Salud y Centro Europeo para la prevención y el Control de las Enfermedades”*, Gobierno de México, Mexico,

This Memorandum of Understanding is not limited to the exchange of information in the event of a public health emergency, but also provides for congresses, conferences, symposia, meetings and scientific workshops organized by the signatories, in addition to exchanges of personnel as well as educational and teaching materials.

7. SELECTION OF IMPORTANT PUBLICATIONS

7.1. Monographs

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8. ANNEXES

8.1. Supreme Court Rulings Discussed (in Order of Appearance)

PENSIÓN JUBILATORIA. EL MONTO MÁXIMO PREVISTO EN LA LEY DEL INSTITUTO DE SEGURIDAD Y SERVICIOS SOCIALES DE LOS TRABAJADORES DEL ESTADO ABROGADA Y EN EL RÉGIMEN DEL ARTÍCULO DÉCIMO TRANSITORIO DE LA LEY DEL ISSSTE VIGENTE, DEBE CUANTIFICARSE CON BASE EN EL VALOR DE LA UNIDAD DE MEDIDA Y ACTUALIZACIÓN (UMA) Y NO EN EL SALARIO MÍNIMO. Si bien la pensión jubilatoria constituye un derecho de seguridad social que deriva de la existencia de un vínculo laboral, en términos del artículo 123, apartado B, fracción XI, inciso a), de la Constitución, al cual los trabajadores del Estado tienen derecho una vez que cumplen con los requisitos de edad y años de servicio previstos legalmente, el aspecto relativo a su cuantificación, al no referirse a alguno de los requisitos que condicionan el otorgamiento del beneficio jubilatorio, corresponde a la materia administrativa y no a la laboral, de ahí que el monto máximo de la pensión jubilatoria establecido en los artículos 57 de la Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado abrogada, y 7 del Reglamento para el Otorgamiento de Pensiones de los Trabajadores Sujetos al Régimen del Artículo Décimo Transitorio del Decreto por el que se expide la Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, es una medida o referencia ajena a la naturaleza de lo que es el salario mínimo, y por tanto, debe cuantificarse a razón de diez veces el valor de la Unidad de Medida y Actualización. Tesis: 2ª./J.30/2021 (10ª.) Semanario Judicial de la Federación, Undécima Época 2023299, Segunda sala. Pensión jubilatoria.

PENSIONES JUBILATORIAS DE LOS TRABAJADORES DEL SISTEMA BANRURAL. PARA EL CÁLCULO DE SUS INCREMENTOS EN TÉRMINOS DEL ARTÍCULO 61 DE LAS CONDICIONES GENERALES DE TRABAJO, LOS DECREMENTOS O PORCENTAJES DEFLACIONARIOS (ÍNDICES NEGATIVOS), NO DEBEN INCLUIRSE PARA COMPROBAR QUE EL ÍNDICE DEL COSTO DE LA VIDA HA AUMENTADO EN UN 10% (DIEZ POR CIENTO) COMO MÍNIMO. El artículo 61 de las Condiciones Generales de Trabajo del Sistema Banrural dispone que las pensiones vitalicias de retiro se aumentarán en la misma proporción que el índice del costo de la vida cuando éste se haya aumentado en un 10% como mínimo. Ahora bien, el precepto invocado no prevé que además de tomar en cuenta los aumentos, también deban contemplarse los decrementos o porcentajes deflacionarios (índices negativos), al referir expresamente que: "Cuando se compruebe que el índice del costo de la vida ha aumentado en un 10% como mínimo ..."; es decir, la intención en el pacto colectivo fue únicamente considerar los aumentos de inflación en el índice del costo de la vida; ante ello, al tratarse de una prestación extralegal, pues es una regla que contiene una prestación superior a la Ley Federal del Trabajo, el artículo relativo debe ser interpretado en los términos literales en

los que se encuentra redactado, cuya única limitante es que el monto pensionario no rebase el sueldo tabular de los trabajadores en activo, pero sin atender cuestiones ajenas o de otra índole que no fueron expresamente establecidas y que son contrarias a la intención de las partes al convenir el ajuste por inflación en las pensiones, como lo es la consideración de decrementos o porcentajes deflacionarios. Tesis: PC.I.L. J/1 L (11a.). Gaceta del Semanario Judicial de la Federación. Undécima época. Pleno de circuitos.

