

WIDOW'S PENSION BENEFITS FOR COMMON-LAW PARTNERS OR SPOUSES AFTER THE REPEAL OF MEXICO SOCIAL SECURITY LAW ARTICLE 130, SECOND PARAGRAPH

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ABSTRACT

The objective of this research is to evaluate the repeal of paragraph 2, Article 130 of the Social Security Law in Mexico. Our research shows that its repeal will make it easier for the common-law partner or widowed spouse to apply for a pension. This is under the assumption that the wife contributed during her working life to the social security system so that her family can receive a future benefit to guarantee a stable economic situation for her common-law partner or husband. On the other hand, it is illegal to set requirements based on gender when applying for a pension. A question arises: will the common-law partner be able to obtain a pension? The problem occurs when the common-law partner is denied a pension because he can't prove economic dependence, as established in Article 130 of the Social Security Law. By imposing additional gender-based requirements on the husband or common-law partner to qualify for the pension, compared to those required of a wife, Article 120 paragraph two violates the fundamental rights to equality and non-discrimination to social security. The treatment is unjustified. We conclude due the repeal of Article 130 paragraph two widowers will be able obtain a pension provided that his wife contributed to the pension system.

JEL: J33, J32, K34

KEYWORDS: Pension, Benefits, Common-Law, Spouse, Repeal, Mexico

INTRODUCTION

The central idea is for common-law or spouse to receive a pension when his wife dies. According to the law of the Mexican Social Security Institute, valid until 2022, to obtain the pension, it was necessary to demonstrate or prove economic dependence before this institution. In Article 130 of the Social Security Law, it established verbatim: “that only the wife will be entitled to the widow's pension, and directly excluded the husband except for when the husband demonstrates economic dependence (LSS, Diputados, 2021). Due to lack of knowledge, men did not request a pension when their spouse died even if she was affiliated with the IMSS (Mexico Social Security System).

As of June 2023, the second paragraph of Article 130 of the Social Security Law (IMSS) was reformed or repealed, which establishes that: a spouse or common-law partner may obtain the widow's pension, in the absence of this, he or she may receive a disability pension (LSS, DOF, 2023). With this modification or repeal, widowers who were denied a pension will now be able to apply because it is considered an acquired right. The rest of this research is organized as follows: in the literature review section, the conceptualization of pensions is presented, the meaning of repealing, as well as historical background, Political Constitution

of the United Mexican States, Fundamental Rights, Social Security Law, Labor Law o Federal Labor Law with the idea of substantiating its legality. Next, we present methodology, results and conclusion sections.

The general objective of this research is *to* analyze repeal of the second paragraph of Article 130 so that spouses or common-law partners can request a pension. The specific goals are first, to analyze the repeal of the second paragraph of Article 130 LIMSS (Ley Instituto Mexicano del Seguro Social), so that common-law partner can obtain the pension without proving economic dependence. Second, to identify which subjects or common-law partners will have the right to request the widow's pension. We wish to identify why the economic dependency requirement was repealed for widowed spouse or widowed common-law partners? Second, widowed spouses or widowed common-law partners will have the right to request a pension in accordance with the repeal of the second paragraph of Article 130 LIMSS.

Problem

When an insured worker dies, the widowed wife or common-law partner will have the right, according to the second paragraph of Article 130 LIMSS, to claim pension as a widowed spouse (LIMSS, 2023). This benefit is also available to other public entities such as Mexican Institute for Social Security and Services for State Workers or Civil Service Social Security (ISSSTE) or Institute for Social Security for the Armed Forces, including army, air force and navy (ISSFAM).

Compared to other public entities, the same right is bestowed upon the widowed or common-law beneficiary, widow or common-law partner, when the deceased worker belongs to the IMSS and other public entity such a (ISSSTE) or (ISSFAM) for active members, or retired from the army, air force or navy.

The requirements to access the benefit for widow's pension are not the same for men and women. In the case of a female widow or female common-law partner, proof of economic dependence is not required. Literally, the woman is not required to prove her total physical or mental inability to perform a job. Of the three institutes indicated in the previous paragraph, only the Mexican Social Security Insurance Law maintains these gender discriminatory conditions. This breaks the principle of generality.

This research argues, if spouse worked and paid the same contributions to secure a future pension for himself, herself or for the spouse or common-law partner, and if IMSS received the revenue, the spouse or common-law partner cannot be denied the benefit of a pension.

LITERATURE REVIEW

Pensions

A pension is an amount paid to someone for their own merits or services or monetary compensation given to a public worker or employee for his/her years of working or for suffering an accident or for suffering from some systematic disability. The pension is not a free or generous concession from the state or the employer. Rather, a pension is a benefit paid and earned by the worker. The right is acquired by the worker with his/her contributions and based on the number of years of productive work. These contributions have been deducted from the employers. The worker's spouse, if he or she is over fifty-five years of age or is incapable of working, will also have the right (Jurídico, 1999). With these characteristics, a right to common-law partner is acquired.

