

# OFFICE HOURS

SHARED RESPONSIBILITY FOR WORK-LIFE BALANCE

EXECUTIVE SUMMARY







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EXECUTIVE SUMMARY

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# INTRODUCTION

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This publication is an update of the report *Office Hours: Shared Responsibility for Work-Life Balance*, originally published in 2016. This report focuses on the importance of reconciling and balancing workers' professional and family responsibilities in benefit to their human rights exercise and to improve personal and economic development for society as a whole. The report includes a comprehensive analysis of federal and state regulations in Mexico and highlights best practices that can help improve this situation. The original report is available in Spanish at [corresponsabilidad.gire.org.mx](http://corresponsabilidad.gire.org.mx).

# I. THE NEED FOR RECONCILIATION

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*Reconciliation* of professional and personal life involves seeking a harmonious relationship between these two environments that tend to be separated, with this division often resulting in serious labor exploitation, oppression, inequality and human rights violations.

When speaking of reconciliation or work-life balance, it is crucial to include the issue of *shared responsibility*, which emphasizes that reconciling work and family life is not simply a “women’s issue,” but is instead the responsibility of society in general. Work-life balance policies that include shared responsibility seek to reassign roles and responsibilities, both at home and outside of it, in an effort to balance care work among male and female family members, employers, and the State.

Historically, the arrival of industrialization determined the division of labor by gender: men were assigned the role of “provider” and were responsible for gainful and paid work, while women were responsible for unpaid work, including caring for the home, family and child-rearing.

In Mexico, two deeply entrenched stereotypes still persist today: 1) women are responsible for caring for the family, and 2) women represent a secondary workforce, and their income simply complements the income generated by men.<sup>1</sup>

Structural inequalities hinder workers’ ability to fully meet both family and professional responsibilities. This is particularly true for women, who are forced to cover double shifts in difficult conditions. However, these inequalities also impact men who are seeking alternative models of masculinity, including participating more actively in child-rearing and caring for the home, but who find themselves limited by work environments that are still structured according to gender stereotypes.<sup>2</sup> This inequality limits the full exercise of human rights, particularly for women, who independently of whether they have a paid job or not, continue to have higher workloads of unpaid labor, including housework and caring for children, family members who live with a disability and the elderly.

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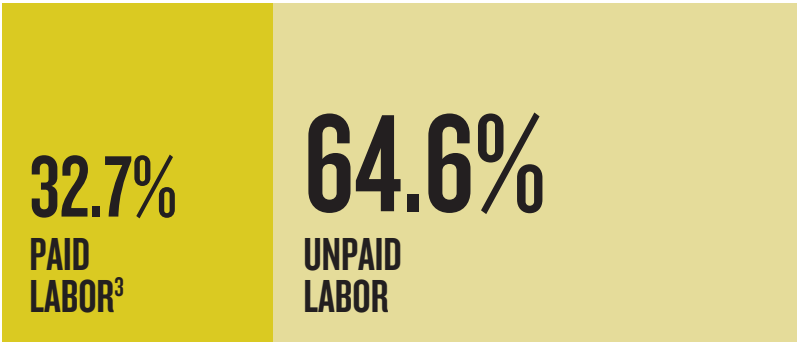
1 ILO-UNDP, *Work and Family: Towards new forms of reconciliation with social co-responsibility*, Santiago, International Labour Organization and United Nations Development Programme, 2009, p. 70-71. See also Barker, D. K. and Feiner, S. 2004 *Liberating Economics: Feminist Perspectives on Families, Work, and Globalization*. Ann Arbor, University of Michigan Press.

2 Moguel Valdés, Miguel Jesús, *Políticas institucionales y cambios en los significados sobre la masculinidad: Un análisis de caso de la licencia de paternidad en la Comisión de Derechos Humanos del Distrito Federal* [Institutional Policies and Changing Masculinities: An Analysis of Paternity Leave at the Mexico City Human Rights Commission], Thesis for the degree of Master of Human Rights and Democracy, FLACSO, Mexico, October 2014, p. 19.

## WEEKLY HOURS DEDICATED TO WORK MEXICO 2016

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 **3.138 BILLION HOURS PER WEEK**



 **2.547 BILLION HOURS PER WEEK**



**IN 2016, WOMEN WORKED 1.2 TIMES MORE THAN MEN, ALTHOUGH MEN DEDICATED MORE TIME TO PAID LABOR.**

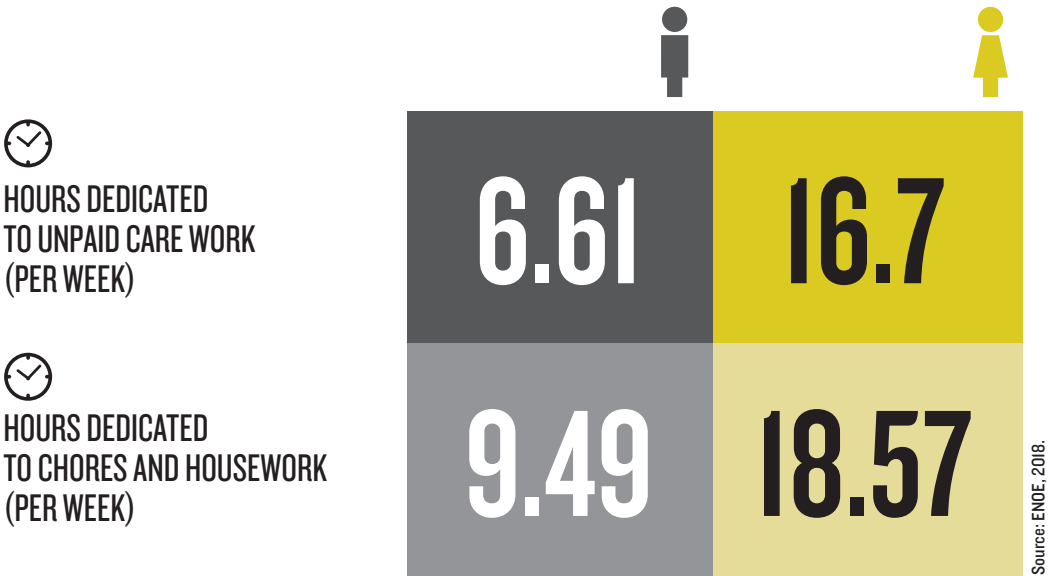
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3 *Mujeres y hombres en México 2018* [Women and Men in Mexico 2018], INEGI, INMUJERES, Mexico, 2018, p. 164. [http://cedoc.inmujeres.gob.mx/documentos\\_download/MHM\\_2018.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/MHM_2018.pdf) [Accessed on: 20 January 2019].

4 *Idem.*

In 2016, the economic value of unpaid labor totaled \$4.7 billion Mexican pesos, equivalent to 23.2% of total GDP for that year. Seventy-five percent of unpaid labor was carried out by women and only 25% by men.<sup>5</sup>

## RECONCILIATION OF PROFESSIONAL AND FAMILY RESPONSIBILITIES IN MEXICO



Women’s significant expansion into the formal workforce has not translated into a decreased workload at home or a redistribution of these roles. To the contrary, women now must manage the double burden of professional and family responsibilities. The lack of reconciliation and social shared responsibility regarding the caretaking responsibilities that generally fall to women has resulted in a series of obstacles within the workplace, including difficulties in terms of taking time off to attend to personal issues and repercussions for workers who have to bring their children to work,<sup>6</sup> as well as enormous impacts on women’s health and quality of life, for example, due to the lack of adequate maternity leave policies.

These situations of inequality impact women’s career paths, creating segregation between women and men that is associated with wage gaps, chronic time deficits that limit women’s growth opportunities and their participation in better paid activities, and that also restricts their participation in formal jobs that are more stable and offer better benefits. In turn, this limits women’s ability to save for retirement and access social security benefits, increasing their vulnerability and poverty.<sup>7</sup>

<sup>5</sup> *Ibíd.*, p. 160.

<sup>6</sup> *Mujeres y hombres en México 2014* [Women and Men in Mexico 2015], INEGI, INMUJERES, Mexico, 2018, p. 34. Retrieved from: [http://cedoc.inmujeres.gob.mx/documentos\\_download/101239.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/101239.pdf) [Accessed on: 22 January 2019].

<sup>7</sup> *Idem.* See also: World Bank, *World Development Report 2012: Gender Equality and Development*, p. 17; World Bank, *World Development Report 2015: Mind, Society, and Behavior*, p. 26; United Nations, *Report of the Special Rapporteur on extreme poverty and human rights, A/68/293*, 9 August 2013, para. 7.

## 2. COMPREHENSIVE POLICIES FOR RECONCILIATION AND SHARED RESPONSIBILITY

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Reconciliation policies should be based on human rights standards, including equality and non-discrimination, as protected by Mexico's Constitution (Article 4); by international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (Article 3), the Convention on the Elimination of All Forms of Discrimination against Women (Articles 1, 11, and 16), and the American Convention on Human Rights (Articles 1 and 24), as well as international instruments such as the International Labour Organization (ILO) C183 - Maternity Protection Convention, C156 - Workers with Family Responsibilities Convention,<sup>8</sup> C100 - Equal Remuneration Convention, and C111 - Discrimination (Employment and Occupation) Convention, which are considered by the ILO to be the "key gender equality Conventions, as they form the underpinnings of equal opportunity for women and men in the world of work."<sup>9</sup>

The lack of reconciliation of work and familiar responsibilities is not a "women's issue." Rather, it is a human rights violation and a situation of oppression that must be addressed by:

- a) Families, as all family members, especially adults, should share rights and responsibilities;
- b) Society, as all societies are involved to varying degrees in gender discrimination and may suffer the damaging effects of a lack of reconciliation;
- c) Employers (public and private sector), who are responsible for resolving the employment situation that leads to this oppression and discrimination; and
- d) The State, which is obligated to protect, respect, guarantee and promote universal human rights.

Both housework and care work are the shared responsibility of adult men and women in a family. However, the State is responsible for creating public policies and regulations that balance the number of hours that people dedicate to unpaid domestic work and care work versus paid labor. These regulations and policies must be adapted to all different types of families, and it is the responsibility of employers to comply with these policies and avoid creating formal or practical obstacles that prevent the achievement of this balance.

