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*Artículos científicos*

## Opciones legales para obtener una mayor pensión por jubilación

*Legal Options to Obtain a Higher Retirement Pension*

*Opções legais para obter uma pensão de reforma mais elevada*

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### Resumen

La presente investigación revisa las pensiones en México como una problemática que afecta a millones de mexicanos. El estudio es descriptivo documental, con un enfoque cuantitativo. Su finalidad es informar a los trabajadores que cotizaron en la Ley del Seguro Social de 1973 las disposiciones que permiten incrementar el monto de su pensión al momento de jubilarse. Se ejemplifican situaciones en que pueden encontrarse miles de empleados, así como las acciones que deben realizarse. La población y muestra de estudio fueron 50 profesionistas especializados en impuestos, quienes opinaron a través de un cuestionario respecto de las ventajas financieras de las opciones propuestas. Los resultados de la investigación

documental y de campo confirman las ventajas financieras de los casos que se analizan. Las conclusiones confirman la legalidad de las opciones, sus beneficios financieros y su mejora permanente al nivel de vida del pensionado.

**Palabras clave:** continuación voluntaria, nivel de vida, opciones legales, ventajas financieras.

### **Abstract**

This research reviews pensions in Mexico as a problem that affects millions of Mexicans. The study is descriptive documentary, with a quantitative approach. Its purpose is to inform workers who contributed to the Social Security Law of 1973 the provisions that allow increasing the amount of their pension at the time of retirement. Situations in which thousands of employees may find themselves are exemplified, as well as the actions that must be carried out. The population and study sample were 50 professionals specialized in taxes, who expressed their opinion through a questionnaire regarding the financial advantages of the mentioned options. The results of the documentary and field research confirm the financial advantages of the mentioned options. The conclusions confirm the legality of the options, their financial benefits, and their permanent improvement to the standard of living of the pensioner.

**Keywords:** voluntary continuation, standard of living, legal options, financial advantages.

### **Resumo**

Esta pesquisa analisa as pensões no México como um problema que afeta milhões de mexicanos. O estudo é documental descritivo, com abordagem quantitativa. Seu objetivo é informar aos trabalhadores que contribuíram para a Lei da Previdência Social de 1973, as disposições que permitem o aumento do valor de sua pensão no momento da aposentadoria. São exemplificadas situações em que milhares de colaboradores podem se encontrar, bem como as ações que devem ser realizadas. A população e amostra do estudo foram 50 profissionais especializados em tributos, que expressaram sua opinião por meio de um questionário sobre as vantagens financeiras das opções propostas. Os resultados da pesquisa documental e de campo confirmam as vantagens financeiras dos casos analisados. As conclusões confirmam a legalidade das opções, os seus benefícios financeiros e a melhoria permanente do nível de vida do pensionista.



**Palavras-chave:** continuação voluntária, padrão de vida, opções legais, vantagens financeiras.

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## Introduction

The limited amount of resources that most people receive as a pension after their retirement represents the only source of income to survive in the last years of their lives. For many people, the change from an active working life to becoming a pensioner brings with it economic difficulties that force them to adjust to a new reality, which in most cases implies a deterioration in their standard of living.

According to the Center for Studies and Public Opinion [CEOP] (February 17, 2006), and following the provisions of the Social Security Law of 1973, the pension systems were operated under the pay-as-you-go system, which consisted of that with the contributions of the workers who were contributing, the pensions of the workers who were already retired were covered. This situation changed after the amendment to the law in 1995: the pay-as-you-go system was abandoned in terms of retirement insurance, unemployment in advanced age and old age, and an individual capitalization system was established. At the same time, the Retirement Fund Administrators (Afores) were created, and although the Mexican Institute of Social Security (IMSS) continued to be in charge of collecting employee-employer contributions, it was given the responsibility of transferring said resources to the Afores.

Regarding the legal norm, the Social Security Law of 1973, published in the Official Gazette of the Federation on March 12, 1973, establishes its general observance throughout the republic in the form and terms established therein. This law establishes, in its second title, called Of the compulsory social security regime, work risk insurance; sickness and maternity; invalidity, old age, unemployment in old age and death; of nurseries for children of insured, and retirement.

