



MAX PLANCK INSTITUTE
FOR SOCIAL LAW AND SOCIAL POLICY

Social Law Reports

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Significant Changes: Improvement of Rights and Social Protection for Workers in Mexico

Reported Period: 2022

Cite as: Social Law Report No. 3/2023

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Department of Foreign and International Social Law

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ISSN 2366-7893

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LIST OF ABBREVIATIONS

ASF	Superior Audit of the Federation
BBVA	Banco Bilbao Vizcaya Argentaria
CISS	Inter-American Conference on Social Security
CJF	Council of the Federal Judicature
CONASAMI	National Council of Minimum Wages
CONEVAL	National Council for the Evaluation of Social Development Policy
CURP	Unique Population Registry Code
DOF	Official Journal of the Federation
IMSS	Mexican Social Security Institute
IMSS-BIENESTAR	Mexican Social Security Institute-Well-Being
INEGI	National Institute of Statistics and Geography
ISSSTE	Institute of Security and Social Services for State Workers
LFT	Federal Labor Law
NOM	Official Mexican Standard
OECD	Organization for Economic Cooperation and Development
ILO	International Labour Organization
WHO	World Health Organization
PEA	Economically Active Population
PIB	Gross Domestic Product
PJF	Judicial Power of the Federation
SCJN	Supreme Court of Justice
STPS	Secretary of Labor and Social Prevention
UNICEF	United Nations Children's Fund
USD	US Dollars

1. INTRODUCTION

The most noteworthy developments concerning social security in 2022 were the reforms to the Social Security Law, specifically the law that entitles domestic workers to social security; the reform to the Federal Labor Law, which, after 52 years, extended the number of vacation days for workers; as well as the reform of the supplemental pension plan for Federal Judiciary workers.

There are also certain resolutions, either as SCJN dissenting opinions or case-law, which, due to their innovative nature, should be included in this report. Among them, the most notable concerned widowhood pensions, the advancement of the human right to social security, survivors and the right to minimum subsistence income, occupational injury due to kidnapping, and the recognition of women as vulnerable persons in judgments that impact social security.

Considerable progress was also made with regard to the IMSS-Well-Being programme and Mexico's growing involvement in international social security law, which is reported in one of the last sections of this report.

2. ECONOMIC, POLITICAL AND SOCIAL SITUATION

2.1. Economy

The economic situation in 2022 has not helped the country's development, according to the latest National Institute of Statistics and Geography (INEGI) report on the Gross Domestic Product (GDP). GDP increased by 0.9% in the third quarter of the year compared to the same period in the previous year, representing an annual growth rate of 2.8%.¹ This figure is in line with the 2.9% economic growth forecast for the country by the Economic Commission for Latin America and the Caribbean.²

The most important revenues for Mexico in that year were remittances, oil exports, foreign direct investments and tourism.³

In this regard, remittances from Mexican nationals living abroad, specifically those residing in the United States of America and Canada, closed the year with an all-time high of \$ 58.4 billion

¹ Instituto Nacional de Estadística y Geografía, Producto Interno Bruto, INEGI, Mexico, 2022, p.1, at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2022/pib_pconst/pib_pconst2022_11.pdf, accessed on 17 January 2023.

² Instituto Nacional de Estadística y Geografía, *Economías de América Latina y el Caribe se desacelerarán en 2023 y crecerán 1,3%*, CEPAL, Mexico, 2022, at: <https://www.cepal.org/es/comunicados/economias-america-latina-caribe-se-desaceleraran-2023-creceran-13>, accessed on 9 January 2023.

³ Carbajal Braulio, *Ingresos externos alcanzan máximos históricos*, La jornada, Mexico, 2022, at: <https://www.jornada.com.mx/2022/10/27/economia/024n1eco>, accessed on 17 January 2023.

dollars, making Mexico the second largest recipient of remittances in the world, with China holding first place. Remittances in the country have been increasing over recent years, as shown in the following table:

Table 1
Remittances to Mexico over the last five years

Year	Amount
2022	\$58.40 billion USD
2021	\$53.13 billion USD
2020	\$39.50 billion USD
2019	\$35.46 billion USD
2018	\$33.48 billion USD
2017	\$28.60 billion USD

Source: Prepared by the author based on the Yearbooks of Migration and Remittances Mexico for 2017, 2018, 2019, 2020 and 2021 compiled by BBVA Research.⁴

2.2. Labor

According to official data from INEGI, the Economically Active Population (EAP) in the country comprised 59.5 million people as of November 2022, 1.2 million more than the previous year. The EAP consisted of 35.8 million men and 23.7 million women, meaning that 77 out of every 100 working-age men and 45 out of every 100 women were economically active.⁵ It is worth noting that 57.4 million (96.6%) of the EAP are employed; however, 31.9 million (55.6%) of the working population are in the informal economy. Seven million people (12.3 %) work in the primary sector,⁶ 14.3 million (24.9%) in the secondary sector,⁷ and 35.7 million (62.2%) in the tertiary sector.⁸ The remaining 0.6% did not provide information on that score.⁹

⁴ BBVA Research, *Anuarios de Migración y remesas*, at: https://www.bbva.com/wp-content/uploads/2018/09/1809_AnuarioMigracionRemesas_2018.pdf, <https://www.bbva.com/publicaciones/mexico-anuario-de-migracion-y-remesas-2019/#:~:text=En%202019%2C%20las%20remesas%20a,2018%20represent%C3%B3%202.7%25%20del%20PIB>, <https://www.bbva.com/publicaciones/anuario-de-migracion-y-remesas-mexico-2020/>, <https://www.bbva.com/publicaciones/anuario-de-migracion-y-remesas-mexico-2021/>, <https://www.bbva.com/publicaciones/mexico-anuario-de-migracion-y-remesas-2022/>, accessed on 17 January 2023.

⁵ Instituto Nacional de Estadística y Geografía, *Nota Técnica*, INEGI, Mexico, 2022, p. 2, at: https://www.inegi.org.mx/contenidos/programas/enoe/15ymas/doc/enoe_n_notas_tecnicas_trim3_2022.pdf, accessed on 10 January 2023.

⁶ Consisting of agriculture, livestock production, forestry, hunting and fishing.

⁷ Consisting of the industrial sector.

⁸ Consisting of the commercial sector and services.

⁹ Instituto Nacional de Estadística y Geografía, *Op. cit.*

According to IMSS¹⁰ data of November 2022, 785,551 jobs were created in the past year, the third highest number of job enrolment per month in the IMSS.¹¹ This institute has a registry of 21.7 million formal jobs, 86.3% of which are permanent and 13.7% temporary.

