

The Mexican Social Insurance Law

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SOCIAL INSURANCE, promised the Mexican people by the Constitution of February 5, 1917, has at last, after almost 26 years, become a reality. On December 31, 1942, President Manuel Avila Camacho and his Secretary of Labor and Social Welfare, Licenciado Ignacio García Téllez, signed an act which declared social insurance against industrial accidents and occupational diseases, sickness and maternity, invalidity, old age, and death to be "a national public service of compulsory character."

Historical Antecedents

To enact such a social insurance law has been the aim of all Mexican administrations since President Venustiano Carranza launched his famous program of social policy in his 1917 annual message. In 1921, for example, President Alvaro Obregón submitted to Congress a first, unsuccessful bill, containing some rudimentary provisions for insurance against occupational risks, old age, and death. During President P. E. Calles' administration, a program of social insurance was embodied in the law of May 25, 1926, regulating the operation of insurance companies, and was to serve as a basis for later regulations on the subject. By an act of December 31, 1931, President Pascual Ortiz Rubio received from Congress, but for too short a time, special power to frame social insurance legislation. Substantial progress in this field became noticeable, however, only after the appointment in February 1934 of a committee charged with drafting a social insurance bill. The resulting legal text was developed eventually, from 1934 to 1940, into numerous legislative proposals emanating from the Ministries of the Interior and of Finance, the Departments of Labor and of Public Health, the President's Research Council, and from certain parliamentary and other groups. Of these proposals, however, only a few were submitted for public discussion and the others remained in manuscript, unpublished.

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Social insurance also figured prominently in the two 6-year plans of 1934-39 and 1940-46, as one of the most urgent tasks given the Cárdenas and Avila Camacho administrations by the Party of the Mexican Revolution. Along with this official concern for the establishment of social insurance in Mexico, both employers and workers have, since 1917, publicly discussed it and made it the object of numerous resolutions in their Congresses—at, for example, the First National Employers' Congress in November 1917, the First Mexican Congress on Industrial Law in August 1934, and other meetings held by the Mexican Confederation of Workers (C. T. M.) in May 1936, and by the Mexican Regional Confederation of Workers (C. R. O. M.) in September 1936.

Adoption of the New Act

Credit for the new Social Insurance Act goes, however, to the present regime: "Do not let us forget," said President Avila Camacho when assuming office on December 1, 1940, "that our ideals of collective justice are far from being realized . . . We must all make it our aim—and I myself shall work with all my strength—to have before long social insurance laws protecting every Mexican in the hours of adversity, in orphanhood, widowhood, sickness, unemployment, and old age, and to replace the century-old system under which the poverty of the Nation has compelled us to live."¹

Declaring later in a Presidential Order of June 2, 1941, that "these aspirations and obligations seem all the more urgent when it is realized that all European countries and about 90 percent of the population of the American continent have social insurance legislation, while Mexico is an exception," he appointed a technical committee to draft a social insurance bill.²

The committee, composed of Government officials and representatives of workers and employers under the chairmanship of the head of the Ministry of Labor and Social Welfare, began its

¹ *Freelator*, Dec. 2, 1940.

² *Diario Oficial*, Vol. 126, No. 32 (June 18, 1941), pt. 1, pp. 7-8.

work immediately, using a draft prepared by the Social Insurance Department of that Ministry and the critical analysis of it made in June 1941, in response to an official request of the Government, by Pierre Adrien Tixier, former Chief of the Social Insurance Section and at that time Assistant Director of the International Labor Office.³

Later the Committee had, throughout its work, the technical assistance of Emil Schoenbaum, an actuarial expert with the ILO. The draft bill prepared by the Committee was submitted to the ILO in March 1942 for advisory opinion, was sent to President Avila Camacho in July 1942, and officially brought to public attention in Mexico and at the First Inter-American Conference on Social Security, held in Santiago de Chile in September.⁴

The adoption of the bill in December 1942 was preceded by a broad campaign sponsored by the Ministry of Labor and Social Welfare. It consisted of the publication of numerous technical articles and of the broadcasts of a series of popular lectures inaugurated on November 11, 1942, by President Avila Camacho and the Ministry of Labor and Social Welfare.

Workers' organizations declared themselves in favor of adopting the bill at the Twentieth National Congress of the Mexican Confederation of Workers (C. T. M.), October 1942, and in a special meeting of the National Workers' Council (*Consejo Obrero Nacional*) on October 21, 1942.