Likewise, in its fourth section, “Of unemployment insurance in old age”, in its article 143, it establishes that there is unemployment in old age when the insured is deprived of paid work after 60 years of age. Therefore, when the worker is deprived of a paid job after the aforementioned age, this contingency, in accordance with article 144 of the law itself, obliges

the institute to grant the worker the following benefits: an economic pension, medical assistance, financial allowances for their families and assistance.

Notwithstanding the provisions of the law, in order for the worker to have the right to enjoy said unemployment insurance benefits at an advanced age, it is necessary to meet a series of requirements, which are mentioned in article 145 of the same legal system, namely: that the worker has been recognized by the institute as a minimum of 500 weekly contributions, that he is over 60 years of age and that he is deprived of paid work.

The Social Security Law of 1973 already considered in its chapter VII, "Of the voluntary continuation in the compulsory regime", the possibility that the worker who was discharged from the institute, in case of having contributed at least 52 weekly contributions accredited in the obligatory regime of this law, could continue voluntarily in this regime as long as they paid in full the worker-employer fees, either bimonthly or annually. This option should be used by the worker within the following 12 months from the date he was terminated by the company where he worked, otherwise he would be lost. The foregoing follows from the provisions of articles 194 to 197 of the Social Security Law of 1973; In the current law, this regime is regulated in articles 218 to 221.

Currently, one of the great problems facing the Government of Mexico is the lack of financial resources to meet the commitments of the pension system. This lack is derived from the large number of people who each month terminate their working life in accordance with the provisions of the respective laws. Thus, many of those who contributed with their work to strengthen the country's economy over 25, 30 or 40 years, and who are now in a position to receive resources through a pension that corresponds to them by law, find themselves with the sad reality that the amount they receive each month as a pension is not enough to cover essential household expenses, and they find it necessary to hire themselves again to obtain money that allows them to cover all family expenses. In short, retired people do not receive a sufficient pension to pay for essential expenses, on the one hand; on the other, the State does not have sufficient resources to sustain long-term payment of the high cost of required pensions.

However, the federal government has launched some social welfare programs, which, starting in 2021, include financial support that will be delivered every two months to all seniors, even when they are receiving a pension. For retirement, a situation that will improve the standard of living of those people who, for many years, contributed their work and effort to the development of the country.

For the reasons discussed above, the development of this research is considered important, since through the information that is analyzed some legal recommendations are proposed for all active workers close to turning 60 years of age or older in order to achieve a significant increase in the amount of your pension. Derived from the above, the question arises: what option do people who are reaching the end of their working life have to obtain a higher pension upon retirement that allows them to improve their standard of living and that of their family?

The development of this research work has as its main objective to demonstrate the economic benefit that it has for workers close to retirement to use the option of continuing to contribute through the voluntary continuation in the mandatory regime in the IMSS to obtain a higher pension for their old age.

Therefore, for a worker to be able to increase the amount of his labor pension during his retirement period, and increase his standard of living and that of his family, it is necessary that he apply the option established by the Social Security Law of registering and continuing to contribute, through voluntary continuation in the mandatory regime during the last five years prior to retirement. In this way, he will be able to plan the amount of the pension that he wants to receive.

### **Literature review**

Social security laws in Mexico have foreseen the need for economic resources that workers who reach the end of their working lives and their families will have. In consideration of the foregoing, the periodic contribution of economic resources on a tripartite basis has been established by law: the worker, the employer and the State. The resources are concentrated in the social security account or registration number of each worker during their productive stage, which will be available when they reach their retirement stage.

However, the inflationary phenomenon that the Mexican economy has experienced for many decades means that the amounts contributed for retirement are insignificant and, therefore, insufficient to decently cover the cost of living of pensioners.