Finally, it's worth noting that the National Minimum Wage Commission (CONASAMI), a decentralized public entity responsible for establishing minimum wages in the country, approved a significant increase of 22% for the general, the professional, and the Northern border free zone¹² minimum wages for 2022. In the case of the general minimum wage, it rose from \$141.70 pesos (\$7.39 USD) in 2021 to \$172.87 pesos (\$9.01 USD) in 2022. For the Northern border free zone, the minimum wage increased from \$213.39 pesos (\$10.04 USD) to \$260.34 pesos (\$12.05 USD).¹³

2.3. Poverty

Poverty is measured by the National Council for the Evaluation of Social Development Policy (CONEVAL), which publishes its results every two years. The last measurement in 2020 found that 55.7 million people in the country were living in poverty, with 10.8 million living in conditions of extreme poverty. In other words, 43.9% of the Mexican population was affected by poverty.¹⁴ The CONEVAL is expected to release the new poverty measurements for the country corresponding to the year 2022 in the first half of 2023.¹⁵

CONEVAL also issued a report on “in-work poverty” for the third quarter of 2022, indicating that the real monthly per capita labor income for this period was \$2,807.49 pesos (\$146.45 USD) with an annual increase of 1.4% compared to the previous year. Nevertheless, “in-work poverty” increased nationwide from 38.3% to 40.1%, mainly as a result of the increase in prices of the basic food basket.¹⁶

¹⁰ The Institute Mexican Social Security (IMSS) is the only national social security institution for workers in the private sector.

¹¹ Instituto Mexicano del Seguro Social, *Puestos de trabajo afiliados al Instituto Mexicano del Seguro Social*, IMSS, 2022, at: <https://www.imss.gob.mx/prensa/archivo/202212/627>, accessed on 10 January 2023.

¹² The minimum wages for the Northern border free zone are established for 43 municipalities in the states of Baja California, Sonora, Chihuahua, Coahuila, Nuevo León, and Tamaulipas, which are adjacent to the United States of America.

¹³ Comisión Nacional de los Salarios Mínimos, *Incremento a los Salarios Mínimos para 2022*, CONASAMI, 2022, Mexico, at: <https://www.gob.mx/conasami/articulos/incremento-a-los-salarios-minimos-para-2022?idiom=>, accessed on 9 January 2023.

¹⁴ Consejo Nacional de Evaluación de la Política de Desarrollo Social, *Medición de la pobreza*, CONEVAL, Mexico, 2020, at: <https://www.coneval.org.mx/Medicion/Paginas/PobrezaInicio.aspx>, accessed on 10 January 2023.

¹⁵ National Council for the Evaluation of Social Development Policy, *Measuring poverty*, CONEVAL, Mexico, 2020, In: <https://www.coneval.org.mx/Medicion/Paginas/PobrezaInicio.aspx>, accessed 10 January 2023.

¹⁶ Consejo Nacional de Evaluación de la Política de Desarrollo Social, *El CONEVAL presenta información referente a la pobreza laboral al tercer trimestre de 2022*, CONEVAL, Mexico, 2022, p.1, at: https://www.coneval.org.mx/SalaPrensa/Comunicadosprensa/Documents/2022/COMUNICADO_18_ITLP_3T_2022.pdf, accessed on 10 January 2023.

The cost of the basic food basket¹⁷ per person in urban areas increased from \$1,901.66 pesos (\$99.19 USD) in 2021 to \$2,124.70 pesos (\$110.83 USD) in 2022; in rural areas, it rose from \$1,463.43 pesos (\$76.33 USD) in 2021 to \$1,630.95 pesos (\$85.07 USD) in 2022.¹⁸

Thus, while the real labor income *per capita* was \$146.45 USD in 2022, the cost of the basic food basket in urban areas amounted to \$110.83. It must be noted that this basket does not include goods and services for transportation, education, recreation, clothing, or personal care, among others.

3. EVOLUTION OF SOCIAL PROTECTION SCHEMES

3.1. Old-Age Schemes: Supplementary Pension for Judiciary Staff of the Federation

Old-age pensions for Federal Judiciary staff consist of two components: the pension granted by ISSSTE – based on a mandatory defined contribution system with a guaranteed pension, and a supplementary occupational pension, established by General Agreement of the Federal Judiciary Council.¹⁹

The function of the supplementary pension is to provide greater economic security and well-being for retired workers through a lifelong monthly payment to federal circuit magistrates, district judges, and senior officials of the Supreme Court of Justice of the Nation (SCJN). It also includes survivor pensions for surviving spouses or common-law partners, as well as for children up to the age of 16, or permanently if they have a disability.

The investment and administration trust fund provides 1% of its financing, while 99% of expenditures are charged to the SCJN regular annual budget. The amount of the supplementary pension is calculated based on 80% of the net salary received at the time of retirement, age and years in service. Accordingly, a distinction is made between forced retirement upon reaching the age of 75, and voluntary retirement upon reaching the age of 65. In both cases, it is

¹⁷ The term 'basic food basket' refers to the set of products and services considered essential for the subsistence and well-being of the members of a family. The basic food basket is made up of basic grains (corn, beans, oats, rice, coffee, etc.); meat, fish, eggs, milk and dairy products, personal care items (toilet paper, disposable diapers, and toothpaste, among others); health care items (hydrogen peroxide, adhesive bandages, cotton, condoms, and others); cleaning products (detergent, soap, etc.); and fruits and vegetables. Gobierno de México, *Canasta Básica: importancia y avances*, Gobierno de México, at: <https://www.gob.mx/agricultura/articulos/canasta-basica-importancia-y-avances#:~:text=Los%20grupos%20de%20productos%20que,%2C%20pasta%20dental%2C%20entre%20otros>), accessed on 17 January 2023.

¹⁸ Blog CONEVAL, *Valor de la canasta alimentaria, diciembre 2022*, CONEVAL, Mexico, 2023, at: <http://blogconeval.gob.mx/wordpress/index.php/2023/01/11/valor-de-la-canasta-alimentaria-diciembre-2022/>, accessed on 10 January 2023.

¹⁹ Diario Oficial de la Federación, *ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma el que regula el plan de pensiones complementarias de Magistrados de Circuito y Jueces de Distrito, en relación con la pensión a beneficiarios*, Secretaría de Gobernación, México, 2022, at: https://dof.gob.mx/nota_detalle.php?codigo=5662662&fecha=26/08/2022#gsc.tab=0, accessed on 19 January 2023.

necessary to have had at least 25 years of service. For the benefit calculation, a maximum of 35 years of service is taken into account, with 80% of the net salary received at the time of retirement.

This Supplementary Pension Plan was reformed on 26 August 2022²⁰ and now provides for more generous rules for the calculation of survivors' pensions: 1. The bases for the calculation of pensions will no longer be subject to the worker's age and length of service. Instead, a maximum limit is established in all cases (80% of the monthly income of magistrates and judges at the time of their death). 2. Pensions will be granted based on the worker's last gross wages, which is higher than the net salary used before the reform. 3. The survivors are entitled to receive a supplementary pension, which added to the ISSSTE pension, shall represent an amount equivalent to 80% of the gross monthly income that the active public servant was receiving at the time of his or her death. In no case may the supplementary pension be less than 25% of the gross monthly salary received by active circuit judges or district judges.

Various legislators have criticized this measure. Although generous pension benefits may be legitimate to guarantee the independence of judges, the reform hardly aligns with the presidential discourse of 'republican austerity,' which should include all public servants.