Within legal analysis the term common-law partner in the Civil Code Article 291 Bis. establishes that it is “the union of a man and a woman, free of marriage, who for more than two years have a marital life without being united in marriage with each other, as long as they have no legal impediments to contracting it” (Civil Code Article 291 Bis) . It is not required to comply with the aforementioned period when they have

common descendants (Villalobos, 2021). However, article 1635 establishes that common-law partners have the right to inherit reciprocally, applying the provisions relating to the succession of the spouse, provided that they have lived together if they were spouses during the five years preceding their death or when they have had children in common. (Villalobos, 2021). There is a discrepancy in years but at least two years must be legally demonstrated.

Repeal

Leaving without legal effect an article, a paragraph, a subsection, this may be in a law, regulation, code, or in a provision that can be annulled or revoked in accordance with the legislation. The legislator considers the harmony that exists in the laws, that they do not contradict each other, meaning that there is subsumption.

There are two types of abrogation: 1) express, which refers to the textual definition, and 2. Tacit, which refers to the abrogation of a law by virtue of incompatibility (Gobernacion, 2023). This concept is considered so that readers identify the change in the second paragraph of Article 130 of the Law of the Mexican Social Security Institute, which is considered an abrogation because this section was left without legal effect, meaning this restriction for the common-law partner is no longer in the legislation.

Background

Because of the Covid-19 pandemic, widow's pensions doubled in the Mexican Social Security Institute, reaching \$12 Billion pesos per year. According to IMSS, pensions granted went from 61 thousand pensions in 2019 to 114,000 pensions in 2021. However, their statistics also mention that 102 thousand widow's pension applications were rejected (Vitela, 2022).

The number of rejections gives us an idea of how many lawsuits are needed to restore the widow's pension to men with equal requirements and without discrimination, in accordance with the unconstitutionality of Art.130 LSS. It is also important to consider budgetary impacts the Institute may have due to the increase in the number of pensions granted to widows and common-law partners as a result of the release of these discriminatory requirements (Amparo, 2009).

Political Constitution of the United Mexican States

Article 123, section A, section XXIX, (CPEUM) Fundamental right to protect citizens and their family in the event of a fatal event that results in an acquired right to a pension. In this environment, it includes the beneficiaries or family in which they must be equal without restriction, that is, as much right as the spouse, common-law partner or family has (Amparo Seguro Social, 2009). It is a transgressor of the fundamental human rights of equality, non-discrimination, and Social Security, of Articles 1, 4, and 123 section XXIX, of the CPEUM due to a gender issue toward a beneficiary and deceased insured worker (Viudez del Art. 130, 2010).

Fundamental Rights

Imprescriptible is a right that will never lose validity and denying this benefit violates the guarantee of subsistence, attention to basic health expenses and threatens the life of the family. Once the second paragraph of Article 130 of the LIMSS has been repealed, as of June 20, 2023 by decree of the Presidency of the Republic, it reclassifies any widowed or common-law beneficiary who has received a refusal based on the failure to prove the economic dependence of the deceased insured or pensioner. The Institute will be in a position to demand replacement of the widow's pension payment (Pension a trabajador de acuerdo a articulo 130 fraccion II LIMSS, 1999).

An Acquired Right is an integral part and cannot be taken away from a governed person. Therefore, the restriction on getting married or entering into common-law relationship to suspend pension payments is repealed. Article 133 establishes that a pension from the death of an insured spouse will cease when the beneficiary dies or remarries. She or he will receive three years of pension. However, the pension is not suspended when beneficiary performs paid work and contributed to the retirement program. (Pension a trabajador de acuerdo a articulo 130 fraccion II LIMSS, 1999).

Mexican Social Security Institute

On January 19, 1943, the IMSS Law was born, which was published DOF. President Ávila Camacho created this public entity to guarantee comprehensive access for workers, with the general objective of guaranteeing the right to health, medical care, protection among others, it began its activities in January 1944, which was reflected in the Magna Carta of 1917, in its Article 123 section XXIX (Garcia Tellez, 1943).

According to the second paragraph, Article 130 the wife of the pensioner or the disability pensioner will have the right to the widow's pension. If the wife is missing, the common-law partner, or the wife, will have the right to receive the pension. This occurs when she lived for five years as if he were her husband, or with whom she had children. If he dies and has several common-law partners, none of them will have the right (LSS, Diputados, 2021). Table 1 presents the requirements to obtain a widow's pension.