The attitude of employers toward the bill appears to be mixed. Thus, for instance, the Mexican Banking Association and the Confederations of Chambers of Industry and of Commerce, in a memorandum to the Senate, took a stand "against the enactment of the bill, considering it harmful to the national economy in general and to public confidence."⁵ On the other hand, after the bill had become a law, the official organ of the Confederations declared that "tradesmen in Mexico had never been opposed to the introduction by the country of such a system of compulsory social insurance; they only suggested that the adoption of such an important measure be postponed until the horizon should be clear of the hundreds of war and post-war problems."⁶

³ *Trabajo y Previsión Social*, Vol. 10, No. 41 (June 1941), pp. 33-60.

⁴ *Ibid.*, Vol. 14, No. 56 (September 1942), pp. 76-80. See also Cohen, Wilbur J., "The First Inter-American Conference on Social Security," *Social Security Bulletin*, Vol. 5, No. 10 (October 1942), pp. 4-7.

⁵ *Excelsior*, Dec. 28, 1942.

⁶ *Carta Semanal*, Vol. 6, No. 300, Jan. 2, 1943, pp. 2-3.

Congress received the bill from President Avila Camacho early in December. In the Chamber of Deputies, the Committee on Social Insurance stressed its ideological, technical, and social value, and the bill was approved unanimously on December 23, 1942. The Senate also approved it unanimously on December 29, 1942, hailing it as the fulfillment of the promises of the Mexican Revolution for social insurance and condemning the "misrepresentative propaganda that the enactment of the social insurance legislation would seriously affect the national economy."⁷

The Social Insurance Act was finally signed by President Avila Camacho on December 31, 1942, and promulgated on January 19, 1943.⁸

Legal Bases of the Act

The new act implements article 123, section 29, of the 1917 Constitution, which declares that the adoption of a social insurance law is a matter of public concern. The act extends, furthermore, the protection afforded workers by the Federal Labor Law, which in 1931 regulated compensation of industrial accidents and diseases.

As a State member of the International Labor Organization, Mexico also had to take into account, in drafting her new legislation, the minimum international standards laid down in the conventions and recommendations on social insurance sponsored by that Organization, as well as the fundamental principles embodied in the Inter-American Social Insurance Code adopted by the First and Second Labor Conferences of American States, held in Santiago de Chile in 1936 and Havana in 1939. In addition, the Mexican Government publicly acknowledged, at the First Inter-American Conference on Social Security, the debt owed to other countries, especially the sister Republics which, like Chile and Peru, have blazed the trail toward social security in the Americas.

Coverage of the Act

The new act makes social insurance compulsory for all workers employed under a labor contract in enterprises that are private or public or placed under labor management (regardless of the number of persons employed), for members of producers'

⁷ *Excelsior*, Dec. 30, 1942.

⁸ *Diario Oficial*, Vol. 136, No. 15 (Jan. 10, 1943), pt. 2, pp. 1-11; Erratum, Vol. 136, No. 25 (Jan. 30, 1943), p. 11.

cooperative societies, and for apprentices. It covers, broadly speaking, workers employed in mining, industry, transportation, and commerce, and their dependents, i. e., a population estimated at about 3.4 million persons in 1939.

The act also makes provision for voluntary and for supplementary insurance. Voluntary insurance against one or more risks is expressly provided for persons not compulsorily insured, for professional, independent, and handicraft workers, for *ejido* holders,⁹ members of agrarian communities, and some other groups. "Supplementary insurance," the act explains, "grants higher benefits to insured persons, or allows them to insure themselves under conditions more favorable than those fixed for compulsory insurance." It is open to workers, whether insured compulsorily or voluntarily, and to employers who are required, under the collective agreements now in force, to grant their workers higher benefits than those stipulated in the act.

Ultimately, as soon as certain practical difficulties are overcome and there has been time to study problems raised by the diversity in the legal status of government employees, persons working in family shops, homeworkers, domestic servants, and agricultural and casual workers, the Government will extend social insurance benefits to these groups also.