3.2. Survivors

3.2.1. Survivors and the Right to the Minimum Subsistence Income

Two arguments were brought forward by Federal Courts to protect the minimum subsistence income for the beneficiaries of workers. On 13 May 2022, a Collegiate Circuit Court issued a criterion²¹ stipulating that the orphanhood pension cannot be less than the general minimum wage in force, thus guaranteeing a life in dignity for the beneficiaries of this pension.

The authority points out that, by law, orphans are entitled to 20% of the wages their parent received before his or her death and to 30% in the event of the death of both parents. This percentage, however, should never be less than the general minimum wage in force, in order to ensure that the beneficiaries receive the necessary resources to have a decent and dignified quality of life. In addition, it points out that establishing otherwise would violate beneficiaries' right to the minimum needed for economic subsistence provided for in Article 31, Section IV, of the Constitution.

b) The second argument was issued by the SCJN on 15 July 2022 through case law protecting the right to social security of the beneficiaries of a deceased worker, who prior to his death

²⁰ Diario Oficial de la Federación, *ACUERDO General del Pleno del Consejo de la Judicatura Federal, que reforma el que regula el plan de pensiones complementarias de Magistrados de Circuito y Jueces de Distrito, en relación con la pensión a beneficiarios*, Secretaría de Gobernación, México, 2022, at: https://dof.gob.mx/nota_detalle.php?codigo=5662662&fecha=26/08/2022#gsc.tab=0, accessed on 19 January 2023.

²¹ Tesis: VIII.1o.C.T.15 L (10a.), at: <https://sif2.scjn.gob.mx/detalle/tesis/2024603>, accessed on 1 December 2022.

had initiated the process to reinstate his rights to IMSS benefits. He had to do so, because Mexico has two social security laws that regulate workers in the private sector: the Social Security Law of 1973 (repealed) and the Social Security Law of 1997 (in force). Both laws, in Article 183, Section III, and Article 151, Section III, respectively, stipulate that if a person stops contributing for a period of more than 6 years, he or she must reinstate the previously paid contribution weeks by contributing 52 more weeks. In other words, a worker must work in the formal sector for at least one more year for his or her previously paid contribution weeks to be recognized. However, if the insured person dies without reinstating the required number of contribution weeks, the 1973 law does not include a specific provision to guarantee the rights of the deceased worker's beneficiaries who were unable to restore their rights.²²

The SCJN reviewed the case and ruled that the abovementioned articles in both social security laws violated the right to social security by not providing for these rights to be reinstated in the event of the worker's death. Since this was a cause outside the worker's control and if the event (the worker's death) had not occurred, the worker could have been able to cover the remaining weeks to reinstate the contributions to the point of being sufficient for a widowhood pension. Consequently, the rules in question cannot be applied to the detriment of the beneficiaries and a widowhood pension must be granted to the wife of the deceased worker.

The analysis of these two resolutions, along with those analyzed in reports of previous years, shows that the Court clearly tends to place the human right to social security, and to minimum subsistence in particular, above the literal interpretation of the law in force. The national provisions have not yet been adjusted to the interpretation given by the Court. This would be urgently necessary, however, because the Court's judgments only protect the plaintiffs.

3.2.2. Right to Combine Widowhood Pensions and Benefits from Own Employment

By means of case law issued on 12 April 2022,²³ the SCJN protected the right to social security and the right to enjoy a widowhood pension, even when beneficiaries receive other social security benefits from their own employment.

The SCJN ruled that Article 6, Section XII, Subsection 2, of the Law of the Institute of Security and Social Services for State Workers (ISSSTE), and Article 12, Section II, Subsection c, of the Regulations for Granting Pensions to Workers Subject to the Regime of the 10th Transitory Article of the ISSSTE are unconstitutional as they prohibit beneficiaries from receiving a widowhood pension when they are active workers. Since the SCJN considers that both legal entitlements (to a widowhood pension and to benefits based on the widow's own employment) are compatible and are intended to improve the standard of living of the family members of

²² Tesis: 2a./J. 26/2022 (11a.), at: <https://sjf2.scjn.gob.mx/detalle/tesis/2024952>, accessed on 2 December 2022.

²³ Tesis: 2a./j. 20/2022 (11a.), at: <https://sjf2.scjn.gob.mx/detalle/tesis/2024507>, accessed on 2 December 2022.

the deceased worker, the deceased worker's wife will be entitled to a widowhood pension, regardless of the rights she has generated on her own account.

With this judgment, the Court takes one step forward in recognizing labor rights and separating them from the human right to social security.

3.3. Maternity Protection and Job Stability

The protection of maternity through social security law and labor law is found in two judgments published in 2022.

a) In a dissenting opinion dated 14 June 2022, a Collegiate Circuit Court upheld the right to render a judgment with a gender perspective in the case of employers not registering their pregnant workers with the social security system. The dispute arose when a female worker sued for the payment of medical expenses for childbirth because her employer had not registered her with the social insurance. The employer neither responded to the claim, nor provided proof of registration with the social security system.

In its analysis, the Court noted that Articles 46, 47, 48 and 49 of International Labour Organization (ILO) Convention No. 102 on Social Security (Minimum Standards); Article 170, Sections II and V, of the Federal Labor Law; Article 84, Section I, 85, 88 and 94, Sections I and II, of the Social Security Law, establish that working women have the right to maternity protection during pregnancy and childbirth, as well as the right to coverage of medical expenses arising therefrom, with guaranteed benefits in money and in kind. Therefore, if the employer has not registered the worker with the mandatory social security regime and she seeks coverage of the expenses during pregnancy, confinement and postpartum, the employer must pay said expenses, taking the gender perspective into account.²⁴

b) The second judgment was published on 18 March 2022. A Circuit Collegiate Court held that the dismissal of pregnant women must always be considered from a gender perspective, taking into account the particularities of the case, which thus has to be judged less rigorously. During pregnancy and after childbirth, women are protected by the Constitution, as the risk of facing disadvantages during this stage of their lives is high due to a lack of job stability, discrimination, and dismissals arising from pregnancy-related absences, among others.²⁵

These judgments were positively received by various feminist associations, which, in addition to their ongoing protests against femicides, have also fought for labor rights for women.

²⁴ Tesis: VI.1o.T.3 L (11a.), at: <https://sjf2.scjn.gob.mx/detalle/tesis/2024841>, accessed on 2 December 2022.

²⁵ Tesis aislada: II.2o.T.3 L (11a.), at: <https://sjf2.scjn.gob.mx/detalle/tesis/2024317>, accessed on 7 December 2022.

3.4. Industrial Accidents: Occupational Injury due to Kidnapping

The Second Collegiate Court on Labour Matters in the Fourth Circuit issued a judgment by means of an isolated opinion²⁶ worth analysing since it deals with an occupational risk caused by a criminal act and the beneficiary being a woman.

This judgment declares the existence of an occupational risk arising from the death of a worker and rules that the widow and orphans are entitled to the corresponding benefits. This was determined despite the fact that the occupational risk arose from a worker having been kidnapped presumably on his way home from work, without any specific evidence as to where he had been kidnapped, which was to be considered an accident *in itinere*. Although the ransom was paid, the worker was not found dead or alive.