Table 1: Requirements to Obtain a Widow's Pension from the IMSS

1	The “deceased” should have 150 weeks of contributions”, except if the death was due to risk (LSS, Diputados, 2021).	4	“You must prove the marriage bond, or the common-law partnership”
2	Your rights must be current.	5	Common-law partner must prove economic dependence on the spouse
3	If the death is due to an occupational hazard, a "ST-3 Permanent Disability or Death Due to an Occupational Hazard" a report is required.	6	If a common-law partner wants his 1973 pension: He must prove his total disability, with "ST-6 Disabled Beneficiary Opinion". 7

This table presents the requirements that the spouse must meet to obtain the pension, before the Mexican Institute of Social Security IMSS, in accordance with law until June 19, 2023. It still appears that the common-law partner must prove the economic dependence (LSS, Diputados, 2021).

To summarize the modification to the multi-cited Law (LSS), we point out how the right to obtain a widow's pension is defined in its Article 64 Section II. This provision states that both the deceased dependent beneficiary man and woman have the right to financial benefit. But it excludes, distinguishes, and discriminates by requiring that the person be incapacitated and financially dependent on the spouse (LSS, Diputados, 2021).

The refusal of the Mexican Social Security Institute to modify the articles that contain the distinction between beneficiaries seeks to prevent its budget from being affected. However, it must be remembered that insured workers made the payments corresponding to their contribution. There is no direct relationship between maintaining a paid job or being unable to work, with the right to obtain a pension as a result of the death of the insured or pensioner.

In accordance with Article 295 of the IMSS, discrepancy between the insured, or beneficiaries, and the IMSS, the benefits that this Law provides, “must be processed before the Federal Courts in labor matters, while those presented between the Institute and employers, will be processed before the Federal Court of Administrative Justice” (LSS, Diputados, 2021). The current IMSS law establishes that for a man to receive a widow's pension, he must have been financially dependent on the worker, a precept that since 2018 was indicated by CONAPRED as discriminatory (CONAPRED, 2018).

Labor law

This law states in its Article 56 that there should be no restriction based on race, nationality, sex, among others. In this section, we deal with discrimination based on gender. If work is the same for women and men, the rights and benefits arising from that employment relationship should be the same. If contributions are made to the IMSS under equal conditions, without distinction of gender of the insured or pensioner, the same rights and benefits must be generated when accessing a pension (Garcia, 2005). This article is very clear to define the acquired right.

The courts, through various jurisprudential theses, have declared that widowers have the right to a pension simply because they are the husband of the worker. Claiming a pension is an inextinguishable right. Yes, you can do it or claim it when you become widowed, in accordance with the thesis: I.6°. T.61 L (10th.), 2013. The courts rule that those who meet the requirements established in the laws can claim the pension.

METHODOLOGY

We use a qualitative and procedural approach to conduct this research. The study was conducted in 2023, in the city of Monclova, Coahuila. For our procedural and legal foundation, we used the Social Security Law, Federal Labor Law, Fundamental Rights, and Political Constitution of the United Mexican States, among other that help to identify how to analyze the right to obtain a spouse's pension? Table 2 provides a comparison of the repeal of the second paragraph of Article 130. The repeal came in effect on June 20, 2023. With a methodological procedure, it is possible to demonstrate to the authority that as of June 2023, common-law partners may request a widow's pension when their spouse dies, without the spouse or common-law partner having to prove their economic dependence. And this repeal goes further, common-law partners who were denied the pension in previous years for not being able to prove financial solvency, now that the second paragraph of the article 130 has been repealed, this means that they will be able to request the pension to obtain this acquired right.

RESULTS

We provide two descriptive tables to demonstrate to implications of repealing Article 130 second paragraph. In Table 2, we provide a comparison of the legislation of the Mexican Social Security Institute valid until June 19, 2023, where the economic dependence of the common-law partner is established in the second paragraph. Current law repealed economic dependence which was a triumph for common-law partners. In Table 3: Article 64 section II the restriction for the widower to demonstrate economic dependence appears and in the new law of June 20, 2023, the aforementioned restriction appears repealed.

Table 2: Comparison of Security Legislation from 2022 to 2023

Basis	Social Security Law to 2022	LIMSS Reform June 20, 2023
Article 130, second paragraph	Right to pension for the wife of the insured person or the disability pensioner, or the woman who lived for five years or with whom he had children, who both have been “free from marriage during concubinage. If when the insured person or disability retired wife died, he had several concubines, none of them will have the right to receive the pension (LSS, Diputados, 2021).	Right to a widow's pension for the spouse of the insured person or the invalidity pensioner z. In the absence of a spouse, the concubine or common-law partner of the insured person or disability pensioner, who has lived for five years preceding his or her death, or who has had children, who both have remained free from marriage during concubinage, or the person who has entered into a civil union with the insured or the pensioner. If when the insured person died due to disability, he had several concubines or common-law partners, none of them will have the right to receive the pension (LIMSS, 2023).
	“The same pension will correspond to the widower or common-law partner who was economically dependent on the insured worker or pensioner due to disability (LSS, Diputados, 2021).”	Abrogated (LIMSS, 2023)

This table presents a comparison of the law of 2022 and 2023. In the first column, which corresponds to the year 2022, it establishes in the second paragraph that the common-law partner must prove economic solvency and in the event that he does not have elements to prove dependency. According to the law, the common-law partner was denied economic benefits. As of June 20, 2023, this second paragraph was repealed, therefore he will have the right to request the pension according to the year in which it came into force.