Public policies and regulations must focus on two main points: 1) eliminating the obstacles that prevent men from fulfilling their familial responsibilities (minimal paternity leave, limited access to childcare services for fathers, lack of permission for "family leave," etc.) and 2) modifying the cultural patterns and perceptions that have established fixed gender roles within families and the division of labor.

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<sup>8</sup> Mexico has not ratified Conventions 156 or 183.

<sup>9</sup> Cruz, Adrienne, Working Paper 2/2012, *Best practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study*, Bureau for Gender Equality, 2012, p. 7.

Several international conventions ratified by Mexico establish that families have the right to protection by society and the State, and that motherhood and childhood are entitled to special care and assistance. The Inter-American Court of Human Rights (IACHR) has ruled that based on Article 17 of the American Convention, the State is obligated to protect the rights of children, as well as support the development and strength of the nuclear family.<sup>10</sup>

Today, Mexican law and domestic and international jurisprudence<sup>11</sup> establishes that men and women have equal rights and obligations within marriage and other familial structures, as well as that marriage is the union of two people, with the understanding that there are diverse types of families that must be recognized by the State within a context of equality and non-discrimination.<sup>12</sup>

## BEST PRACTICE



### STATE ACTIONS TO BALANCE NEWBORN CARE

#### SWEDEN

Although Swedish law offers more than a year of parental leave,<sup>13</sup> until recently only 6% of fathers took advantage of this leave. In 1995, the Swedish government created financial incentives to encourage more men to take the leave: if the father did not take leave, the family would lose one month of government subsidies. As a result, it became common for fathers to take at least one or two months of paternity leave, which resulted in these men taking on more responsibilities in the home. Today, eight out of every 10 Swedish fathers take an average of four months of the 13 months of parental leave available. As a result, the culture and the work environment began to change: schedules became more flexible and the salary difference between men and women was reduced (mothers' earnings increased 6.7% for each month of paternity leave taken by their male spouse).<sup>14</sup>

10 IACHR, *Caso Atala Riffo y Niñas vs. Chile, Fondo, Reparaciones y Costas* [Atala Riffo and Children vs. Chile: Fund, Reparations, and Costs], Ruling from 24 February 2012, Series C No. 239, para. 169.

11 *Ibid.*, para. 120 and 145. See also, IACHR, *Caso Duque vs Colombia. Excepciones preliminares, Fondo, Reparaciones y Costas* [Duque vs. Colombia - Preliminary Exceptions: Fund, Reparations, and Costs], Ruling from 26 February 2016, Series C No. 310, para. 125. Retrieved from: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_310\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_310_esp.pdf); and *Matrimonio entre personas del mismo sexo. No existe razón de índole constitucional para no reconocerlo* [Same-sex Marriage: No Constitutional Reason Not to Recognize It]. Tenth session, Registration 2009922, First Chamber, Theses of Jurisprudence, Federal Judicial Weekly and Gazette, Book 22, September 2015, Vol. I, Subject(s): Constitutional, Civil, Thesis 1a./J. p. 253. Retrieved from: <https://sjf.scjn.gob.mx/sjfsist/paginas/DetalleGeneralV2.aspx?id=2009922&Clase=DetalleTesisBL>

12 IACHR, *Caso Atala Riffo y Niñas vs. Chile, Fondo, Reparaciones y Costas* [Atala Riffo and Children vs. Chile: Fund, Reparations, and Costs], op. cit. para. 172-175.

13 See section 4.2 c) of this document.

14 Johansson, Elly-Ann, *The Effect of Own and Spousal Parental Leave on Earnings*. Institute for Labour Market Policy Evaluation (IFAU), Sweden, 2010, p. 28. Retrieved from: <https://www.ifau.se/globalassets/pdf/se/2010/wp10-4-The-effect-of-own-and-spousal-parental-leave-on-earnings.pdf> [Accessed on: 28 January 2019].

In Mexico, the General Law on Equality between Women and Men (*Ley General para la Igualdad entre Mujeres y Hombres*) and the General Law on Women's Access to a Life Free From Violence (*Ley General de Acceso de las Mujeres a una Vida Libre de Violencia*) enshrine women's rights to equality and non-discrimination in all environments, including at work and at home. Mexican Official Norm NMX-R-025-SCFI-2015 for Labor Equality and Non-Discrimination (*Norma Mexicana NMX-R-025-SCFI-2015 en Igualdad Laboral y No Discriminación*)<sup>15</sup> establishes a series of requirements and practices that all public and private workplaces must implement to ensure labor equality and non-discrimination, including requirement 12, which refers to shared responsibility in professional, personal, and family responsibilities.

However, for shared responsibility policies to be effective, it is necessary to plan, design, develop, follow-up on, and evaluate a comprehensive work-life balance policy that includes all of involved parties. A comprehensive policy that encourages shared responsibility and reconciliation must include all three branches of government as follows:

- 1) The executive branch must implement a series of necessary actions to establish comprehensive policies for shared responsibility and reconciliation derived from the scope of the law and available resources.
- 2) The legislative branch must implement actions such as the ratification of international treaties, the harmonization of domestic legislation with international standards on the matter, and the preparation of legislative proposals that improve quality of life.
- 3) The judicial branch must apply a gender perspective to all rulings and sentences in accordance with international standards on the matter, as well as assess the constitutionality of the norms, laws, and actions implemented by the State.

To achieve shared responsibility that results in true equality and justice for both men and women, it is necessary to modify multiple cultural behaviors and perceptions that are based on outdated gender roles. The Mexican State must implement measures to modify these behaviors,<sup>16</sup> but employers should also implement various actions to promote shared responsibility and reconciliation, ranging from the company or organization's work environment to comprehensive programs to encourage shared responsibility and reconciliation.

A fundamental issue that must be considered within shared responsibility and reconciliation policies is the length and flexibility of workdays. Very long workdays do not benefit anyone; in fact, it has been proven that shorter workdays result in more efficient and competitive work. Flexible hours and half-days are a fundamentally important part of shared responsibility and reconciliation, as they allow employees to both work and attend to personal responsibilities.

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15 The notice of entry into force of this Norm was published in the Official Gazette of the Federation on October 19, 2015, indicating that it would enter into force 60 days after its publication. This Norm annuls NMX-R-025-SCFI-2012.

16 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 5 a).



# BEST PRACTICE

## REDUCED WORK HOURS

### GIRE, MEXICO CITY

At GIRE, we constantly review our work policies to improve the reconciliation of our employees' professional and personal or family lives. In addition to other measures implemented by the organization, GIRE implemented a six-hour workday (9:00 am-3:00 pm) since its founding in 1992. This ensures that all of the organization's employees have significant time during the day to attend to other responsibilities. Currently, the workday is also flexible, allowing staff members to choose between three different schedules depending on what works best for their personal and familial needs, as long as the selected schedule is compatible with their responsibilities and workload.



# 3. AN ECONOMIC ANALYSIS OF RECONCILIATION

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Reconciliation and shared responsibility do not just help protect and ensure workers' human rights; they also have social and economic benefits. Various international organizations, including the ILO and the United Nations Development Programme (UNDP), have found that a lack of reconciliation measures generates negative consequences.

- a) On a macroeconomic level, the difficulties that women face when seeking to join the workforce means that women's potential is not used efficiently, resulting in over-qualification for the jobs they are able to access and a higher percentage of women in precarious working conditions.<sup>17</sup>
- b) On the company level, both public and private companies can be impacted by a lack of adequate reconciliation. Studies show that the negative consequences of a lack of reconciliation include higher staff turnover and difficulties in hiring and retaining staff, less work satisfaction and less commitment to the organization, stress at work, absenteeism and tardiness, health issues, and an increase in occupational accidents.<sup>18</sup>
- c) A lack of reconciliation and shared responsibility can have personal impacts as well, including physical and mental health issues, especially for women and children. This particularly impacts older girls, who are often required to assume domestic and family responsibilities, negatively impacting their school performance. Additionally, the quality and quantity of care received by younger children is also negatively impacted by a lack of shared responsibility policies. Finally, connections between a lack of reconciliation and issues such as adolescent pregnancy, substance abuse, and criminality have also been documented, thus negatively impacting society in general.<sup>19</sup>

From a strictly economic perspective, one could argue that not covering social benefits such as maternity or paternity leave results in savings. However, focusing exclusively on these costs downplays the potential positive results of reconciliation policies, as well as the innovative measures that are available to reduce these costs. Additionally, the cost of covering these benefits should be compared to the cost of not doing so, in addition to the benefits of reconciliation and offering social security benefits, among others.

- a) Costs to countries' economies: The actions and measures necessary to implement reconciliation policies tend to incur additional costs, including the time not worked due to maternity, paternity, or parental leave, the salaries of the temporary workers hired to cover said leave, the investment necessary to expand coverage and ensure the quality of child-care services, the installation of adequate lactation rooms, and the activities necessary to encourage cultural change related to gender roles.

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17 ILO-UNDP, *op. cit.*, p. 107.

18 *Ibid.*, p. 109.

19 *Ibid.*, pp. 111-113.