The court stated that in judging from a gender perspective, the worker's wife was in a vulnerable position and the rights of her young children had to be protected. Hence, the existence of the occupational risk was recognized.

3.5. Social Security for Domestic Workers

On 16 November 2022, the Federal Official Gazette published a decree amending, adding and repealing various provisions of the Social Security Law regarding the insurance for domestic workers.²⁷ This reform came about as a result of a direct *amparo*²⁸ filed before the Second Chamber of the SCJN. The ruling on the *amparo* found that Section II of Article 13 of the Social Security Law was unconstitutional as it stated that domestic workers may voluntarily join the social security system, thereby undermining the employer's obligation to insure them and thus restricting their right to access various branches of insurance.

In 2018, the Court had issued an unprecedented ruling, in which it mandated the legislative branch to set up guidelines for the IMSS and to reform the relevant laws to effectively protect the domestic workers' enjoyment of the human right to social security. This judgment gave rise to several legislative processes:

- On 2 July 2019, amendments to the Federal Labor Law and the Social Security Law²⁹ entered into force, officially recognizing domestic workers as persons entitled to social

²⁶ Poder Judicial de la Federación, Segundo Tribunal Colegiado en materia de trabajo del cuarto Circuito, Amparo Directo 762/2021, at: http://sise.cjf.gob.mx/SVP/word1.aspx?arch=157/01570000279330240006006.docx_1&sec=Ra%C3%BAID%C3%ADaz_Villarreal&svp=1, accessed on 19 January 2023.

²⁷ Diario Oficial de la Federación, *DECRETO por el que se reforman, adicionan y derogan diversas disposiciones de la Ley del Seguro Social, en materia de personas trabajadoras del hogar*, Secretaría de Gobernación, Mexico, 2022, at: https://dof.gob.mx/nota_detalle.php?codigo=5671665&fecha=16/11/2022#gsc.tab=0, accessed on 12 January 2023.

²⁸ Suprema Corte de Justicia de la Nación, *Amparo Directo 9/2018*, SCJN, Mexico, at: <https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/resumen/2020-12/Resumen%20AD9-2018%20GDH.pdf>, accessed on 9 January 2023.

²⁹ Cámara de Diputados del H. Congreso de la Unión, *Decreto por el que se reforman, adicionan y derogan diversas disposiciones de la Ley Federal del Trabajo y de la Ley del Seguro Social, en materia de las personas trabajadoras*

insurance in the mandatory system and, consequently, to all benefits, and placing the corresponding responsibility on employers.³⁰

- In July 2020, the Mexican State ratified ILO Convention 189 on domestic workers, which strengthens its prior commitment to draft the appropriate legislation to ensure the necessary protection for them.³¹
- The IMSS launched a pilot programme aimed at guaranteeing domestic workers access to social security on equal terms with mandatorily enrolled workers, specifically the coverage of medical, hospital and pharmaceutical services and obstetric care, disability benefits as well as access to a disability and life pension, retirement funds, and other social benefits like childcare.³²

Finally, a special chapter on domestic workers was added to the Social Security Law and published on 16 November 2022 in the Federal Official Gazette. Chapter XI of Title Two of the Social Security Law is made up of Articles 239-A to 239-H, which establish social security-related conditions for domestic workers, including a calculation of the contribution base wages of domestic workers and the days payments are to be made to the IMSS.³³

3.6. Social Assistance Programmes: IMSS-Well-Being

In 2022, the Federal Official Gazette published the decree by which the decentralized public entity called Health Care Services of the Mexican Social Security Institute for Well-Being (IMSS -Well-Being) was created, replacing the 2019 federal government social assistance programme of the same name. As with the predecessor programme, its objective is to offer health services at the local level for persons not covered by social security. More specifically, it aims to “contribute to guaranteeing the constitutional right to health by providing health services, at different levels of care, thereby implementing and applying the Comprehensive Health Care Model (*Modelo de Atención Integral a la Salud* - MAIS) which combines the provision of health services with the active participation of the community in self-care, thus benefitting the population without social protection.”³⁴ The mission of this recently created body is to expand its

del hogar, Diario Oficial de la Federación, at: https://www.diputados.gob.mx/sedia/biblio/prog_leg/Prog_leg_LXIV/043_DOJ_02jul19.pdf, accessed on 9 January 2023.

³⁰ Cfr. Ley del Seguro Social, Article 12.

³¹ Cfr. Senado de la República, *Comisión de Trabajo y Previsión Social, Oficio: CTPS/LXV /0143/2021*, at: https://infosen.senado.gob.mx/sgsp/gaceta/65/1/2021-12-14-1/assets/documentos/CTPS_Relatoria_Parlamento_Abierto.pdf, accessed on 9 January 2023.

³² Instituto Mexicano del Seguro Social, *Programa Piloto: Incorporación de las Personas Trabajadoras del Hogar*, Mexico, 2022, p. 3, at: https://www.gob.mx/cms/uploads/attachment/file/437796/PROGRAMA_PILOTO-comprimido.pdf, accessed on 19 January 2023.

³³ The new chapter contains a definition and categories (239-A), lists who is not considered within this category (239-B), establishes employer obligations (239-C) and specifies the cases in which insurance may be terminated (239-D).

³⁴ Secretaría de Gobierno, *ACUERDO mediante el cual se establecen las Reglas de Operación del Programa IMSS-BIENESTAR para el ejercicio fiscal 2022*, Diario Oficial de la Federación, de 24 de diciembre de 2022, at: https://www.dof.gob.mx/nota_detalle.php?codigo=5639354&fecha=24/12/2021#:~:text=Reglas%20de%20Op

services to 65.5 million people without social protection and provide free, quality and universal health care.³⁵

In 2022, IMSS-Well-Being operated in 24 states and served more than 25 million people in 350 hospitals. On an average day, close to 55,000 medical consultations, 262 surgical procedures, more than 29,000 laboratory tests, and about 236 deliveries are performed.³⁶

The beneficiaries of the IMSS-Well-Being programme are:

1. persons who are not covered by social security and reside in one of the areas where IMSS-Well-Being operating agreements have been signed, and
2. foreign migrants in transit through national territory.³⁷ It should be noted that migrants in transit are comparable to visitors without permission to perform gainful activities, based on the provision of the 6th Transitory Article of the Migration Law. According to Mexican law, such persons are foreigners staying under conditions as visitors, whom the law “[a]uthorizes [...] to transit or remain in national territory for a maximum uninterrupted period of 180 days, counted as of the day of entry, and [who are] not permitted to carry out activities subject to remuneration in the country.”³⁸

They receive the following benefits:

1. first level medical care comprising basic emergency care, mental health care, nursing and preventive medical services.
2. second level medical care, which includes general surgery, services in the field of gynaecology/obstetrics, internal medicine, pediatrics, anesthesiology, family medicine and epidemiology. It should be mentioned that it has not yet been determined who shall provide highly specialized medical care and how such care shall be delivered to programme beneficiaries.³⁹

[eraci%C3%B3n.%2C%20eficiencia%2C%20equidad%20y%20transparencia.&text=Reglamento%20Interior%20del%20Instituto%20Mexicano%20del%20Seguro%20Social](#), accessed on 16 March 2022.