Regarding modality 40, Villalobos (2021) mentions that it is an option that workers who have been affiliated with the IMSS and who have been discharged by their employer due to termination of employment have, an option that will allow them to continue accumulating weeks of contributions and improve their average quoted salary. Similarly,

Leal, Ulloa and Alonso (2020) emphasize that through the 40 modality, workers can stop working before reaching 65 years of age and complete the remaining weeks to process their retirement by paying with their voluntary savings. For his part, Robles (2021) comments that IMSS modality 40 is a program that allows people to make voluntary contributions to increase their weeks and salary in order to improve their pension upon retirement. In the same sense, González (2018) points out that this is a facility that workers have to continue contributing on their own to the IMSS when they have finished their employment relationship and thus increase their weeks of contributions.

Martínez, Ramos, Trejo and Sánchez (2017) They mention the voluntary continuation in the mandatory regimen as a benefit provided by the University of Oaxaca to teachers who leave due to retirement to cover their quotas in the aforementioned regimen until they reach the age of 60 established by law to request their pension. On the other hand, Rivas, González and Clark (2021) make a comparison regarding the knowledge that the population of the agricultural sector has about the modalities of retirement due to unemployment in advanced age and old age, among them the voluntary continuation in the mandatory regime. Rivas et al. (2021) found that over 70% of the surveyed population is unaware of the options they can choose to retire from the IMSS. In addition to the above, Salas, Casares and Gutiérrez (2011) comment that the insured who contribute under the Social Security Law in force until June 1997 can access the option of continuing to contribute voluntarily in the mandatory regime, in accordance with the law, even they can reach the maximum contribution ceiling to achieve the highest pension limit.

Now, according to Rodríguez (December 10, 2020), in 2020, for the first time in more than 20 years, the federal government made changes to the Social Security Law and the Retirement Savings System so that workers can get a higher pension. Along these lines, Guzmán (February 11, 2021) states that the changes made by the federal government benefit workers, since the reason for these is to ensure a better quality of life. However, Fuentes (February 24, 2020), who quotes the president of the National Commission of the Retirement Savings System, Abraham Vela Dip, points out that in Mexico 56% of the population is employed informally, so It does not have any retirement savings plan. To address this problem, the Government will be forced to increase the amount of compulsory savings by workers and gradually increase the retirement age. In addition, a fiscal reform is necessary that allows the increase of Government resources. Only in this way will it be possible to face the payment of current pensions and the future universal pensions of the population.



Ortega (October 31, 2020) refers to the comments of Gloria Arellano, founding partner of the firm Sánchez, Arellano Abogados, who comments that, although modality 40 is contemplated in article 218 of the current Social Security Law, who really benefits are the people who will obtain their pension with the 1973 law and are contributing under the 1997 law. He also points out that the greater the number of weeks of contributions recognized by the IMSS, as well as the highest possible average salary of the last five years and the age in completed years, the pension to be received will be greater. And she suggests that it is advisable to contribute to this module at age 55, to last five years contributing and retire with a magnificent pension at 60; thus, the five years quoted in the 40 modality are an investment.

Finally, the editorial office of the newspaper El Financiero (April 13, 2021) points out that it is possible for the worker to obtain the pension of his dreams. To achieve this, you must enroll in the voluntary continuation in the mandatory regime of the Social Security Law, known as modality 40. In fact, it is perhaps the best option to retire in accordance with the 1973 law. Even in the source in question It is mentioned that a pension of about 50,000 pesos per month could be planned, in accordance with the amounts allowed by the law itself. The foregoing is confirmed by the wording of the IDC Fiscal, Legal and Labor Advisor portal (May 14, 2018), which clarifies that the voluntary continuation in the mandatory regime proceeds when the worker has ceased to have an employment relationship and its purpose is obtain a pension for unemployment in advanced age and old age. Finally, the media Expansión (December 14, 2021) shares that through modality 40 it is possible to retire with a pension of up to 50,000 pesos per month, provided that it has been quoted in the 1973 law. And in case the worker is without an employment relationship, he can continue making contributions through the voluntary continuation in the mandatory regime or modality 40, to quote the maximum limit of up to 25 units of measurement and updating (UMAS) allowed, with the purpose of increasing your pension to the maximum established by law.