MIEMBROS DE LAS FUERZAS ARMADAS MEXICANAS (PERSONAS FINADAS). LES ES APLICABLE EL ARTÍCULO 63 DEL CONVENIO NÚMERO 102 DE LA ORGANIZACIÓN INTERNACIONAL DEL TRABAJO, RELATIVO A LA NORMA MÍNIMA DE LA SEGURIDAD SOCIAL, ATENDIENDO AL PRINCIPIO PRO PERSONA. El artículo 63 del Convenio Número 102 de la Organización Internacional del Trabajo, Relativo a la Norma Mínima de la Seguridad Social, concede el beneficio de una pensión a los familiares del derechohabiente cuando la persona finada haya cumplido con un mínimo de cinco años de cotización, mientras que la Ley del Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas la condiciona a veinte años, tal como se aprecia de sus artículos 21, párrafo cuarto y 31, fracción III. Es por ello que, tratándose de los miembros de las Fuerzas Armadas Mexicanas (personas finadas), sí les resulta aplicable el artículo 63 del Convenio Número 102 de la Organización Internacional del Trabajo, relativo a la Norma Mínima de la Seguridad Social, atendiendo al principio pro persona, toda vez que el artículo 123, apartado B, de la Constitución Política de los Estados Unidos Mexicanos no prevé alguna restricción respecto de los años de cotización para que los militares obtengan una pensión sino que, en su fracción XIII, dispone que se regirán por sus propias leyes, por lo que las normas nacional e internacional no pugnan con las bases mínimas de seguridad social y, por ende, están de acuerdo con ella, pues una tutela de un modo y otra de otro el mínimo de cotización, por cuyo motivo se debe elegir y aplicar la norma más favorable que dé mayor protección en términos del artículo 1o. constitucional, la cual, en el caso, resulta ser la norma internacional. Tesis: PC.I.A. J/165 A (10a.). Gaceta del Semanario Judicial de la Federación. Decima época. Pleno de circuitos.

PENSIÓN POR VIUDEZ REDUCIDA. CONFORME AL CONVENIO 102 DE LA ORGANIZACIÓN INTERNACIONAL DEL TRABAJO (OIT), PROCEDE OTORGARLA CUANDO NO SE CUMPLIÓ CON EL PERIODO MÍNIMO DE COTIZACIÓN (INCONVENCIONALIDAD DEL ARTÍCULO 65 DE LA LEY DEL INSTITUTO DE SEGURIDAD SOCIAL DEL ESTADO DE TABASCO, ABROGADA). De conformidad con el artículo 65 de la Ley del Instituto de Seguridad Social del Estado de Tabasco abrogada, el derecho a la pensión por viudez se genera con la muerte del asegurado, siempre que hubiere cotizado al instituto por quince años o más. Por su parte, los artículos 59 a 64 del Convenio Número 102 de la Organización Internacional del Trabajo

(OIT), si bien imponen que debe garantizarse al cónyuge supérstite e hijos del trabajador un pago periódico que se traduce en una pensión económica conforme a periodos mínimos de cotización, lo cierto es que también exigen que cuando la prestación mencionada queda sujeta a un periodo mínimo, deben prevverse pensiones reducidas a partir de los tres y cinco años, dependiendo del caso. Así, el artículo 65 aludido, al condicionar el pago de la pensión por viudez a que se cumpla con el periodo mínimo de cotización (quince años), sin establecer pensiones reducidas, contraviene el aludido instrumento convencional. En consecuencia, en los casos en que se reclame el pago de una pensión por viudez sin haberse cumplido con el lapso mínimo de cotización exigido en la legislación local, debe atenderse a la norma internacional y, de ser procedente, otorgar la pensión reducida, tomando como base el porcentaje mínimo estipulado en la citada ley para delimitar el proporcional que debe pagarse de acuerdo con los años cotizados y el último salario devengado. Tesis X.2º.T.2L (10a.) Gaceta del Semanario Judicial de la Federación, Décima época. Tribunales Colegiados de Circuito.