³⁵ Instituto Mexicano del seguro Social, *Cumple IMSS 80 años de ser garante del derecho humano a la salud y protección a la seguridad social*, IMSS, México, 2022, at: <http://www.imss.gob.mx/prensa/archivo/202301/031#:~:text=En%202022%20se%20cre%C3%B3%20el,de%20la%20historia%20del%20IMSS>, accessed on 25 January 2023.

³⁶ Instituto Mexicano del Seguro Social, *IMSS-Bienestar no es un cambio de rótulo, sino de régimen en atención médica: Zoé Robledo*, México, 2022, at: <https://www.imss.gob.mx/prensa/archivo/202212/656>, accessed on 23 January 2023.

³⁷ Secretaría de Gobierno, *ACUERDO mediante el cual se establecen las Reglas de Operación del Programa IMSS-BIENESTAR para el ejercicio fiscal 2022*, Diario Oficial de la Federación, de 24 de diciembre de 2024, at: https://www.dof.gob.mx/nota_detalle.php?codigo=5639354&fecha=24/12/2021#:~:text=Reglas%20de%20Operaci%C3%B3n.%2C%20eficiencia%2C%20equidad%20y%20transparencia.&text=Reglamento%20Interior%20del%20Instituto%20Mexicano%20del%20Seguro%20Social, accessed on 16 March 2022.

³⁸ Ley de Migración, Article 52.

³⁹ IMSS: Bienestar para toda la vida, *Aportaciones a la política pública del Sector Salud y estrategias para el fortalecimiento de la Seguridad Social 2018-2024*, México, 2018, at: https://www.gob.mx/cms/uploads/attachment/file/428868/Programa_IMSS_Bienestar_para_toda_la_vida.pdf, accessed on 20 June 2022.

The requirements to access medical services are:

1. a visit of any of the medical facilities in person.
2. the presentation of the Unique Residents' Registration Code (CURP). If this Code is missing, a birth certificate or official identification (National Electoral Institute card, passport or professional license) has to be provided.

4. LABOR LAW REFORMS AND THEIR IMPACT ON SOCIAL SECURITY

4.1. Decent Holidays

On 27 December 2022, an important reform amending Articles 76 and 78 of the Federal Labor Law (LFT) regarding vacation periods for workers in the private sector was published in the Federal Official Gazette. This marks the most significant reform of the century regarding vacations. Despite appearing to be a solely labor-related reform, the causes underlying it are needs social security should address: work-related stress and its impact on workers' health. The main purpose of this reform aims at increasing workers' vacation days, which, prior to the reform, consisted of 6 days for the first year of service and is now double at 12 days.

Every year, two days of vacation are added up to the total amount of 20 days. Thereafter, two days of vacation will be added for every five years of service. Another advantage of this reform is that it allows the worker to decide whether to take vacation days consecutively or in shorter periods. The table below provides an overview of the vacation days now in force.

Table 2
Vacation days per years of service following the December 2022 reform

Vacations	
Years of Service	Days of Vacation
1 year	12 days
2 years	14 days
3 years	16 days
4 years	18 days
5 years	20 days
6 to 10 years	22 days
11 to 15 years	24 days
16 to 20 years	26 days
21 to 25 years	28 days
26 to 30 years	30 days
31 to 35 years	32 days

Source: Created by the author based on *Decreto por el que se reforman los artículos 76 y 78 de la Ley Federal del Trabajo, en materia de vacaciones* published on 27/12/23.

The reform was justified by mainly four arguments:

1. The number of vacation days had not been increased in 52 years under the current LFT of 1970.⁴⁰

2. It is the combined result of various initiatives⁴¹ aimed at increasing vacation days. From a comparative law perspective, Mexican legislation greatly contrasts with many other labor legislations, such as those of Great Britain and Ireland, where the minimum vacation period is set at 28 days.

3. Several years ago, Mexico started regulating psychosocial risk factors in the workplace to improve working environments, especially since the Official Mexican Standard NOM-035-STPS-2018 on the prevention of psychosocial risks in the workplace entered into force in 2019.

4. Data on work-related stress have also contributed to passing this reform. According to the World Health Organization (WHO), 75% of the Mexican population suffers from work-related stress, placing Mexico above major economic powers like China and the United States. Moreover, based on figures from the Organization for Economic Co-operation and Development (OECD), Mexico is also the country with the highest number of hours worked, given that a Mexican worker performs an average of 2,124 hours a year while the world average stands at 1,687 hours per year.⁴²

Work-related stress has a significant impact on the social security system as it leads to high costs. Based on ILO data, the latter can range from 0.5% to 3.5% of the GDP, which in the case of Mexico is between \$5 billion and \$40 billion dollars.⁴³

5. INTERNATIONAL SOCIAL SECURITY

5.1. Ratification of ILO Convention C190

On 6 April 2022, the decree approving ILO Convention 190 concerning the elimination of violence and harassment in the world of work, adopted in Geneva on 21 June 1919, was published

⁴⁰ Diario Oficial de la Federación, *Original Ley Federal del Trabajo*, DOF, Mexico, at: https://www.diputados.gob.mx/LeyesBiblio/ref/lft/LFT_orig_01abr70_ima.pdf, accessed on 10 January 2023.

⁴¹ 22 September 2020 by Senator Sasil de León Villard, 9 December 2021 by Senator Geovanna del Carmen Bañuelos de la Torre, 10 February 2022 by Senator Patricia Mercado Castillo, 15 June 2022 by Senator Ricardo Velázquez Meza, and 20 September 2022 by Senator Bertha Alicia Caraveo Camarena.

⁴² Senado de la República, Comisión de Trabajo y Previsión Social, *Dictamen de las Comisiones Unidas de Trabajo y Previsión Social y de Estudios Legislativos, Segunda, en sentido positivo, recaído a las Iniciativas de Proyecto de Decreto de Reforma y Adición de Diversas disposiciones de la Ley Federal del Trabajo en materia de vacaciones dignas*, at: https://infosen.senado.gob.mx/sgsp/gaceta/65/2/2022-10-25-1/assets/documentos/Dict_Com_Trabajo_Div_Dispo_Ley_Federal_Trabajo_Vacaciones_Dignas.pdf, accessed on 9 January 2023.

⁴³ Hernández, Gerardo, *¿Cuánto le cuesta el estrés laboral a empresas, personas y economía en México?*, El economista, Mexico, 2022, at: <https://www.economista.com.mx/capitalhumano/Cuanto-le-cuesta-el-estres-laboral-a-empresas-personas-y-economia-en-Mexico-20220803-0097.html>, accessed on 17 January 2023.

in the Federal Official Gazette.⁴⁴ This international instrument recognizes the right of everyone to a world of work free from violence and harassment, applies to all types of work and considers the fact that work is not always carried out in a specific space and, thus, has a broad perspective.