- b) Costs to businesses: In Mexico, the cost associated with maternity leave is covered by the State. However, the Mexican Federal Labor Law (*Ley Federal del Trabajo* - LFT) establishes that paternity leave should be covered by the employer, and that a five-day leave period should be offered to “each male employee following the birth or adoption of an infant” (Article 132, Item xxvii bis). Although, the Federal Law for State Workers (*Ley Federal de los Trabajadores al Servicio del Estado* - LFTSE) does not include paternity leave, the LFT is considered to be a supplement for state workers, and a reform to the Government Workers’ Social Security and Services Institute Law (*Ley del ISSSTE*) in 2013 covers this five-day period for all beneficiaries. In other words, in Mexico, paternity leave as established by law, or parental leave if available, is covered by employers. Even when the direct costs of these leaves do not have to be covered by each institution, indirect costs are still incurred, including the recruitment and training of new employees and the loss of productivity caused by internal changes resulting from leave or sabbaticals.<sup>20</sup>
- c) Benefits to countries’ economies: In addition to complying with the State’s obligations in terms of human rights standards, reconciliation policies can also result in benefits to countries’ economies, including:
- Economic and social development encouraged by the adoption of social security benefits.<sup>21</sup>
  - The counter-cyclical effect that expanding social support and reconciliation policies can have when facing a national-level economic crisis.<sup>22</sup>
  - Economic improvement resulting from investing in education and early childhood development initiatives,<sup>23</sup> which can take the form of support given directly to families or investments in high-quality childcare facilities.<sup>24</sup>
  - Increased GDP (estimated at up to 24%) resulting from an increase in the number of female members of the workforce thanks to effective reconciliation and shared responsibility policies.<sup>25</sup>
- d) Benefits for employers: Despite the fact that reconciliation policies are often considered to be high cost, low-cost or zero-cost measures exist that can be adapted to the needs of companies and that support reconciliation. For example, flexible or staggered schedules, the implementation of basic lactation rooms, and the ability to bring children to work within certain circumstances can all help support reconciliation efforts. Despite the costs associated with these programs, definitive evidence exists that shows that protecting effective and accessible maternity benefits can result in increased staff satisfaction and commitment, which leads to higher levels of performance and productivity, particularly when

20 Lewis, Suzan et. al., *Maternity Protection in SMEs: An International Review*, Geneva, ILO, 2014, pp. 59 et seq.

21 ILO, *Maternity and Paternity at Work: Law and practice across the world*, Geneva, 2014. p. 7.

22 *Ibid.*, p. 9.

23 Carmen Luna and Adrián Estaño, “Educación de calidad, clave para el ascenso de México: Nobel, Entrevista a James Heckman” [Quality Education is Key for Mexico’s Development: An Interview with Nobel Prize-winner James Heckman], *CNN Expansión*. Retrieved from: <http://www.cnnexpansion.com/economia/2015/07/13/educacion-de-calidad-clave-para-el-ascenso-de-mexico-nobel> [Accessed on: 29 October 2015].

24 Amela, Victor-M, Ima Sanchís, Lluís Amiguet, “Es más rentable invertir en párvulos que en bolsa, Entrevista realizada a James Heckman” [It is More Profitable to Invest in Early Childhood Education than in the Stock Market: An Interview with James Heckman], *La Vanguardia*. Retrieved from: <http://www.lavanguardia.com/lacontra/20110418/54142686501/es-mas-rentable-invertir-en-parvulos-que-en-bolsa.html> [Accessed on: 29 October 2015].

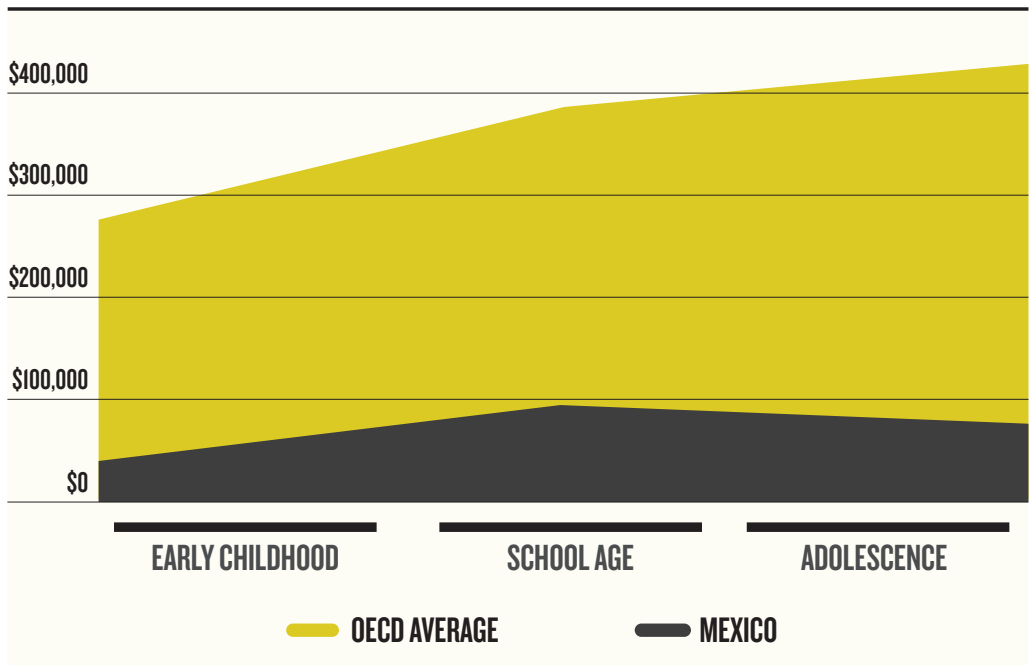
25 Pinedo Caro, Luis, “Incremento del PIB cuando se incrementa el empleo en México” [Mexican GDP Increases When Employment Increases], Mexico, 2017. Retrieved from: [www.corresponsabilidad.gire.org.mx](http://www.corresponsabilidad.gire.org.mx).

these benefits form part of a comprehensive, family-friendly policy.<sup>26</sup> Various cases have been documented that show that reconciliation and shared responsibility policies have positive results.<sup>27</sup>

- e) Benefits for the individual and the family: Evidence shows that many women are limited to working in the informal economy, with lower salaries or limited opportunities for growth, in exchange for the flexibility and/or support that they need to balance their personal and professional responsibilities. Some research shows that women have actively transitioned to jobs with maternity policies after having children.<sup>28</sup> Flexible work schedules that support the reconciliation of professional and family responsibilities are considered by employees to be a benefit that increases their quality of life.<sup>29</sup>

Based on the above, it is easy to see that despite the additional cost, increasing public spending on shared responsibility policies can help reduce the issues faced by families, and particularly by women, in terms of reconciling professional and personal responsibilities, resulting in significant social and economic benefits. However, in comparison with other OECD countries, Mexico’s investment in these policies is minimal.

## PUBLIC SPENDING PER CHILD IN DIFFERENT STAGES OF DEVELOPMENT AVERAGE EXPENDITURE OECD VS MEXICO



Source: "Mexico spends less per child than the majority of OECD countries in all stages of childhood development. Aggregate public expenditure per child in 2007."

26 Lewis, Suzan et. al., *Maternity Protection in SMEs: An International Review*, Geneva, ILO, 2014, p. 43.  
 27 ILO-UNDP, *Work and Family: Towards New Forms of Reconciliation with Social Co-Responsibility*, Santiago, International Labour Organization and United Nations Development Programme, 2009, p. 108; Lewis, Suzan *op. cit.*, pp. 44-45.  
 28 Lewis, Suzan, *op. cit.* pp. 45.  
 29 *Idem.*

# 4. WORK-LIFE BALANCE

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## HUMAN RIGHTS STANDARDS

### THE RIGHT TO WORK AND LABOR RIGHTS FROM A REPRODUCTIVE AND FAMILY PERSPECTIVE

- The right to work “includes the right of everyone to the opportunity to gain his [or her] living by work which he [or she] freely chooses or accepts” (Article 6, International Covenant on Economic, Social and Cultural Rights [ICESCR]).
- Labor rights include “the right of everyone to the enjoyment of just and favourable conditions of work” (Article 7, ICESCR).

In Mexico, labor laws are based on Article 123 of the Political Constitution of the United Mexican States (Constitución Política de los Estados Unidos Mexicanos - CPEUM). Additionally, based on Article I of the CPEUM, the Mexican State must observe regulations regarding labor rights established in international instruments to which it is a party, such as General Comment No. 18 of the Committee on Economic, Social and Cultural Rights (CESCR), Article II of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Special Survey on Equality in Employment and Occupation in respect of Convention No. III published by the Committee of Experts on the Application of Conventions and Recommendations (CEACR).<sup>30</sup>

## 4.1. REPRODUCTIVE LIFE AND WORK

International human rights law prohibits discrimination or termination based on pregnancy. The LFT also prohibits such actions, in addition to prohibiting employers from requiring staff to avoid becoming pregnant in order to remain employed or not being pregnant to gain employment.

Being pregnant, or the possibility of becoming so, places women in situations of risk in the workplace, and employers must take steps to guarantee safe working conditions for women. This obligation is addressed in Mexican legislation, which establishes that employers must provide adequate protection for pregnant women and not place them in spaces or work situations that pose a risk to their health or the health of the fetus (CPEUM, LFT, and LFTSE).

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30 Committee of Experts on the Application of Conventions and Recommendations (CEACR), *Equality in Employment and Occupation: Special Survey on Equality in Employment and Occupation in respect of Convention No. 111*, Report III (Part 4B), 83rd Session of the International Labour Conference, ILO, 1996, para. 32.

## HUMAN RIGHTS STANDARDS

### MATERNITY PROTECTION

- ILO Maternity Protection Convention, 2000 (No. 183) and Maternity Protection Recommendation, 2000 (No. 191) are two fundamentally important documents on the issue.
- Mexico has not ratified Convention No. 183, but it has ratified the Social Security (Minimum Standards) Convention, 1952 (No. 102), which contains a section and various provisions on maternity protection.
- The Conditions of Work and Equality Department of the ILO has stated that maternity protection is a fundamental labor right.<sup>31</sup>

The CEDAW Committee and the ILO's CEACR have expressed concern regarding the ongoing presence in Mexico of practices such as requiring a pregnancy test to obtain or maintain employment and exposing pregnant women to difficult and/or dangerous working conditions, and these bodies have recommended that Mexico implement measures to eliminate these discriminatory practices, harmonize labor legislation to comply with CEDAW, and ratify ILO Convention No. 156.<sup>32</sup>

The right to social security is recognized in Article 123 of the Mexican Constitution, as well as Article 9 of the ICESCR and ILO Convention No. 102. Additionally, the CESCR developed some fundamental questions in General Comment No. 19 regarding the regulations of this right, which includes maternity and child protection.<sup>33</sup>

Social security and universal healthcare are both fundamentally important during pregnancy, delivery, and the post-partum period, as well as immediately following the adoption of a newborn, and access to these services is connected to the right to work and the right to non-discriminatory labor laws. However, in Mexico, social security is tied to formal employment, meaning that many workers do not have access to these benefits, as 59.1% of people are employed in the informal economy, including 29 out of every 100 employed women.<sup>34</sup>