## Methodology

This research is documentary descriptive type. It presents information contained in the Social Security Law, as well as comments from authors and researchers who have analyzed the subject of pensions in Mexico. The study method is quantitative, since the analysis of the information is carried out through mathematical calculations applied to the different options. This allows showing the amount of the pensions that result in each case.

The population and study sample were 40 public accountants and 10 lawyers, who manage and advise large and small companies with hired personnel, all of them graduates of the master's program in Taxes offered by the Faculty of Administrative Sciences of the Autonomous University of Baja California. . The information collected in the field research was processed through descriptive statistics to know and concentrate the results of the opinions of those who decided to participate. This information was organized and processed to facilitate obtaining results. The opinions of the authors consulted and the professionals surveyed regarding the advantage of using the recommended option to obtain a better pension at retirement are commented. The results show an important financial benefit for those who choose the proposed option, base information for drawing conclusions.

## Results

According to the law, in order for the worker to have the right to request his pension, he must have 500 weekly contributions recognized by the institute and have reached the age of 60, which is established in article 145 of the 1973 law. However, the worker could find himself in some of the cases established in article 183 of the law itself:

- a) That the interruption in the payment of contributions is not greater than three years; All your contributions will be recognized.
- b) That, having been subject to the mandatory regime, the interruption in the payment of contributions exceeds three years, but not six. All your previous quotes will be recognized when you cover 26 new weekly quotes
- c) If you stop paying installments for a period greater than six years, the previous contributions will be recognized when you pay 52 new weekly contributions.

In any of the previous subsections, the worker must re-enter the mandatory regime through an employment relationship, and comply with at least the weeks of contribution required by article 183, either 26 for subsection b) and 52 in the case of the paragraph c).

Once the provisions of article 183 have been fulfilled, the moment comes when the worker must decide whether to take advantage of the provisions of the Social Security Law regarding registering on their own to continue contributing in the voluntary continuation in the mandatory IMSS regime. The first step is that the worker is left without an employment relationship, in this way, he will be enabled to request his incorporation in the modality that is mentioned and recommended here.



In this option, the worker must pay the contributions according to a salary equal to or greater than the one he was contributing in the last company where he worked. The financial benefit is directly related to the amount of the salary registered by the worker in the new regime: the higher the salary, the higher the monthly fee, but the financial benefit will also be higher, provided that, in the case of the three items mentioned above, the option is chosen within one year of having terminated their employment relationship, in accordance with article 195 of the aforementioned 1973 law.

In accordance with article 167 of the law in question, the amount of a pension will be determined based on the average daily salary with which the worker has contributed in his last 250 weekly contributions. In accordance with the above, the following practical case is presented (see table 1)

**Tabla 1.** Ejemplo de pensión mensual de trabajadores con base en el salario base de cotización (SBC) durante los últimos cinco años anteriores a su pensión en la continuación voluntaria en el régimen obligatorio

Concept	Average SBC in Mexico (IMSS) to October 2021	Option worker B SBC	Option worker C SBC	Option Worker D SBC	Option worker E SBC
Average SBC last 250 weeks	432.00	600.00	1000.00	1500.00	2015.00
Monthly pension is equal to the average salary multiplied by 30	12 960.00	18 000.00	30 000.00	45 000.00	60 450.00

Fuente: Elaboración propia

From the previous example, it can be considered that the worker contributed a much lower amount in his job with an employer compared to the amount he decided to contribute in the last 200 weeks in the voluntary continuation in the mandatory regime. In this way, he was able to plan the amount of the intended pension five years in advance. The types of insurance premiums and the amount of the fee that the worker must pay each month in

advance are disclosed below. It should be remembered that the worker does not have an employer, therefore, the total payment corresponds to him.

Table 2 shows the branches of Social Security and the percentages in each of them, in which the worker who chose to continue contributing in the Mandatory Regime must contribute and pay the contributions, either to complete the number of weeks contributed necessary to obtain your pension or because you want to plan the amount of the pension to receive once you retire. The information shows that the maximum percentage that the worker will pay, on the salary that he wishes to contribute, will be 10.075% whose amounts directly increase his pension.