ILO Convention 190 protects workers, including employees, as defined by national law and practice; persons working irrespective of their contractual status; persons in training, including interns and apprentices; workers whose employment has been terminated; volunteers; jobseekers and job applicants; and individuals exercising the authority, duties or responsibilities of an employer.⁴⁵

The ratification of this agreement, which entered into force on 6 July 2023, is particularly important because although Mexican labor legislation has already included provisions on workplace bullying since 2012, it needs to be updated to 1) cover different types of harassment, such as subordinate workers bullying their supervisors and 2) make it applicable to all types of workers.

5.2. Framework Agreement Between CONEVAL and CISS

The National Council for the Evaluation of Social Development Policy of the United Mexican States (CONEVAL) and the Inter-American Conference on Social Security (CISS) signed a Framework Agreement for Technical Cooperation⁴⁶ to advance the analysis and generation of evidence on the effectiveness of public policies regarding access to social rights and social protection. This agreement entered into force on 13 June 2022.

The agreement is valid for 5 years, renewable for periods of equal length, and encompasses: a) studies and evaluations of social policies and programmes in Mexico; (b) research projects on regional programmes and policies; (c) seminars, courses, workshops and conferences; (d) joint publications; e) exchange of information on events of interest that may be circulated on social networks.

⁴⁴ Diario Oficial de la Federación, *Decreto por el que se aprueba el Convenio 190 sobre la Eliminación de la Violencia y el Acoso en el Mundo del Trabajo, adoptado en Ginebra, el veintiuno de junio de dos mil diecinueve*, Secretaría de Gobernación, Mexico, 2022, at: https://www.dof.gob.mx/nota_detalle.php?codigo=5648165&fecha=06/04/2022#gsc.tab=0, accessed on 13 January 2023.

⁴⁵ Gaceta del Senado, Dictamen de las Comisiones Unidas de Trabajo y Previsión Social y de Relaciones Exteriores del Senado de la República, por el que se aprueba el Convenio 190 de la Organización Internacional del Trabajo "Sobre la eliminación de la violencia y el acoso en el mundo del trabajo, adoptado en Ginebra, el 21 de junio de 2019", Ciudad de México, 15 de marzo de 2022. https://www.senado.gob.mx/64/gaceta_del_senado_documento/124374, accessed on 22 December 2022.

⁴⁶ Consejo Nacional de Evaluación de la Política de Desarrollo Social de los Estados Unidos Mexicanos (CONEVAL) y Conferencia Interamericana de Seguridad Social (CISS), *Convenio Marco de Colaboración*, Ciudad de México, 13 June 2022, at: <https://ciss-bienestar.org/wp-content/uploads/2022/02/Convenio-CISS-CONEVAL-2022.pdf>, accessed on 17 December 2022.

5.3. Memorandum of Understanding between IMSS and UNICEF

On 1 March 2022, the Mexican Social Security Institute (IMSS) and the United Nations Children's Fund (UNICEF) signed a Memorandum of Understanding to implement strategies for the prevention, detection and treatment of all forms of malnutrition among pregnant women, children and adolescents.⁴⁷ This strategic alliance does not only target undernourishment, but also improper nutrition. The 2020 National Nutrition Survey reported an increase in overweight and obesity among children, reaching 18.6% in 2021.⁴⁸ In the adult population, 74.1% were either overweight (38.1%) or obese (36%).⁴⁹

5.4. Memorandum of Understanding between STPS, IMSS and UNICEF

On 10 August 2022, the Ministry of Labor and Social Welfare (STPS), the Mexican Social Security Institute (IMSS) and the United Nations Children's Fund (UNICEF) signed a Memorandum of Understanding to establish the foundations and mechanisms for institutional technical collaboration with the aim to advocate for family-oriented policies and encourage breastfeeding in the workplace.⁵⁰

The initiative is part of the joint efforts of the STPS, IMSS and UNICEF to draft, inter alia, "Guidelines for the design and operation of lactation rooms and for the promotion of a breastfeeding culture in the workplace." It should be mentioned that Mexico is committed to the protection of the universal right to breastfeeding in all regulatory spheres. Its respective policy⁵¹ is based on various international instruments signed by the Mexican State and national regulations. As a result, in 2018, Mexico established the Draft Mexican Official Standard PROY-NOM-050-SSA2-2018 for the promotion, protection and support of breastfeeding.⁵²

This Memorandum is noteworthy in that in Mexico, in addition to the promotion of breastfeeding and the provision of childcare for workers' children, more measures need to be taken to improve the work-life balance.

⁴⁷IMSS y UNICEF-México, *Memorándum de Entendimiento para Prevenir de Manera Radical la Mala Nutrición*, Ciudad de México, 1 March 2022, at: http://www.imss.gob.mx/sites/all/statics/i2f_news/IMSS.%20Boletín.%20104%200.pdf, accessed on 19 December 2022.

⁴⁸ Instituto Nacional de Salud Pública, *Encuesta Nacional de Salud y Nutrición 2020*, INSP, Mexico, 2020, p.20 at: <https://ensanut.insp.mx/encuestas/ensanutcontinua2020/doctos/informes/ensanutCovid19ResultadosNacionales.pdf>, accessed on 11 January 2023.

⁴⁹ *Ibidem*, p. 188.

⁵⁰ UNICEF, *Memorándum de Entendimiento Secretaría del Trabajo y Previsión Social (STPS), el Instituto Mexicano del Seguro Social (IMSS) y el Fondo de las Naciones Unidas para la Infancia (UNICEF)*, Mexico, 10 August 2022, at: <https://www.unicef.org/mexico/comunicados-prensa/para-fortalecer-acciones-en-favor-de-la-lactancia-materna-en-centros-de-trabajo>, accessed on 26 December 2022.

⁵¹ UNICEF-México, *"Lactancia y Trabajo"*, 2018, at: <https://www.cjf.gob.mx/micrositios/DGDHIGyAI/resources/campanas/lactanciaMaternaComoDerecho.pdf>, accessed on 10 January 2023.

⁵² It should be mentioned that this is still a project and not yet in force.

5.5. Memorandum of Understanding between Spain and Mexico on Workers' Rights

On 30 November 2022,⁵³ Mexico and Spain signed a Memorandum of Understanding to work together towards respecting labor rights, restoring lost purchasing power of the minimum wage, and eliminating subcontracted labor.

This instrument provides for cooperation in defending workers' rights, in the training of skills adapted to technological and environmental innovations in the labor market, as well as in fostering the social economy and democracy in the workplace.

In addition, it was agreed that the two countries would pursue the same policies in terms of increasing the minimum wage, improving working conditions and social protection for vulnerable groups, strengthening labor inspection, and promoting social dialogue, freedom of association, effective collective bargaining and vocational training for young people.

6. CONCLUDING REMARKS

Among the notable social security and labor law changes in Mexico that undoubtedly contributed to the improvement of workers' rights in 2022 are:

1. the historic legal reforms: the first to the Social Security Law, guaranteeing social security rights for domestic workers, and, after 52 years, the extension of vacation days for workers;
2. the discontinuation of the PROSPERA program and the health insurance system known as Seguro Popular, replaced by INSABI (National Health Institute), and this year, the creation of the public entity IMSS-Well-Being. The benefits of this substitution will need to be analyzed, taking into account that it is a recently implemented governmental measure that requires time to adapt and determine whether the results are favorable for beneficiaries.
3. The Supreme Court of Justice of the Nation, through the analysis of cases brought before it, issued resolutions that provide valuable guidance to judges nationwide on how to approach novel or consequential issues currently arising. Examples include the progressiveness of the human right to social security in cases of widowhood pensions, the right to a minimum subsistence income in the allocation of orphan's pensions, and the protection of maternity rights, among others. They demonstrate that significant advances in social security are also achieved through judicial decisions.