31 ILO, 2014, *op. cit.*

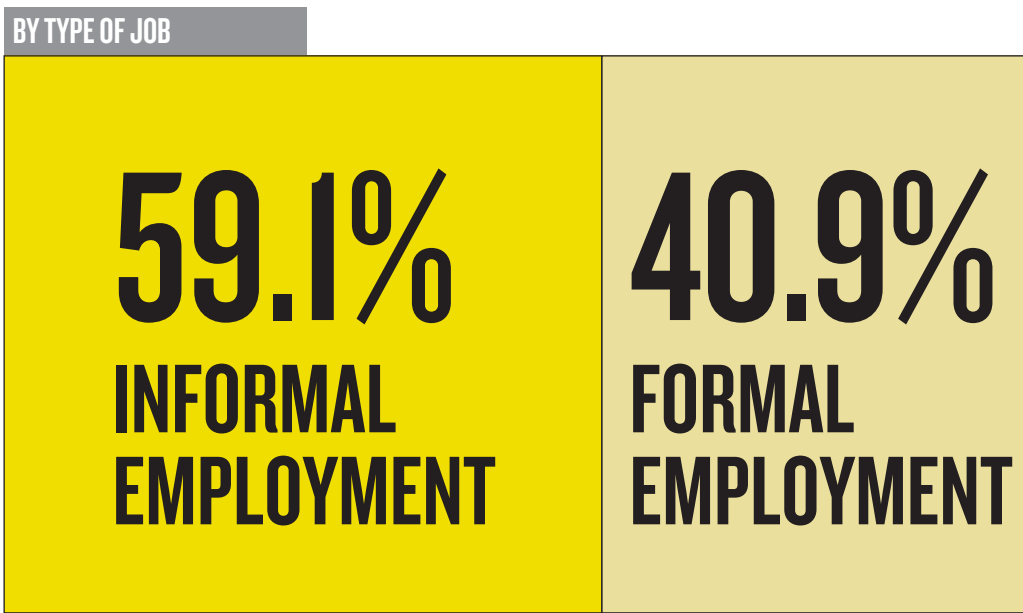
32 United Nations, CEDAW Committee, *Concluding observations of the Committee on the Elimination of Discrimination against Women [CEDAW/C/MEX/CO7-8]*, 52nd session (2012) para. 28. Retrieved from: <https://undocs.org/en/CEDAW/C/MEX/CO/7-8> [Accessed on: 29 April 2015]; *Observation (CEACR) - adopted 2013, published 103rd ILC session (2014)*. Retrieved from: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:3146221,en](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3146221,en) [Accessed on 15 May 2016].

33 United Nations, CESCR, *General Comment No. 19 The right to social security (art. 9) [E/C.12/GC/19]*, 39th session (2007). Retrieved from: <https://undocs.org/E/C.12/GC/19> [Accessed on: 20 October 2016].

34 Instituto Nacional de Estadística y Geografía (INEGI), Mexico: *Nuevas estadísticas de informalidad laboral [Mexico: New Statistics on the Informal Economy]*, Mexico, slide 9, 2018. Retrieved from: <http://www.inegi.org.mx/est/contenidos/Proyectos/encuestas/hogares/regulares/enoe/>.

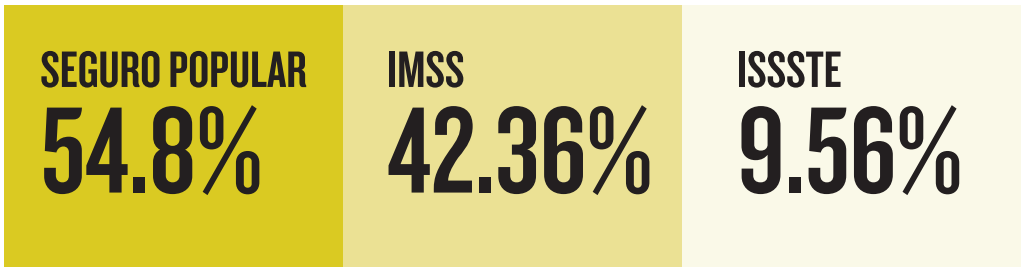
# COMPOSITION OF THE INFORMAL ECONOMY

## MEXICO 2018



In Mexico, the primary public institutions that provide access to social security services are the Mexican Social Security Institute (*Instituto Mexicano del Seguro Social* - IMSS), the Government Workers' Social Security and Services Institute (*Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado* - ISSSTE), Mexican Petrol Agency (*Petróleos Mexicanos* - PEMEX), the Ministry of Defense, and the Social Health Protection System (*Sistema de Protección Social en Salud* - Seguro Popular).<sup>35</sup> This latter institution is focused on providing services to non-beneficiaries of social security through a public and voluntary health insurance structure that only offers access to medical-surgical, pharmaceutical, and hospital services.<sup>36</sup>

## PERCENTAGE OF WOMEN ENROLLED IN SOCIAL SECURITY PROGRAMS



The Seguro Popular provides access to basic healthcare services, but it does not offer social security benefits such as childcare services, maternity or paternity leave, disability benefits, or pensions.

35 The current federal administration has announced the possible restructuring of the social security system, but this is the current system in place as of February 2019.

36 Secretaría de Salud, *Seguro Popular ¿Qué es?* [What is the Universal Insurance System?], Seguro Popular. Retrieved from: <http://www.seguro-popular.gob.mx/index.php/conocenos/seguro-popular-1> [Accessed on: 21 October 2016].

## 4.2. PROFESSIONAL LEAVE

There are four types of professional leave that are associated with reproductive decisions: i) prenatal and postnatal maternity leave, ii) medical leave iii) breastfeeding leave, and iv) family leave.

### A) MATERNITY LEAVE

Mexico offers 12 weeks (private sector) or 3 months (public sector) of paid maternity leave.<sup>37</sup> The Mexico City Government has extended maternity leave policies to cover up to four and a half months, but this extension involves a reduced salary and only applies to public sector employees. The private sector offers maternity leave totaling six weeks for adoptive parents, while the Mexico City Government offers 15 calendar days for its employees.<sup>38</sup>

The IMSS subsidizes the salary of each employee during leave as long as the employee has made contributions for at least 30 weeks prior to taking leave. If they have not, the payment is the full responsibility of the employer.<sup>39</sup> This regulation encourages the discriminatory practice of requiring a pregnancy test during the hiring process, as companies seek to avoid paying for maternity leave.

According to the information obtained via access to information requests submitted by GIRE, from January 1, 2010 to December 31, 2015, the IMSS granted 3,270,430 maternity leave requests.<sup>40</sup> During this same period, the ISSSTE reported granting 277,349.<sup>41</sup> In contrast, the answer to the same access to information request corresponding to the period from 2012 to 2017 showed that the IMSS granted 19,011 maternity leave requests,<sup>42</sup> while the ISSSTE granted 72,758.<sup>43</sup> The significant difference between the statistics reported by each institution during these two time periods is a reflection of the lack of interest on the part of these institutions in terms of providing accurate information that allows an assessment to be made not only in terms of whether the number of leaves granted is sufficient, but also the types of barriers that women might face during the process. Additionally,

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37 CPEUM, Article 123, Section A, Item V and Section B, Item XI, Subsection c; LFT, Article 170, Item II; and LFTSE, Article 28.

38 *Acuerdo mediante el cual se da a conocer la implementación de la nueva cultura laboral en la Ciudad de México por el que se establece la organización del tiempo de trabajo, otorgamiento de licencias especiales y periodos vacacionales, para las y los trabajadores de base, confianza, estabilidad laboral, enlaces, líderes coordinadores, mandos medios y superiores de la administración pública del Distrito Federal, para la efectividad de la prestación del servicio a la ciudadanía y la conciliación de la vida laboral y familiar* [Agreement to announce the implementation of the new labor culture in Mexico City, establishing the organization of work hours, special leave and vacation periods, for regular workers, trust, job stability, liaisons, coordinating leaders, middle and upper management of the public administration of the Federal District, for the effectiveness of the provision of the service to the public and the reconciliation of work and family life] published in the Official Gazette of Mexico City on 14 August 2015, numerals nine and ten. See also: LFT, Article 170, Item II bis and the Ley de Igualdad Sustantiva entre Mujeres y Hombres en el Distrito Federal [Substantive Equality for Men and Women Act of Mexico City], Article 21, Item II, Subsection a.

39 Ley del Seguro Social, Articles 101, 102, and 103.

40 Federal Government, Instituto Mexicano del Seguro Social, Sistema de Acceso a la Información Pública: Infomex, Folio 0064100491516.

41 Federal Government, Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, Sistema de Acceso a la Información Pública: Infomex, Folio 0063700103816.

42 Federal Government, Instituto del Seguro Social, Sistema de Acceso a la Información Pública: Infomex, Folio 0064103053017.

43 Federal Government, Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, Sistema de Acceso a la Información Pública: Infomex, Folio 0063700682617.

the public information available is not sufficient to assess whether the number of leaves reported is reasonable in relation to the number of beneficiary women who gave birth during any given year. However, according to the 2013 National Survey on Employment and Social Security (Encuesta Nacional de Empleo y Seguridad Social - ENESS), 50.1% of women between 15 and 49 years old that required medical care due to pregnancy or delivery in 2013 did not receive maternity leave benefits.

## HUMAN RIGHTS STANDARDS

### ILO STANDARDS ON MATERNITY LEAVE

- ILO Convention No. 183 establishes the right to maternity leave totaling at least 14 weeks (Article 4, Subsection I).
- The ILO Maternity Protection Recommendation, 2000 (No. 191), which accompanies ILO Convention No. 183, proposes increasing maternity leave to at least 18 weeks.
- Mexico has not ratified this Convention, and its current legislation does not comply with this standard.

## B) PATERNITY LEAVE

In Mexico, the LFT recognizes the right to five days of paid paternity leave for new biological and adoptive fathers.<sup>44</sup> The short duration of guaranteed paternity leave reinforces the stereotype that childcare is the primary or exclusive responsibility of women. Some federal and local-level public agencies offer paternity leave beyond the time recognized in the LFT (ranging from 10 to 30 days), such as the Council for the Prevention of Discrimination of Mexico City (*Consejo Para Prevenir y Erradicar la Discriminación de la Ciudad de México - COPRED*). Despite being slightly longer, the leave offered is still insufficient and places the responsibility of caring for biological and adopted children primarily on women.<sup>45</sup> Additionally, the maternity and paternity leaves established in current legislation are based on a heteronormative understanding of family and reproduction and assumes that all families are comprised by one man and one woman.