Table 3: Comparison of the IMSS Law for Year 2022 and Year 2023

Basis	Social Security Law to 2022	LIMSS Reform June 20, 2023	Proposal
third paragraph, Section II Art. 64.	Section II. The widow will be granted a pension equivalent to forty percent of what would have corresponded to him, in the case of permanent disability. Same pension to the widower who <u>would have been financially dependent on the insured</u> . The amount of this pension may not be less than the minimum amount corresponding to the widow's pension from disability and life insurance (LSS, Diputados, 2021).	“ Fraction II. <u>The widow or widower of the insured, the common-law wife or partner who survives him or her</u> , or anyone who has entered into a civil union with the insured, will be granted a pension equal to forty percent of that which would have corresponded to the insured, in the case of total permanent disability. The amount of this benefit may not be less than the minimum amount corresponding to the widow's pension from disability and life insurance” (LIMSS, 2023).	Repealed text to modify (LIMSS, 2023)

This table presents a comparison of the validity of the laws. In this case, Article 64, section II, of the IMSS Law, in which the economic solvency appears until the year 2022, but on June 20 it was repealed and eliminated the term of economic dependence on the spouse so this beneficiary will be able to request the pension without having to prove this requirement.

There may be different scenarios, which are taken as a precedent to request the pension. For example: who is granted a pension? Some interesting cases occur such as the husband of a deceased woman who was never divorced, or to the common-law partner of the deceased who lived with the woman at the time of her death. The answer must be with the one who was legally married to her, but if the common-law partner legally proves that he lived with her as husband and wife in the last two years, the IMSS will withdraw the husband's pension, and neither the husband nor the common-law partner will receive a pension. In addition, authorities may consider the action fraudulent and request the return of the pension plus surcharges. The repeal of Article 130 second paragraph is a triumph for the common-law partners because they have an acquired right, and they will no longer have demonstrated economic dependency to obtain a pension.

CONCLUSIONS

The objective of this research is to evaluate the repeal of paragraph 2, Article 130 of the Social Security Law in Mexico. Our research shows that its repeal will make it easier for common-law partners or widowed

spouse to apply for a pension. With the repeal of Article 130 Paragraph 2, common-law partners don't have to demonstrate economic dependence and it is clearly established that they have an acquired right. In addition, beneficiaries who were denied a pension may apply for the benefit. The beneficiary subjects of this repeal will be able to directly obtain the widow's pension as of June 20, 2023 without retroactive effect. This remains an achievement and a benefit to obtain this right. However, for the taxpayer or government entities it will be a significant expense because pension expenses will increase.

We use a qualitative and procedural approach to conduct this research. The study was conducted in 2023, in the city of Monclova, Coahuila. For our procedural and legal foundation, we used the Social Security Law, Federal Labor Law, Fundamental Rights, and Political Constitution of the United Mexican States among others to support how the spouse or common-law partner can obtain a pension when the wife dies.

Results show how widowers or common-law partners will be able to receive the pension directly with the repeal of Article 130, paragraph II of the Social Security law and in accordance with Tables 2 and 3. It is limited to obtaining the pension by supporting with the multi-cited repeal of the Mexican Social Security Institute. From a legal point of view, Mexican Social Security Law Article 130 second paragraph lacks fundamental elements, constitutional principles, equity, legality, certainty, among others. It even passed through interpretations, trials and protections.

In the 1940s, women's predominant function was to be housewives. There were few working wives contributing to social security. Thus, Article 130 second paragraph made sense to legislators. We are in a changing world, there are more antidiscrimination laws in place. As the number of women in the workplace increases, more widows or common-law partners will become and will be able to obtain the pension directly as equals. Likewise, common-law partners who were denied the pension can request their pension. It is a right acquired from the repeal of the second paragraph of Article 130 LIMSS. Widowed spouses or common-law partners have the law on their side and an acquired right to a pension.

The authority does not publicize these benefits that common-law partners can obtain directly. It is common for widowers to spread the word, consult an expert and request a pension. Future research is needed to compare this law from 1973 with 1997 to know the effect on retirees and government funding.

BIOGRAPHY

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