Undoubtedly, it has been a year of progress.

⁵³ Memorandum de Entendimiento sobre Cooperación y Asistencia Técnica entre España y México para la defensa de los derechos de los trabajadores, 30 November 2020, at: <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/trabajo14/Paginas/2022/301122-diaz-mexico.aspx>, accessed on 5 December 2022.

7. SELECTION OF IMPORTANT PUBLICATIONS

7.1. New Monographs

- Carbonell, Miguel, *Legislación Sobre Seguridad Social (IMSS e ISSSTE)*, Editorial Tirant lo Blanch, 4 ed., 2022, México
- Castellanos Varela, Oscar J. et al., *El ABC de la seguridad social, publicación independiente*, 2022, México
- Coppoletta, Sebastián, *Las obligaciones implícitas en el contrato relacional de trabajo*, Editorial Tirant lo Blanch, 2022, México
- CROSS, *Las pensiones en México. Ley del seguro social, ley del ISSSTE y pensiones privadas*, Editorial Instituto Mexicano de Contadores Públicos (IMCP), 2022, México
- Guadarrama Rinconi, Albalinda, *El trabajo remunerado de la mujer*, Editorial Tirant lo Blanch, 2022, México
- Ibarra Olguín, Ana María (coord.), *“Derecho a la seguridad social”, Pensiones de vejez e invalidez*, Editorial Centro de Estudios Constitucionales de la Suprema Corte de Justicia de la Nación, 2022, México
- Jiménez Moles María del Rosario, Pardío Vargas Alfonso (coord.), *Los grandes cambios del derecho del trabajo en México*, Editorial Tirant lo Blanch, 2022, México
- Martínez Carrillo, Carlos Ferran (coord.), *Los derechos fundamentales laborales*, Editorial Tirant lo Blanch, 2022, México
- Martínez Suazo, Froylán, *La conciliación como forma de solución a los conflictos de trabajo*, Editorial Tirant lo Blanch, 2022, Ciudad de México
- Mendizábal Bermúdez, Gabriela et al., *Alianza del pacífico: condiciones migratorias laborales y de seguridad social*. Universidad Externado de Colombia, Colombia, 2022
- Pérez Chávez, José, Fol Olguín, Raymundo, *Guía práctica laboral y de seguridad social 2022*, Editorial Tax, 2022, México
- Rostro, José Luis, López Serrano, Erick, *Derecho laboral, sindicalismo y nuevas tecnologías*, Editorial Tirant lo Blanch, 2022, México
- Tena Suck, Rafael, Morales Saldaña, Hugo Ítalo, *Derecho procesal del trabajo*, Editorial Trillas, 2022, México

7.2. Articles

- Aguilar Cisneros Kenia Yasbeth, Rincón Mayorga César Alejandro, *La definición de las indeterminaciones constitucionales relacionadas con la seguridad social*, Revista Latinoamericana de Derecho Social, ISSN-e 1870-4670, N.º. 34, 2022, UNAM, Instituto de Investigaciones Jurídicas, At: <https://revistas.juridicas.unam.mx/index.php/derecho-social/article/view/16731>
- Atlatenco Ibarra, Quetzalli et al., *Eficiencia de gestión de las sociedades de inversión especializada en el ahorro para el retiro de los jóvenes en México*, Estudios del Desarrollo Social vol. 10 no. 3, La Habana sept.-dic. 2022, at: Eficiencia de gestión de las sociedades de inversión especializada en el ahorro para el retiro de los jóvenes en México (sld.cu)
- Barrera Arias, María et al., *El derecho laboral, parte del derecho social en México: origen y estado actual, libro la ciencia del derecho, aportes de la investigación jurídica en*

- posgrados Colombia y México*. Sincelejo - Sucre Colombia, Corporación Universitaria del Caribe – CECAR, 2022
- Centro de Estudios de las Finanzas Públicas, *Las Pensiones y las Finanzas Públicas en México, 1997-2030*, Palacio Legislativo de San Lázaro, México, 2022, at: <https://www.cefp.gob.mx/publicaciones/investigaciones/inv4.pdf>
- Dávalos Morales, José, *El derecho de huelga*, revista número 68, marzo-abril 2022, UNAM, Instituto de Investigaciones Jurídicas, México, at: <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/16743>
- Dávalos Morales, José, *El trabajo decente*, revista número 70, julio-agosto 2022, UNAM, Instituto de Investigaciones Jurídicas, México, at: <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/17191>
- Dávalos Morales, José, *Los trabajadores del campo*, revista Número 69, mayo-junio 2022, UNAM, Instituto de Investigaciones Jurídicas, México, at: <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/17080>
- Dávalos Morales, José, *Unificación de la seguridad social*, revista número 67, enero-febrero 2022, UNAM, Instituto de Investigaciones Jurídicas, México, at: <https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/16651?articlesBySameAuthorPage=1#articlesBySameAuthor>
- Dávila Soto, Josué Mesraim, *Seguridad Social de los trabajadores de plataformas digitales en México*, *Ius et Scientia* 2022, Vol. 8, Nº1 ISSN 2444-8478, Editorial Universidad de Sevilla 2022, at: <https://revistascientificas.us.es/index.php/ies/article/view/21170/18566>
- Fernández Cuevas, María Patricia, *El derecho humano a la seguridad social de las mujeres indígenas migrantes del valle del mezquital: un tema pendiente en la procuración de justicia*, *Revista de Investigación Científica del Instituto de Formación Profesional de la PGJEH*, estado de Hidalgo, at: <https://www.revistapgjeh.com/index.php/ifpp/article/view/20>
- Mendizábal Bermúdez, Gabriela, *Hacia la construcción de un derecho social comparado*, *Boletín Mexicano de Derecho Comparado*, nueva serie, año LIV, Núm. 162, 2021, at: <https://revistas.juridicas.unam.mx/index.php/derecho-comparado/article/view/17073/17615>
- Morales Ramírez, María Ascensión, *Subcontratación laboral. Reformas en materia de seguridad social*, *Revista latinoamericana de derecho social*, ISSN-e 1870-4670, Nº. 34, 2022, México
- Orozco Genders, Mónica E. et al., *Movilidad social, políticas de cuidados y protección social*, *Genders*, A. C., centro de estudios Espinosa Yglesias (CEEY), at: 01-Orozco-et-al-2022_compressed.pdf (ceey.org.mx).