At this point, neither the Social Security Law nor the IMSS Law have been reformed to require that the State cover the five days of paternity leave, which currently must be covered by the employer. Through an access to information request, GIRE found that from 2012 to 2017, IMSS granted 5,437 paternity leave requests, with the number increasing year over year.<sup>46</sup> On the other hand, ISSSTE, which has been obligated to cover paternity leave for all its beneficiaries following a 2013 legislative

44 Ley Federal del Trabajo, Article 132, Item XXVII Bis.

45 Ley de Igualdad Sustantiva Entre Mujeres y Hombres en el Distrito Federal, Article 21, Item II, Numeral 2.

46 GIRE, *La pieza faltante. Justicia reproductiva* [The Missing Piece: Reproductive Justice], Mexico, 2018, p. 156. Available at: <http://justiciareproductiva.gire.org.mx>.



reform, reported that it granted 377 paternity leave requests during the same period.<sup>47</sup> However, due to the fact that this data is not disaggregated, it is impossible to know if requests for paternity leave have increased, decreased, or remained stable year over year.

The ILO has not yet published a document specifically on paternity leave or its recommended duration. However, the Provisional Record Regarding Gender Equality at the Heart of Decent Work, adopted by the International Labour Conference during its 98th session in 2009, recognizes that the reconciliation of work and family responsibilities is in the interest of both men and women and urges States to formulate adequate policies to better balance work and family responsibilities, include paternity and/or parental leave and incentives for men to use them.<sup>48</sup> However, in Mexico, the paternity leave offered is significantly less than the 8.2 week average leave period offered in OECD countries, even within the federal and local agencies that offer leave beyond the minimum established in Mexican labor law.<sup>49</sup>

### C) PARENTAL LEAVE

Parental or family leave is longer than maternity or paternity leave and can be taken by one or both parents to care for a newborn or young child, depending on the needs of each family. Parental or family leave is typically taken once the available maternity or paternity leave has been exhausted. Although it is often unpaid or partially unpaid, family leave generally offers greater flexibility in terms of the distribution of time between each parent and the total time off requested.<sup>50</sup> According to ILO Recommendations No. 191 and No. 165, parents should be entitled to parental leave during a period following the maternity or paternity leave without losing their employment and with the rights resulting from employment being safeguarded. The duration of this type of leave, as well as the payment of parental benefits and other details, should be determined by national laws or regulations.<sup>51</sup> General Comment No. 16, published by CESCR, also establishes the obligation to individually guarantee the right to paternity and/or maternity leave and shared parental leave.<sup>52</sup> Mexican legislation still does not consider this type of leave. In January 2019, the Commission, Council, and Parliament of the European Union agreed that mothers and fathers will have four months of parental leave, with at least two months of non-transferable, paid parental leave.<sup>53</sup>

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47 *Ibid.*

48 International Labour Conference, *PR No. 13 - Report of the Committee on Gender Equality - Sixth item on the agenda: Gender equality at the heart of decent work (general discussion)*, 98th Session (2009). Conclusions Paragraphs 6 and 42. Retrieved from: <https://bit.ly/2GNYbmU> [Accessed on: 14 March 2016]. See also ILO, 2014, *op. cit.* p. 7.

49 OECD, "Employment: Length of maternity leave, parental leave, and paid father-specific leave". Retrieved from: <https://stats.oecd.org/index.aspx?queryid=54760> [Accessed on: 30 January 2019].

50 ILO, 2014, *op. cit.* p. 8.

51 United Nations, CESCR, *General Comment No. 191 The right to social security (art. 9) [E/C.12/GC/19]*, 39th session (2007), paragraph 22. Retrieved from: <https://undocs.org/E/C.12/GC/19> [Accessed on: 20 October 2016].

52 United Nations, CESCR, *General Comment No. 16. The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights) [E/C.12/2005/4]*, 34th session (2005), paragraph 26. Retrieved from: <https://bit.ly/2T0VEfN> [Accessed on: 22 February 2016].

53 Pellicer, Luis, "La UE acuerda cuatro meses de permiso para ambos progenitores" [The EU Establishes Four Months of Leave for Both Parents] in *El País*, 25 January 2019. Retrieved from: [https://elpais.com/sociedad/2019/01/24/actualidad/1548354374\\_594152.html](https://elpais.com/sociedad/2019/01/24/actualidad/1548354374_594152.html) [Accessed on: 30 January 2019].

## 4.3. BREASTFEEDING AND WORK

As documented by the World Health Organization (WHO) and other international bodies, breastfeeding provides a wide range of benefits for the health and well-being of both mother and infant.<sup>54</sup> According to UNICEF, if every baby were exclusively breastfed from birth, almost 1.5 million neonatal and infant deaths could be avoided each year.<sup>55</sup> Additionally, breastfeeding can also have benefits for the mother's health, as it reduces the risk of post-natal hemorrhage and breast cancer.<sup>56</sup>

Women have the right to safe motherhood, to make decisions regarding their reproductive lives, and to raise their children based on what they consider best for them and their families, including receiving support should they choose to breastfeed. The CEDAW recognizes the importance of breastfeeding and establishes obligations for the States Parties regarding pregnancy and lactation, as well as other sexual and reproductive rights and the right to health.<sup>57</sup> Additionally, ILO Recommendation No. 191 suggests that “provisions should be made for the establishment of facilities for nursing under adequate hygienic conditions at or near the workplace.”<sup>58</sup>

Mexican legislation includes certain measures that support lactation, such as two half-hour breaks per shift for breastfeeding mothers and the possibility for nursing mothers to reduce their workday by an hour for six months, and also establishes the obligation to provide access to lactation rooms within the workplace.<sup>59</sup> ILO Convention No. 183 establishes the right to one or more daily breaks or a daily reduction of hours of work so that a mother can breastfeed her child.<sup>60</sup> However, this Convention does not establish the period during which these rights shall be granted, instead stating that it shall be determined by national law and practice. Additionally, available data shows that the inclusion of these measures in Mexican legislation has not been sufficient: in 2016, Mexico was ranked last in terms of breastfeeding in Latin America, a clear indicator of the gap between the protections established in current legislation and the reality of its implementation.<sup>61</sup>

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54 UNICEF, WHO, UNESCO, UNFPA, UNDP, UNAIDS, World Food Programme, and the World Bank, *Facts for Life: Breastfeeding - Key Messages: What every family and community has a right to know*, Fourth Edition, 2010, p. 48, paras. 1, 3, 4, 7, and 8.

55 UNICEF, “Impact on child survival and global situation”. Retrieved from: [https://www.unicef.org/nutrition/index\\_24824.html](https://www.unicef.org/nutrition/index_24824.html) [Accessed on: 16 July 2015].

56 Dermer, Alicia, *A Well-Kept Secret: Breastfeeding's Benefits to Mothers*, NEW BEGINNINGS, Vol. 18 No. 4, July-August 2001, p. 124-127 Retrieved from: <http://illi.net/nb/nbjulaug01p124.html> [Accessed on: March 17 2016].

57 CEDAW, Article 12.

58 ILO Recommendation No. 191, Article 9.

59 Constitución Política, Article 123, Section A, Item V and Section B, Item XI, Subsection c); LFT, Article 170, Item IV; Ley Federal de los Trabajadores al Servicio del Estado; Ley del Seguro Social; Ley del ISSSTE; Ley General de Salud; Ley para la Protección de los Derechos de Niñas, Niños y Adolescentes, and Ley General de Acceso de las Mujeres a una Vida Libre de Violencia.

60 ILO, Convention No. 183, Article 10(2).

61 Chamber of Deputies. LXIII Legislature, Communication, *Boletín no. 0963, En lactancia, México es último lugar en Latinoamérica* [Bulletin No. 0963: Mexico is Last in Latin America in Breastfeeding], 2016.

## 4.4. BALANCING WORK AND CHILDCARE

Care work can be understood as the activities dedicated to caring for people throughout their lifecycle.<sup>62</sup> The recipients of said care include children, people with disabilities, elderly adults, and any other person who is unable to take care of him or herself due to a permanent or temporary illness or disability. The State is responsible for guaranteeing the human rights of both the caregiver and the care recipient. However, recent studies on care work emphasize the unequal distribution between men and women of the responsibilities derived from care work and suggest that it is necessary to harmonize the work-life balance of financial providers, which now tends to include both men and women.<sup>63</sup>

Elements such as sufficient and healthy nutrition, stimulation, attention, and a warm, loving, and respectful environment are necessary to ensure effective early childhood development. The absence of any of these elements can impact children's human rights, as well as a country's future economic and social performance.<sup>64</sup> An adequate reconciliation system should not simply create an environment that facilitates early childhood development but should also be flexible and adapt to the changing needs of those that receive care, particularly children.

The Convention on the Rights of the Child establishes States' obligation to guarantee the protection and care necessary for every child's well-being, taking into account the rights and duties of each child's parents and/or legal guardians. Additionally, the Convention establishes that the State must provide the appropriate assistance to parents and legal guardians to ensure that they are able to adequately perform their child-rearing responsibilities, as well as ensure the establishment of institutions, facilities, and services for the care of children. Among other things, the Committee on the Rights of the Child has addressed the impact of the business sector on children's rights, stating that "policies must take account of the impact of working hours of adults on the survival and development of the child at all stages of development and must include adequately remunerated parental leave."<sup>65</sup>

In Mexico, however, these conditions are rarely fulfilled, with children and adolescents spending significant time alone without the close presence of adult educators, due to, among other factors, the increased time allotted for external work, the outward sprawl of growing cities, the insufficient availability and impact of transportation spending, the shortened school day, the insufficiency of accessible public childcare services, and the lack of free time.<sup>66</sup>

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62 Jusidman, Clara, "La desvalorización del trabajo humano y su efecto en las familias y en la construcción social de las personas en México" ["The Devaluation of Human Labor and the Impact on Families and Social Construction of Individuals in Mexico], talk given at the *Foro Internacional Empleo Informal y Precario*, 24 November 2014. Retrieved from: <http://lli.net/nb/nbjulaug01p124.html> [Accessed on: 2 November 2015].