SUSPENSIÓN DE PLANO EN EL JUICIO DE AMPARO. PROCEDE CONCEDERLA A LOS EMPLEADOS DEL SECTOR SALUD QUE FORMEN PARTE DE UN GRUPO VULNERABLE DURANTE EL FENÓMENO DE SALUD PÚBLICA DERIVADO DEL VIRUS SARS-CoV2 (COVID-19). Cuando un empleado del sector salud reclama en amparo indirecto la omisión o negativa de observar el "Acuerdo por el que se establecen las medidas preventivas que se deberán implementar para la mitigación y control de los riesgos para la salud que implica la enfermedad por el virus SARS-CoV2 (COVID-19)", y el "Acuerdo por el que se establecen acciones extraordinarias para atender la emergencia sanitaria generada por el virus SARS-CoV2", publicados en el DOF el 24 y el 31 de marzo de 2020, respectivamente, y éste demuestra encontrarse en algún grupo vulnerable al virus, contemplado en el primer acuerdo mencionado, debe concederse la suspensión de plano para que las autoridades responsables permitan de inmediato su resguardo domiciliario, sin responsabilidad alguna para la quejosa, con goce de sueldo íntegro y demás prestaciones a las que tenga derecho, derivadas de su relación laboral, y no con el alcance restringido de establecer su asistencia a la fuente de empleo con medidas de protección personal para ello, hasta en tanto se resuelva el juicio de amparo, o bien, hasta en tanto las autoridades federales sanitarias suspendan o den por concluida la emergencia sanitaria decretada en el país por el virus aludido; lo anterior, con independencia de que no se trate de los supuestos taxativamente precisados en el artículo 126 de la Ley de Amparo, pues dicho precepto no debe entenderse de forma limitativa, sino enunciativa, esto es, que las hipótesis que pueden presentarse para el otorgamiento de la suspensión de plano no son únicamente las establecidas en dicha norma, sino también en otros supuestos, como lo es cuando se trata del derecho a la salud, relacionando para ello el artículo 22 con el diverso 4o., ambos de la Constitución Política de

los Estados Unidos Mexicanos, a fin de evitar algún eventual riesgo que pudiera significar un daño o deterioro irreparable a ese derecho fundamental. Tesis VII.2o.T. J/68 L (10a.). Gaceta del Semanario Judicial de la Federación. Tribunales Colegiados de Circuito.

RIESGOS DE TRABAJO. EL ARTÍCULO 899-E, FRACCIÓN IV, DE LA LEY FEDERAL DEL TRABAJO (EN SU TEXTO ADICIONADO POR DECRETO PUBLICADO EN EL DIARIO OFICIAL DE LA FEDERACIÓN EL 30 DE NOVIEMBRE DE 2012), NO EXIGE COMO REQUISITO DE LOS DICTÁMENES MÉDICOS PARA SU CALIFICACIÓN Y VALUACIÓN UNA DETERMINADA EXTENSIÓN EN LOS RAZONAMIENTOS DEL PERITO PARA JUSTIFICAR EL NEXO CAUSAL ENTRE LA ACTIVIDAD DESARROLLADA POR EL TRABAJADOR O EL MEDIO AMBIENTE DE TRABAJO, CON LAS ENFERMEDADES DETECTADAS. El Pleno del Décimo Circuito establece que la extensión o no de los razonamientos en los dictámenes médicos no constituye una exigencia, de forma o de fondo, para que la Junta pueda apreciar la prueba pericial médica regulada en el artículo 899-E de la Ley Federal del Trabajo, porque su fracción IV no lo exige para acreditar el origen profesional de las enfermedades detectadas al limitarse a señalar, en el aspecto formal, que el dictamen médico debe contener los razonamientos para determinar la relación de causa-efecto entre la actividad específica desarrollada por el trabajador y el estado de incapacidad cuya calificación o valuación se determine.

8.2. Update of Research Resources

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