Risks Insured

The risks to be insured constituted a highly controversial subject in all the earlier legislative proposals, especially the question of workmen's compensation. Under the Mexican Constitution of 1917 and the Federal Labor Law of 1931, employers are directly and solely liable for the industrial accidents and diseases incurred by their employees. As a result, labor has steadily refused to share this responsibility. On the other hand, the imperfections of the workmen's compensation now in force were so evident that insurance against occupational accidents and diseases was finally included as one of the risks covered by the new act. However, it is expressly stipulated that the cost of these special provisions will fall, as it has in the past, exclusively upon employers.

⁹ An *ejido* is a nucleus of population which has received land from the Government, provisionally or definitively, through the application of the agrarian laws in force since 1915. An *ejidatario* is the peasant member of the *ejido* community.

Besides workmen's compensation, the act provides insurance against sickness and maternity, invalidity, old age, and death. The unemployment risk was never considered, in the preliminary discussions, as worth covering by insurance. It was generally admitted by official spokesmen that the unemployment problem, as such, does not exist in Mexico. Thus, the act merely provides for insurance against "involuntary unemployment at an advanced age."

Benefits

The benefits fixed by the act for the various risks covered are as follows:

Occupational accidents and disease.—In the event of these risks, as defined in the Federal Labor Law of 1931, the insured worker receives medical and surgical aid, medicines, and prosthetic and orthopedic appliances. In addition, temporary incapacity for work is compensated in cash, up to a maximum of 52 weeks, at a daily rate which varies from 0.60 to 9.70 pesos,¹⁰ according to the wage class to which the insured worker belongs, i. e., at approximately 75 percent of the basic daily wage. For total permanent incapacity, a full monthly pension is paid, ranging from 16 to 260 pesos, or about 20 times the average daily wage. In case of partial permanent incapacity, this pension is adjusted, on the basis of the disablement evaluation schedule of the Federal Labor Law, to the reduction in earning capacity. If the monthly pension so calculated is less than 16 pesos, a lump sum equal to 5 annual installments will be paid.

If the insured person dies, the widow receives a pension equal to 36 percent of the pension due for total permanent incapacity, and the orphans, under 16 years of age, receive either 20 or 30 percent of the full pension, according to whether they have lost one or both parents, respectively. If there is no widow, the pension is granted by the act, "to take into account a sociological reality," to the woman with whom the deceased had lived as husband for the 5 years before his death or by whom he had had children.¹¹ In the absence of the above-mentioned survivors, the deceased's parents, if they were dependent on him, are entitled to a pension up to a maximum of one-

¹⁰ A peso is equivalent to 21 cents at current rate of exchange.

¹¹ The Spanish word is *concubina*, which is translated hereafter as "common-law wife," since that Anglo-Saxon term seems the closest approximation to the original.

third of the full pension. A funeral indemnity of one month's wages is paid to the person who incurred the funeral expenses.

Sickness.—In the event of sickness, the act provides medical and surgical aid and pharmaceutical supplies during a 26-week period for the worker, his children under 16 years of age—if they live in the same house and are dependent on him—and his wife (or common-law wife). No qualifying period is fixed for such benefits. The worker himself is also entitled to a daily cash allowance ranging from 0.35 to 5.20 pesos, i. e., about 40 percent of the basic daily wage, and covering the seventh day up through the twenty-sixth week of his incapacity; the corresponding qualifying period is 6 contribution weeks in the 9 months preceding the illness. If the worker is hospitalized by the insurance fund itself, half of the daily allowance to which he is entitled is paid his dependents.

Maternity.—Any employed woman who has paid at least 30 weekly contributions during the 10 months preceding her confinement is entitled to obstetrical aid and to cash benefits as follows: a daily allowance ranging from 0.35 to 5.20 pesos, i. e., about 40 percent of her basic daily wage, to be paid during a period of 42 days before and 42 days after confinement; for the period from the eighth day before until the thirtieth day after her confinement this allowance is increased to 100 percent of her salary if she abstains from paid work as required by the Federal Labor Law. She is also granted, during a maximum period of 6 months, a supplementary nursing allowance equal to 50 percent of the basic maternity benefit. Obstetrical aid is also extended to the wife (or common-law wife) of any insured worker.

Invalidity.—An insured worker whose earning capacity has been permanently reduced by two-thirds, through nonoccupational illness or accident, is entitled to a pension if he has paid a minimum of 200 weekly contributions. This benefit consists of a basic amount, varying from 57 to 936 pesos per annum (i. e., about 20 percent of the average annual wage earned during the 60 months prior to the pension award), and a supplement ranging from 0.08 to 1.37 pesos for each additional week of contributions (i. e., about 10 percent of the basic daily wage). In no case can the pension be less than 30 pesos a month.