63 *Idem*.

64 Berlinski, Samuel and Norbert Schady (eds.) *The Early Years: Child Well-Being and the Role of Public Policy*, Inter-American Development Bank, 2015, Washington, DC, pp. 99 et seq.

65 United Nations, Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights* [E/C.12/2005/4], 62nd session (2013), para. 20.

66 Jusidman, Clara, 2014, *op. cit.*

## PUBLIC POLICIES AND REGULATIONS IN MEXICO

# THE LAW FOR THE PROTECTION OF THE RIGHTS OF CHILDREN AND ADOLESCENTS AND THE SYSTEM FOR THE COMPREHENSIVE PROTECTION OF THE RIGHTS OF CHILDREN AND ADOLESCENTS

On December 5, 2014, the Law for the Protection of the Rights of Children and Adolescents (*Ley General de los Derechos de Niñas, Niños y Adolescentes - LGDNNA*) came into effect. The Law recognizes children and adolescents as rights holders and establishes the State's responsibility to respect, protect, guarantee, and promote their human rights. The Law also stipulates the guiding principles and criteria that should inform national policy on the subject. Based on the LGDNNA (Article 125), the System for the Comprehensive Protection of the Rights of Children and Adolescents (*Sistema Nacional de Protección Integral de Niñas, Niños y Adolescentes - SIPINNA*) was created in December 2015. The SIPINNA represents a window of opportunity to implement activities, measures, and collaborations with other institutions and/or national systems to potentially exchange information and create synergies in order to ensure the respect, protection, and guarantee of the rights of children and adolescents from a perspective of shared responsibility and reconciliation for the parents of said children and adolescents.

Although the primary responsibility in terms of childcare falls on each child's parents, conditions must be created that facilitate effective childcare, and the State is required to address the situations that prevent these conditions. International treaties, such as CEDAW and ICESCR, establish that States Parties must take the measures necessary to guarantee families the broadest possible support and protection to ensure the adequate care and education of their children, including reducing the barriers faced by men and women that limit their ability to balance their professional and family responsibilities. These limitations create stressful situations that impact both physical and emotional well-being, thus altering healthy coexistence, in addition to violating human rights, including violating workers' right to spend enough quality time with their families. For the World Bank, one of the ways to address these obligations is through public policy, including childcare subsidies and public childcare facilities.<sup>67</sup> When faced with the lack of such services, as well as basic reconciliation policies, families tend to rely on support from other family members, who in turn may have other paid or unpaid responsibilities.

## A) CHILDCARE FACILITIES

The Law on the Provision of Services for Early Childhood Attention, Care, and Development (*Ley General de Prestación de Servicios para la Atención, Cuidado y Desarrollo Infantil - Ley 5 de junio*)<sup>68</sup> defines "care centers" as all spaces (public, private, or a combination) "where services are provided for early childhood attention, care, and development." (Article 8.1) The Law also uses the term "childcare facilities," which emphasizes *care* for infants and children.

67 World Bank, Report 2012, pp. 26-27.

68 Published in the Official Gazette of the Federation on 24 October 2011.

### CRITERIA FOR CHILDCARE FACILITIES

Access to childcare services implies the exercise of various human rights, including the rights to social security, equality, and non-discrimination. The guarantee of these rights includes the regulation and implementation of public policies that offer this type of benefit to those who, for various reasons, perform paid and unpaid labor.

CESCR provides an effective framework to analyze the compliance of childcare services with international human rights standards regarding access to education.<sup>69</sup>

- **Availability:** There must be sufficient access to childcare services and programs.
- **Accessibility:** Childcare services and programs must be accessible and non-discriminatory, particularly in terms of the race, sexual orientation, or religion of users. Other obstacles must also be eliminated to ensure universal access to education, including ensuring reasonable fees, distance, schedule, etc.<sup>70</sup> Economic accessibility is also a component of this criteria, and childcare services and programs should be affordable for all.
- **Acceptability:** The form and substance of the care provided must be acceptable (e.g., relevant, culturally appropriate, and of good quality).
- **Adaptability:** Childcare facilities and their services must be adjusted to the needs of rights holders, in this case the infants and children that are in their care, as well as their families.

The Supreme Court, in its ruling on the case regarding the deaths of 49 children at the ABC childcare facility in Hermosillo, Sonora in 2009, developed the scope and content of the right to social security, clearly stating that “childcare services” are part of this right, which is held by both adults and children,<sup>71</sup> and clearly establishing that the State has the responsibility to guarantee not only access to these services, but also that the delivery of these services must be according to the highest standards of quality and safety.<sup>72</sup>

69 United Nations, CESCR, *General Comment No. 13 Implementation of the International Covenant On Economic, Social And Cultural Rights: The right to education (article 13 of the Covenant)* (21st session, 1999), para. 6. The characteristics proposed by CESCR were adopted and developed by Katarina Tomaševski during her tenure as the first United Nations Special Rapporteur on the right to education of the United Nations Commission on Human Rights (1998-2004) and were presented as the 4-A framework: availability, accessibility, acceptability, and adaptability. See Tomaševski, Katarina, *Indicadores del derecho a la educación [Right to Education Indicators]*. Retrieved from: <http://www.derechoshumanos.unlp.edu.ar/assets/files/documentos/indicadores-del-derecho-a-la-educacion.pdf> [Accessed on: 26 May 2016].

70 Vázquez, Daniel and Sandra Serrano, *Principios y obligaciones de derechos humanos: los derechos en acción* [Human Rights Principles and Obligations: Rights in Action], Mexican Supreme Court (SCJN), UN Human Rights, CDHDF, Mexico, 2013, p. 34.

71 Suprema Corte de Justicia de la Nación, “Dictamen final de solicitud de ejercicio de la Facultad de Investigación (art. 97): Expediente 1/2009-01: engrose” [Final report of the application for the exercise of the Judicial Review (Article 97): File 1/2009-01: Engrossment], 2010, p. 196-204. Retrieved from: <http://bit.ly/1GKKSXX> [Accessed on: 18 April 2015].

72 *Ibid.*, p. 202-203.

In Mexico, various agencies provide access to childcare services as established in Mexican legislation,<sup>73</sup> including ISSSTE, IMSS, the Ministry of Social Development, the Armed Forces Social Security Institute, PEMEX, and the Ministry of Public Education, offering access to these services through public or public-private initiatives. Private entities also offer these services, occasionally subsidized by employers or as a service provided on behalf of the State. The quality and safety of these services varies significantly. The *Ley 5 de junio* and its regulations seek to establish public policies to regulate and manage childcare institutions in Mexico, but this policy has not been fully implemented. Additionally, it is important to keep in mind that the majority of laborers in Mexico do not have access to the services provided by these agencies, as they are employed in the informal economy and must find alternative childcare options, which often requires investing significant time and money, particularly for women.

## HUMAN RIGHTS STANDARDS

### DENYING FATHERS ACCESS TO CHILDCARE

The Social Security Law establishes that working women will have access to childcare services and that men will have access to these same services only in exceptional cases, limited to widowers, divorced men who have sole custody of their children and have not remarried, and legal guardians of minor children that they cannot care of. This reproduces the idea that care work, particularly childcare, is a woman's responsibility. In an effort to reform the legislation and encourage shared responsibility, particularly in terms of childcare, GIRE has provided support to individuals and families that have been denied access to childcare services as a result of the criteria outlined above.

Of the 21 cases supported by GIRE from 2015 to 2018, three have been favorably resolved by the Mexican Supreme Court. Based on these rulings, the Court has established that the differential treatment of denying access to childcare for the children of male rights holders is unjustified and based on gender stereotypes.

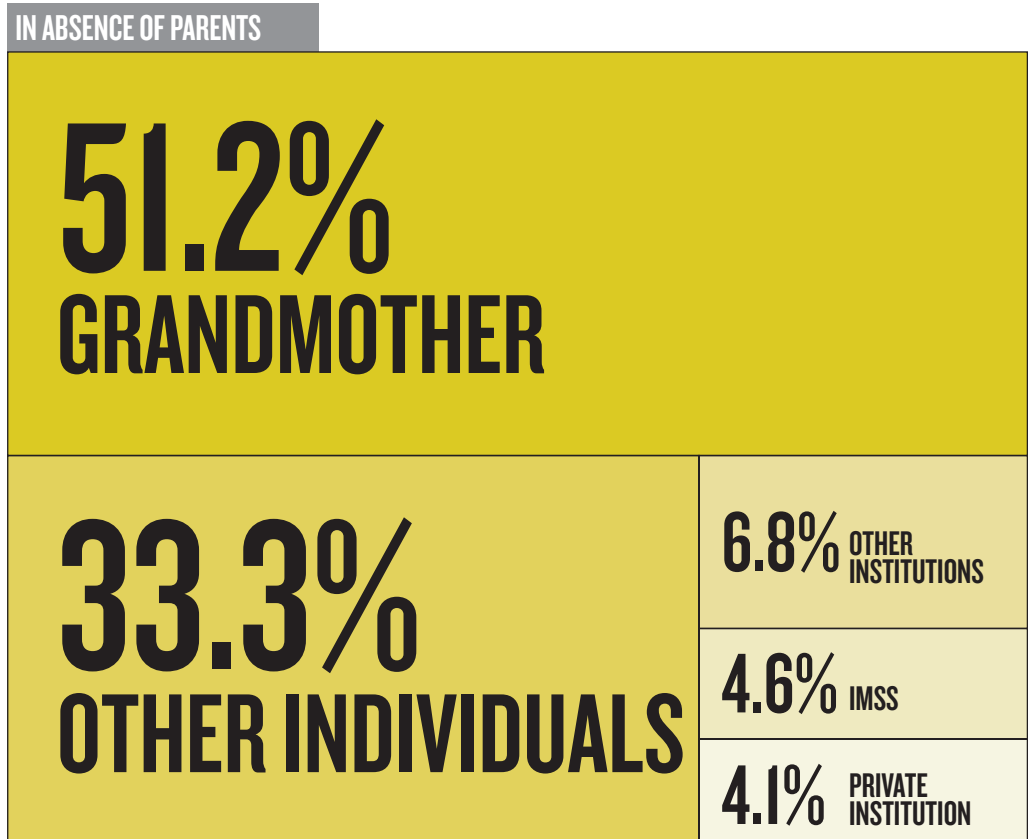
Despite the existing regulations and policies, the *availability* of childcare services is still significantly limited, and the services offered are not sufficiently *accessible* in terms of ease of access, economic accessibility, and non-discrimination. The *acceptability* of these services must also be improved, including implementing high-quality early childhood education and stimulation programs and safety standards. Additionally, these services must be *adaptable* to the needs of workers and their children.