8. ANNEXES

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

Tesis: 2a./j. 20/2022 (11a.), Gaceta del Semanario Judicial de la Federación, undécima época, 2024507, segunda sala de la Suprema Corte de Justicia de la Nación

PENSIÓN POR VIUDEZ PARA BENEFICIARIOS QUE SE ENCUENTRAN COMO TRABAJADORES EN ACTIVO. EL ARTÍCULO 6, FRACCIÓN XII, INCISO 2), DE LA LEY DEL INSTITUTO DE SEGURIDAD Y SERVICIOS SOCIALES DE LOS TRABAJADORES DEL ESTADO, QUE IMPIDE DE MANERA TOTAL EL DISFRUTE DE TAL DERECHO, RESULTA INCONSTITUCIONAL POR LESIONAR EL DERECHO A LA SEGURIDAD SOCIAL. A una persona se le negó el pago de la pensión por viudez, pues la autoridad de seguridad social estimó que, debido a que se encontraba desempeñando un trabajo remunerado e incorporado al régimen del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, no podía gozar simultáneamente del pago de la referida pensión y de las prestaciones derivadas de su propia situación laboral, acto que fue emitido con fundamento en los artículos 6, fracción XII, inciso 2), de la Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, y 12, fracción II, inciso c), 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. En la primera instancia del juicio de amparo se concedió formalmente la protección constitucional en relación con ambas disposiciones, sin embargo, únicamente se realizó el estudio correspondiente respecto de la norma reglamentaria.

Tesis: VIII.1o.C.T.15 L (10a.), Gaceta del Semanario Judicial de la Federación, Undécima época Primer tribunal colegiado en materias civil y de trabajo del octavo circuito.

PENSIÓN POR ORFANDAD. DE LA INTERPRETACIÓN CONFORME DE LOS ARTÍCULOS 156 Y 157 DE LA LEY DEL SEGURO SOCIAL DEROGADA, SE CONCLUYE QUE SU MONTO MÍNIMO NO DEBE SER MENOR AL SALARIO MÍNIMO GENERAL VIGENTE, PARA SATISFACER EL DERECHO AL MÍNIMO VITAL. De la interpretación gramatical de los artículos 156 y 157 de la Ley del Seguro Social derogada, se advierte que la pensión por orfandad se otorga a los hijos menores de 16 años de edad (con posibilidad de prorrogarla), así como a los mayores que no puedan mantenerse con trabajo propio debido a una enfermedad crónica, defecto físico o psíquico, cuando fallezca su padre o madre, y que si disfrutaban de una pensión por invalidez, vejez o cesantía en edad avanzada, y contaban con un mínimo de 150 cotizaciones semanales, el monto de la pensión por orfandad debe corresponder al 20% de la pensión de que se trate cuando falte uno de los ascendientes, y de 30% cuando sean ambos.

Tesis: 2a./J. 26/2022 (11a.), Gaceta del Semanario Judicial de la Federación, Undécima Época, 2024952, Segunda Sala de la Suprema Corte de Justicia de la Nación.

DERECHOS DE SEGURIDAD SOCIAL. EL ARTÍCULO 183, FRACCIÓN III, DE LA ANTERIOR LEY DEL SEGURO SOCIAL, Y SU CORRELATIVO 151, FRACCIÓN III, DE LA VIGENTE, AL NO PREVER LA FIGURA DE LA REACTIVACIÓN DE DERECHOS DE UNA PERSONA TRABAJADORA QUE FALLECE SIN HABER COTIZADO CINCUENTA Y DOS SEMANAS DESPUÉS DE REINGRESAR AL RÉGIMEN OBLIGATORIO, VULNERAN EL DERECHO FUNDAMENTAL A LA SEGURIDAD SOCIAL. Los Tribunales Colegiados de Circuito contendientes analizaron la constitucionalidad de la negativa de otorgar la pensión por viudez a raíz del fallecimiento de la persona trabajadora acaecido antes de completar el periodo de reactivación de cotizaciones de cincuenta y dos semanas previsto en los citados artículos, pese a que en periodos anteriores ya había reunido las cotizaciones necesarias para el otorgamiento de la pensión. Así, un tribunal sostuvo que al no preverse en la legislación la hipótesis de conservación de derechos de una persona trabajadora que al reingresar al régimen obligatorio fallece sin haber cotizado cincuenta y dos semanas, no violaba los principios de seguridad social y utilidad pública previstos en el artículo 123, apartado A, fracción XXIX, de la Constitución Federal, mientras que otros tribunales coincidieron en que la ausencia de tal previsión violaba el principio de utilidad pública, en tanto privaba a las personas beneficiarias de las prestaciones que la persona trabajadora generó.

Tesis: VI.1o.T.3 L (11a.), Gaceta del Semanario Judicial de la Federación, Undécima Época, 2024841, Tribunales Colegiados de Circuito.

GASTOS MÉDICOS EROGADOS POR EMBARAZO, PARTO Y PUERPERIO. CONFORME AL MÉTODO DE JUZGAR CON PERSPECTIVA DE GÉNERO, PROCEDE SU PAGO CUANDO NO QUEDE DEMOSTRADO QUE EL PATRÓN INSCRIBIÓ A LA TRABAJADORA EN EL SEGURO SOCIAL. Una trabajadora demandó el pago de gastos médicos que tuvo que erogar para dar atención a su parto, debido a que su patrón no la inscribió en el Seguro Social. Fundó su reclamo en los artículos 123, apartado A, fracción V, de la Constitución Política de los Estados Unidos Mexicanos y 170 de la Ley Federal del Trabajo. Por su parte, el demandado no contestó ese hecho ni probó la inscripción en el régimen de seguridad social. Este Tribunal Colegiado de Circuito determina, al juzgar el asunto con perspectiva de género, que el patrón debe pagar los gastos erogados para sufragar la atención médica recibida durante el embarazo, parto y puerperio, cuando no acredita haber inscrito a la trabajadora en el Seguro Social.

Tesis aislada: II.2o.T.3 L (11a.), Gaceta del Semanario Judicial de la Federación, Undécima época, Tribunales Colegiados de Circuito.

DESPIDO DE UNA TRABAJADORA EMBARAZADA. LA CAUSAL DE RESCISIÓN POR FALTAS DE ASISTENCIA DURANTE EL PERIODO DE GRAVIDEZ DEBE JUZGARSE CON PERSPECTIVA DE GÉNERO, APLICANDO UN ESTÁNDAR PROBATORIO FLEXIBLE. La actora presentó demanda laboral en la que alegó despido injustificado. El tribunal del conocimiento absolvió al demandado bajo la consideración de que aquélla no acreditó los presupuestos de su acción, en tanto que el demandado justificó sus excepciones y defensas. Este Tribunal Colegiado de

Circuito determina que tratándose del despido de una mujer en condición de gravidez, el deber de juzgar con perspectiva de género implica apartarse de resultados formalistas y, paralelamente, conlleva una apreciación de los hechos y pruebas en conciencia, en la especie, conforme a un estándar probatorio más laxo para la empleada –ya que le correspondía a ésta la carga de la prueba–, que permita valorar los medios aportados con apego a un estudio de razonabilidad.

8.2. Update of Research Resources

8.2.1. Digital References

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8.2.2. Legislation

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Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado

Ley de Migración

Ley del Seguro Social

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