Old-age.—The old-age pension stipulated by the act is identical in amount with that for invalidity.

The pensionable age is fixed at 65 years and the qualifying period at 700 weekly contributions. The pensionable age may be lowered to 60 for the worker "involuntarily deprived of paid employment"; he will receive a pension at a reduced rate, to be fixed by regulations. In neither case does the worker have to prove disability for work. Under a last-minute provision, Congress empowered the President to issue special regulations on old-age insurance with a view to protecting "mining, metallurgical, and other workers, whose productive life span is considerably reduced by the nature of their arduous occupation."

Death.—On the death of pensioners or insured workers who have paid 200 weekly contributions, pensions are awarded to the widow, under certain qualifying conditions (or, in her absence, to the common-law wife), and to the orphans under 16 years of age. For the widow, the pension is equivalent to 40 percent of the invalidity or old-age pension which the husband was receiving or to which he was entitled; orphans receive 20 or 30 percent, depending on whether they have lost one or both parents.

As an incentive to marriage, the act provides that a widow (or common-law wife) who is pensioned and marries subsequently shall receive a lump sum equal to three yearly installments of the pension due her.

Other provisions.—Persons who cease to be liable to compulsory insurance before they become entitled to a pension are guaranteed the retention of their rights during a period equal to one-fifth of the time for which contributions have been credited, provided that this period is longer than 18 months. Furthermore, if they have at least 100 weekly contributions to their credit, they may continue their insurance on a voluntary basis.

Financial Organization

The financial structure of the social insurance system rests on an actuarial study entrusted by the Mexican Government to Emil Schoenbaum, member of the Correspondence Committee on Social Insurance of the ILO and former director of the General Pension Institution at Prague.¹² This study, in turn, was based on bio-demographic

¹² Schoenbaum, Emilio, "Informe Actuarial," in Secretaría del Trabajo y Previsión Social: *Memoria de Labores, Septiembre de 1941-Agosto de 1942*, Vol. 2, pp. 71-163, tables.

and socio-economic data obtained partly from Mexican statistical returns, as recent as the 1940 industrial and population censuses, and also on the financial experience derived by other countries, such as Chile, Ecuador, and Peru, from administration of their social insurance legislation.

Contributions.—The cost of the new system will be met from contributions, as follows:

As far as industrial accidents and occupational diseases are concerned, employers will continue to be solely responsible for their compensation, as stipulated by the Federal Labor Law. On the other hand, by insuring under the new act, the employer is freed from his liabilities for such risks, except in the case of an accident willfully caused by him or due to serious neglect on his part.

Compensation for occupational disability will be based on a schedule of risk classes and degrees, to be revised every 3 years. This schedule will classify all enterprises according to their occupational risk, their standards of industrial hygiene and safety, and other factors. The premium rate will be fixed, by regulation, in proportion to the employers' total wage bill and the occupational risk inherent in his enterprise.

The remaining insurance programs will be financed by contributions from the State, employers, and employees. Their total contribution will equal 12 percent of the wages of the insured worker; the employer's share will be 6 percent, the employee's 3 percent, and the State's also 3 percent.

Basic wages.—To fix the amount of the contributions due under each program and the corresponding benefits, the insured population is divided into nine wage groups, according to their daily earnings:

Class:	Daily wages (in pesos)	
	More than—	Not more than—
I.....	—	1
II.....	1	2
III.....	2	3
IV.....	3	4
V.....	4	6
VI.....	6	8
VII.....	8	10
VIII.....	10	12
IX.....	12	--

No maximum wage limit is fixed for liability to insurance. Employers pay the entire contribution for workers in certain categories, such as appren-

tices employed without remuneration and persons receiving only the minimum wage.

Additional provisions establish the procedure for calculating the basic daily wage when remuneration is paid for weekly or monthly periods, when the worker does piece work or works for several employers, and in other special circumstances.

Investment of the funds.—The act expressly states that the investments of the insurance funds must fulfill the best conditions for safety, yield, and liquidity, and give preference, other things being equal, to investments promoting the highest social good, such as the construction of hospitals, sanatoria, and workers' housing projects. Other permissible investments are, under certain conditions, guaranteed bonds and securities issued by the Federal and State Governments for public works, certain securities and shares of national credit institutes and Mexican industrial companies, and mortgage loans and bonds.