73 Mexican Constitution, Article 123, LFT, LFTSE, IMSS Law, ISSSTE Law.

## B) GRANDMOTHERS AND OTHER FEMALE FAMILY MEMBERS

When parents are unable to care for their children, this responsibility often falls to other female family members, primarily grandmothers, who generally have already completed an employment cycle,<sup>74</sup> whether paid or unpaid, and end up becoming both financial and care providers, which significantly impacts their lives. This is the result of a series of socially-accepted forms of discrimination against these women related to their gender, age, and economic status, as fewer childcare services are accessible for lower income households.

## NON-PARENTAL CHILDCARE PROVIDERS



## C) DOMESTIC WORKERS

Another sector of the population impacted by the absence of public policies and regulations that favor the reconciliation of work and family responsibilities are domestic workers.

In Mexico, according to estimates from the National Institute of Statistics and Geography (*Instituto Nacional de Estadística y Geografía* - INEGI), in 2016, there were approximately 2.3 million domestic

74 See the chart “Non-parental Childcare Providers” included in this document.

workers, and 90% of these were women.<sup>75</sup> These domestic workers often endure discriminatory conditions and human rights violations: only one in every 10 (12%) of domestic workers have access to employee benefits (end-of-year bonus, vacation, or health insurance) and only 2% have a contract in place.<sup>76</sup> Additionally, domestic workers face daily violations of their labor rights, including:

- No social security benefits
- The absence of a workday as established in the LFT and overtime payment
- No time off or paid vacation days as established by law
- No end-of-year bonus

## HUMAN RIGHTS STANDARDS

### RIGHTS OF DOMESTIC WORKERS

On September 5, 2013, the ILO Domestic Workers Convention, 2011 (No. 189) entered into effect. To date, Mexico still has not ratified this Convention.

During its review of the ninth periodic report of Mexico, the CEDAW Committee once again recommended that the Mexican government:

“Amend the Federal Labour Act to ensure its application to domestic workers, undertake regular labour inspections of private households and ratify the Domestic Workers Convention, 2011 (No. 189) of ILO as a matter of priority.”<sup>77</sup>

## D) SOCIAL SECURITY AND “FAMILY AND MEDICAL LEAVE”

The regulations and guidelines for childcare facilities establish that a sick child must stay home; as a result, parents must often miss work to care for a sick child. The labor regulations regarding taking time off to care for dependents is neither clear nor consistent. However, it is common to find labor norms and practices that only extend this type of excused absence to mothers, which is discriminatory to fathers, who are not offered this time off; mothers, who find themselves fully responsible for caring for their children; and for minor children, who find themselves denied care when ill.

75 Instituto Nacional de Estadística y Geografía (INEGI), 2018. *Encuesta Nacional de Ocupación y Empleo* [National Occupation and Employment Survey]. First quarter 2018. Retrieved from: [http://www.beta.inegi.org.mx/contenidos/saladeprensa/boletines/2018/enoe\\_ie/enoe\\_ie2018\\_08.pdf](http://www.beta.inegi.org.mx/contenidos/saladeprensa/boletines/2018/enoe_ie/enoe_ie2018_08.pdf) [Accessed on: 24 January 2019].

76 Consejo Nacional para Prevenir la Discriminación, 2018. *Encuesta Nacional sobre Discriminación 2017: Prontuario de resultados* [National Survey on Discrimination: Results]. Retrieved from: <http://www.beta.inegi.org.mx/programas/enadis/2017/> [Accessed on: 24 January 2019].

77 Committee on the Elimination of Discrimination against Women, Concluding observations on the ninth periodic report of Mexico [CEDAW/C/MEX/CO/9], 70th Session, 6 July 2018, para. 40, Subsection d.



## 5. ACCESS TO JUSTICE

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Access to justice as part of work-life balance and shared responsibility is essential, not just in terms of reparations for people whose human rights have been violated, but also to implement measures of non-repetition that modify the structural conditions that allowed said violations to occur in the first place.

The Labor Rights Prosecutor's Office (*Procuraduría Federal de la Defensa del Trabajo*) is a decentralized body within the Ministry of Labor and Social Welfare whose mission is to protect workers' rights through legal support, reconciliation, and representation. In response to an access to information request submitted by GIRE, this agency reported zero cases of dismissals due to recently becoming a parent, taking time off to care for a sick child, or bringing children to work.<sup>78</sup>

The federal and state conciliation and arbitration boards have jurisdiction over labor conflicts. However, the United Nations Special Rapporteur on the independence of judges has indicated that these Boards do not enjoy the guarantee of independence, as they are part of the executive branch and are often controlled by employers.<sup>79</sup>

On February 24, 2017, constitutional reforms were passed that shifted the administration of labor justice to the judiciary and created Conciliation Centers, which will be managed by a decentralized organism, and labor courts within the federal and state judiciaries. As established in the reforms, these agencies were required to be created within a year of the publication of these same reforms. However, the restructuring of the labor justice system is still pending as of February 2019, despite the fact that initiatives have been presented in both chambers of the legislature.

Through access to information requests, GIRE petitioned the state conciliation and arbitration boards and the federal Conciliation and Arbitration Board regarding the number of cases related to dismissal due to pregnancy, recent parenthood, and/or absences due to caring for a dependent child presented between January 1, 2010 and December 31, 2015. Half of the state boards did not have a registry or categorization system in place for the cases they heard, making it impossible to assess the full scope of the issue.<sup>80</sup> Some states did have a registry but did not report any cases or judgements that met these characteristics.<sup>81</sup> Only eight states reported cases that met these criteria.<sup>82</sup>

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78 Federal Government, Procuraduría Federal de la Defensa del Trabajo, Sistema de Acceso a la Información Pública: Infomex, folios 1411100007216, 1411100007316, and 1411100007416.

79 United Nations Economic and Social Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Kumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39. Report on the mission to Mexico [E/CN.4/2002/72/Add.1]*, 58th session (2002), paras. 148, 149, 192 (m). Retrieved from: <<https://undocs.org/ar/E/CN.4/2002/72/Add.1>> [Accessed on: 24 June 2015].

80 Sistema de Acceso a la Información Pública, Infomex, folio 1410000012716.

81 Campeche, Chihuahua, Guerrero, Nayarit, Sinaloa, Veracruz, and Zacatecas. Folios 0100043316 y 0100043416; 009592016 y 009632016; 00042416 and 00042516; 00031416 and 00031316; 00116916 and 00117016; 00207716 and 00207816; 00269716 and 00269816.

82 Baja California, Baja California Sur, Chiapas, Hidalgo, Estado de México, Nuevo Leon, Sonora, and Tamaulipas. Folios 160669 and 160670 (answer sent via mail), Folios 00025616 and 00025716, Folios 15137 and 00068316, Folios 00049516 and 00049616, Folios 00007/JLCAVT/IP/2016 and 00008/JLCAVT/IP/2016, Folios SI-2016-03-01-1103 and SI-2016-03-01-1104, Folios 00164316 and 00164516, and answer received via email without a folio number.

Cases of human and labor rights violations should also be tracked by the different public human rights agencies in Mexico, including the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*) at the federal level and local human rights commissions and prosecutor's offices at the state level.

GIRE requested information from these public agencies regarding the number of complaints regarding pregnancy tests during the hiring process and the corresponding resolutions, as well as for unfair dismissal due to pregnancy or recent maternity or paternity, absences due to caring for a dependent child, and bringing children to work. GIRE also requested information regarding the complaints regarding fathers being denied access to childcare services for their children during the period from January 1, 2010 to December 31, 2015.

An analysis<sup>83</sup> of the information received showed that nine states<sup>84</sup> recorded complaints that correspond to the issues mentioned above. In the majority of these states,<sup>85</sup> the number of registered complaints ranged between two and six –i.e., a minimal number of complaints were registered throughout the country. The rest of the states did not provide the information requested,<sup>86</sup> did not have a record of complaints for these issues,<sup>87</sup> sent information that could not be disaggregated,<sup>88</sup> or did not accept or receive complaints, but instead resolved them by arguing a lack of jurisdiction.<sup>89</sup>

As a result of the Federal Law to Prevent and Eliminate Discrimination (*Ley Federal para Prevenir y Eliminar la Discriminación*),<sup>90</sup> the National Council for the Prevention of Discrimination (*Consejo Nacional para Prevenir la Discriminación* - CONAPRED) has the power to hear complaints about discriminatory acts, omissions, or social practices associated with individuals or corporations, as well as federal public officials and authorities. CONAPRED also has the power to impose administrative measures and reparations.

Each state also has legislation in place to prevent discrimination. These laws establish different types of implementing agencies, such as state human rights bodies (19 states); a specific body, generally called a council (11 states); and other structures, such as directorates or sub-directorates within the state-level executive power.

In October 2015, CONAPRED issued Resolution of Order 8/15 against the ISSSTE and IMSS as the authorities responsible for discriminating against six beneficiary fathers who were denied access to childcare services for their children. In this resolution, CONAPRED indicated that these fathers should be granted access to childcare services and that efforts should be made to reform the applicable legislation. Additionally, both ISSSTE and IMSS staff should be informed in writing so that they are able to implement a “compliant and pro persona interpretation” of the reformed regulation. ISSSTE now provides these services to beneficiary fathers, but IMSS beneficiaries must still present a legal petition in order to access them.

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83 For more information, see Chapter 5 of *Horas hábiles*.

84 Guanajuato, Hidalgo, State of Mexico, Michoacan, Puebla, Tabasco, Veracruz, and Yucatan.

85 Hidalgo.

86 Jalisco, Oaxaca, and Tamaulipas did not provide a response, and Baja California replied that the online platform did not allow them to respond.

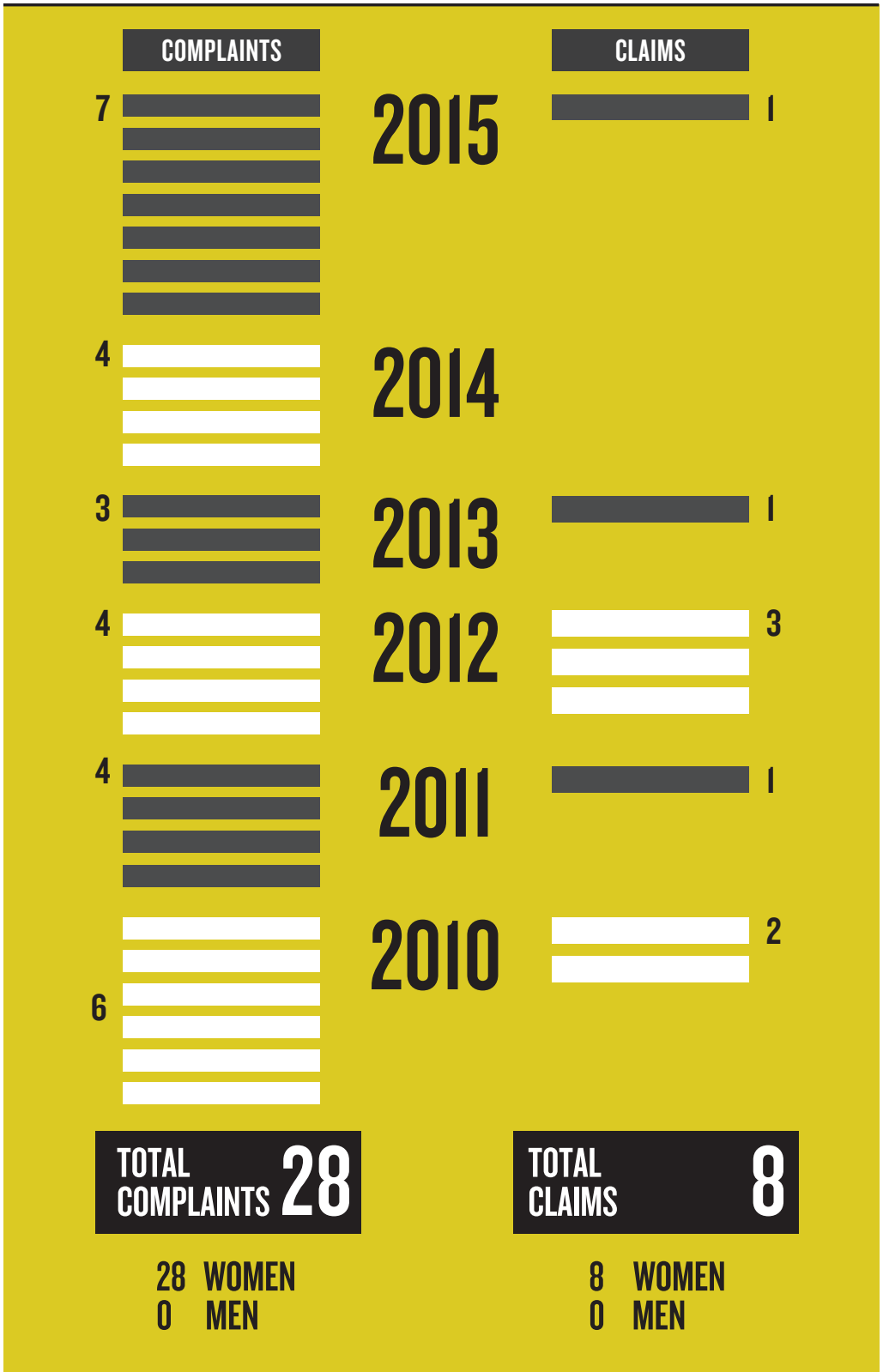
87 Campeche, Colima, Chiapas, Chihuahua, Durango, Guerrero, Morelos, Quintana Roo, Sinaloa, Sonora, Tlaxcala, and Zacatecas.

88 Mexico City and San Luis Potosi.

89 Aguascalientes, Baja California Sur, Nuevo Leon, Nayarit, and Queretaro.

90 This Law entered into effect on June 12, 2003 and was subsequently reformed on March 20, 2014 to grant CONAPRED additional powers.

# COMPLAINTS AND CLAIMS OF SUPPOSED ACTS OF MATERNITY OR PATERNITY DISCRIMINATION



Source: Developed by GIRE based on requests for access to public information.

# CONCLUSIONS

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The relationship between professional and personal responsibilities exists within a system of discrimination and gender inequality that fosters human rights violations, particularly violations of women's rights. A lack of reconciliation between these responsibilities impacts society in general, and the State is obligated to create and promote the public policies necessary to achieve reconciliation. Additionally, public and private sector employers must modify their internal policies to eliminate all discriminatory policies, particularly those associated with the reproductive choices of their employees.

Human rights standards prohibit pregnancy discrimination and establish the obligation to protect pregnant women in the workplace. However, in Mexico, these standards and their corresponding regulations are routinely violated, partly because the majority of the working population does not have access to social security benefits, including access to health services, maternity and paternity leave, access to childcare services, and more.

Among OECD countries, fathers are entitled to an average of 8.2 weeks of paternity leave. Additionally, according to the ILO, maternity leave should be offered for a minimum of 14 to 16 weeks, and both paternity and maternity leave should be complemented by additional family leave. Yet Mexico is a far cry from complying with these standards: the maternity and paternity leave periods offered in the country are notoriously limited, and family leave does not exist. Additionally, Mexico should support mothers who choose to breastfeed by implementing supportive policies and offering flexible schedules, in addition to other measures that support equality in the workplace, such as flexible hours, part-time opportunities, and remote work.

The State is obligated to guarantee the conditions necessary so that women and men are able to effectively reconcile their personal and professional responsibilities and must administer justice when institutions create barriers that limit this ability. Until this occurs, the workplace will continue to be an environment that perpetuates unequal relationships, particularly for women, thus limiting the free and respectful development of their human rights.

# RECOMMENDATIONS

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- The executive power and all public and private sector employers must take steps to eliminate discrimination related to pregnancy, childbirth, or lactation. See ‘Key Elements for Reconciliation and Co-responsibility: Checklist for Employers’ in this publication.
- Research must be conducted on both the macroeconomic and enterprise levels to understand the costs and benefits of reconciliation, taking into account inputs from international studies to identify measures that help reduce the costs and increase the benefits of reconciliation policies.
- The Mexican State must:
  - Take action to create a universal social security system that is not contingent on formal employment.
  - Ratify the following ILO Conventions: C156 - Workers with Family Responsibilities Convention, C183 - Maternity Protection Convention, and C189 - Domestic Workers Convention.
  - Reform the Federal Labor Law to comply with international labor standards, including:
    - Extending maternity leave to a minimum of at least 16 weeks, as established by the ILO;
    - Extending paternity leave to bring Mexico into alignment with its OECD peers.
  - Guarantee the quality, accessibility, and availability of childcare services, including public services.
  - Establish inspection mechanisms to ensure compliance with the workday limits established in Article 61 of the Federal Labor Law (Ministry of Labor and Social Welfare).

# ESSENTIAL ELEMENTS FOR PROMOTING WORK-LIFE BALANCE CHECKLIST FOR EMPLOYERS

There are many ways in which internal, human resource and labor policies can be adjusted or adapted —both in the public or private sector— to improve shared responsibility between employers and employees for work-life balance, independent of the laws and public policies that the State should enact. The majority of these changes imply minimum investment or none at all, while implementation of the same translates into significant improvements in productivity and benefits on

a social level. Assuming that all employers comply with current labor legislation, the following list proposes a series of best practices that can be easily implemented based on the theory presented in GIRE's diagnostic,<sup>1</sup> divided into three levels: basic (\*), intermediate (\*\*\*) and advanced (\*\*\*)).

1. Available also in Spanish at <http://corresponsabilidad.gire.org.mx>

<input type="checkbox"/>	Flexible schedules. *	<input type="checkbox"/>	Advanced lactation room with recliner armchair, electric pump, desk, telephone and access to the internet. ***
<input type="checkbox"/>	Staggered shifts. *	<input type="checkbox"/>	Two half-hour breaks every day or shortened work hours by one hour, for the mother, for a period of six months after giving birth. *
<input type="checkbox"/>	Six-hour work days. **	<input type="checkbox"/>	Two one-hour breaks every day or shortened work hours by two hours, for the mother, for a period of six months after giving birth. **
<input type="checkbox"/>	Compressed work weeks. **	<input type="checkbox"/>	Facilitate exclusive breastfeeding through a six-month maternity leave. ***
<input type="checkbox"/>	Home office. **	<input type="checkbox"/>	A discrimination-free environment for all breastfeeding mothers. *
<input type="checkbox"/>	A combination of two or more of the above policies. **	<input type="checkbox"/>	Controls and regulations to prevent pregnant women from being laid off or any other form of discrimination. **
<input type="checkbox"/>	14-week maternity leave. *	<input type="checkbox"/>	Controls and regulations to prevent women from being fired during the three months following birth. **
<input type="checkbox"/>	18-week maternity leave. **	<input type="checkbox"/>	Incentives to hire pregnant women. ***
<input type="checkbox"/>	15-day paternity leave. *	<input type="checkbox"/>	Every employee, regardless of the type of his or her contract, must have access to social security protections. *
<input type="checkbox"/>	Four and a half-week paternity leave. **	<input type="checkbox"/>	Every employee must know his or her rights regarding social security protections. **
<input type="checkbox"/>	52-day parental leave. *	<input type="checkbox"/>	The employers must orient employees on access to childcare facilities. ***
<input type="checkbox"/>	Parental leave until the child turns one year old. **	<input type="checkbox"/>	Periodic awareness raising workshops for personnel. *
<input type="checkbox"/>	A combination of parental leave and part-time work until the child turns three years old. **		
<input type="checkbox"/>	A basic lactation room with chair, table and electric outlet. *		
<input type="checkbox"/>	Intermediate lactation room: a chair with footrest, refrigerator and an electric pump which is rented by the employer. **		



*Office Hours: Shared Responsibility for Work-life Balance. Executive Summary*

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