Administration of the Act

The enforcement of the Social Insurance Act and its administration are entrusted to a single body, the Mexican Social Insurance Institute, created by the act as an autonomous, public agency with headquarters in Mexico, D. F. The Institute will function through:

The General Assembly, supreme authority of the Institute with 10 representatives each of employers, employees, and the Federal Government;

A Technical Board, also tripartite, of six members to deal with legal and administrative matters and the investment of the funds;

A Supervisory Committee of three members elected by the General Assembly; and

A Director General appointed by the President of the Republic, to be responsible for current management of the Institute, to preside over the Technical Board, and to represent the Institute before other authorities.

The act outlines the procedure for settling disputes arising out of the nonconformity of employers or employees with respect to coverage, contributions, benefits, and other matters. These disputes will come within the jurisdiction of the Technical Board of the Institute and, in the last instance, of the Federal Board of Conciliation and

Arbitration. The act also provides for stringent penalties for infringements by liable employers and by the officers and staff of the Institute.

Enforcement of the Act

Under transitional provisions, the General Assembly and the Supervisory Committee will not become operative before 1945. Their rights and duties are, meanwhile, concentrated in the hands of the Director General and the First Technical Board, appointed by Presidential Order on January 4, 1943. Licenciado Vicente Santos Guajardo, former Undersecretary of Labor and Social Welfare, will act as Director General. On the Technical Board, the Government and the employers' and workers' organizations are represented by four delegates each—two regular and two substitute.

The Social Insurance Act became effective January 19, 1943. It is left with the Federal Government, however, to fix the dates for the gradual operation of the various programs as well as to determine the geographic areas in which the act is to be put into effect, with due recognition of industrial development, geographic aspects, density of insured population, and possibilities for establishing the necessary social insurance services.

Intended ultimately, when completely in operation, to give security, "from the cradle to the grave," to a gainfully occupied population estimated for 1940 at 6.1 million persons, the Mexican social insurance act, because of its social implications, far surpasses the Federal Labor Law of 1941, which still ranks as one of the most advanced in the world.

When the International Labor Office was called upon to consider the bill on which the present act is based, it declared that its adoption "opens a new era in the economic and social evolution of Mexico . . . For the first time, in the face of crude medical and social reality, a plan of action has been established which is audacious but also sound and well-organized, and of which every element has been carefully calculated and weighed."¹³

¹³ *Trabajo y Previsión Social*, Vol. 14, No. 56 (September 1942), pp. 40-44.

The ILO further characterized the act as broad and complete in its basic design; as moderate and prudent in the method by which it is to be applied, and carefully based on actuarial studies which tend to secure the permanent financial equilibrium of the system. The scope is broad, since it extends potentially to all workers whose status is that of economic dependence; and the protection it affords is complete, since it covers all the social and occupational risks to which workers and their families are exposed. Lastly, the ILO considers that the act is prudent with respect to the mode of its enforcement, since provision is made for the introduction of insurance branch by branch and for its application to successive groups of workers, with due regard for environmental conditions.

In this gradual enforcement the Mexican Government sees, in turn, a guarantee "that the economic repercussions of the new social insurance program will be felt step by step, without provoking a crisis which could affect national economy."¹⁴

As soon as the act was made public, in its draft form, at the Inter-American Conference on Social Security in September 1942, it attracted wide attention; in fact, 19 delegations present declared officially their appreciation of the technical and ideological principles governing the bill and their hope for its early adoption.¹⁵

"The technical success achieved in this Mexican social insurance legal text," said the Mexican delegate in response to this declaration, "is not a victory exclusively for my country, but an homage which all the sister Republics of America render, as a group, to collective justice and security. In this work, Mexico has emulated the most valuable experiences of Bolivia, Uruguay, Panama, Argentina, Brazil, Costa Rica, Canada, Ecuador, Cuba, Venezuela, the United States, and especially of the two Republics, pioneers of social security in America: Chile and Peru."¹⁶

¹⁴ *Ibid.*, pp. 76-80.

¹⁵ *Ibid.*, pp. 80-87.

¹⁶ *Ibid.*, pp. 76-80.