**Tabla 2.** Primas o ramo de seguro a pagar en la continuación voluntaria en el régimen obligatorio

Types of insurance (line)	Percentages		Percentages to be paid by the insured based on their SBC
	Employer	Employee	
Retirement	2.00%		2.00%
Unemployment in old age and old age	3.150%	1.125%	4.275%
Disability and life	1.750%	0.625%	2.375%
Medical expenses for pensioners	1.050%	0.375%	1.425%
sums	7.95%	2.125%	10.075%

Fuente: Elaboración propia con datos de la Ley de Seguro Social vigente en 2021

**Tabla 3.** De acuerdo con los datos de la tabla 1 y los porcentajes presentados en la tabla 2, se determina el pago mensual que debe pagar el trabajador

Concept	Worker A	Worker B	Worker C	Worker D	Worker E
Average salary for the last two hundred and fifty weekly contributions	300	600	1000	1,500	2015
Monthly average salary	9000	18 000	30 000	45 000	60 450
Percentage	10.075%	10.075%	10.075%	10.075%	10.075%
Monthly amount to pay	906.75	1813.50	3022.50	4,33.75	6090.33

Fuente: Elaboración propia con información de la Ley de Seguro Social vigente a 2021

Regarding the results of the field research, when asking the respondents about whether the voluntary continuation in the mandatory regime is an important option to plan the retirement pension, 67% said they totally agreed and 33% said they agreed ; When asked if this is used as an economic strategy for the pension, 33% said they totally agreed and 67% said they agreed; When asking the participants if the voluntary continuation in the mandatory regime allows planning the pension that they wish to receive, 33% totally agreed, 50% agreed and 17% disagreed; When asking the professionals if the modality in question allows planning the pension according to economic capacity, 50% totally agreed, 33% agreed and 17% disagreed; When asking the participants if the voluntary continuation is a legal way to improve the worker's pension, 33% totally agreed and 67% agreed.

Next, the concentrate of the field information collected through the application of questionnaires is presented (see table 4).

**Tabla 4.** Concentrado de información de campo a través de cuestionarios

Indicators	Totally in agreement	In agreement	In disagreement	strongly disagree
1) I know what the voluntary continuation in the mandatory regimen established in articles 218 to 221 of the Social Security Law consists of.	67%	33%		
2) Voluntary continuation is an important option for retirement pension planning.	67%	33%		
3) Voluntary continuation is used as an economic strategy for the pension.	33%	67%		
4) Voluntary continuation allows you to plan the amount of pension you want to receive.	33%	50%	17%	
5) Voluntary continuation allows you to plan your pension based on financial ability.	50%	33%	17%	
6) Voluntary continuation is a legal way to improve the worker's pension.	33%	67%		

Fuente: Elaboración propia

### Analysis of results

When comparing the results of this research with that carried out by Villalobos (2021), the latter sees modality 40 as an option that allows the worker to continue accumulating weeks of contributions and improve their average salary for their pension. Similarly, Leal et al. (2020) see it as an opportunity for workers under the age of 65 to pay on their own for the contributions they lack in order to access their pension. For Robles

(2021) and González (2018), the analyzed pension regime serves to increase the weeks of contributions and increase the SBC for the pension. For its part, the writing of the newspaper El Financiero (April 13, 2021) describes the benefits of voluntary continuation in the mandatory regime so that workers are aware of the option. In the same sense, Rivas et al. (2021) make a comparison that allows them to know to what extent the option of retirement by voluntary continuation in the mandatory regime is known among the population of the agricultural sector. On the other hand, Martínez et al. (2017) review the issue as a benefit granted by the University of Oaxaca to teachers who end their employment relationship before 60 years of age, which consists of keeping them in that regimen until they meet the age requirement. In addition to the comments of the aforementioned authors, this research positions the scheme in question as an option that allows retirees to increase the amount of income they will receive periodically as a pension, which has as a voluntary contribution limit the amount of the SBC maximum that the law considers for the calculation of pensions. The proposal to adopt this regime is illustrated with some options regarding contribution wages, payments that the worker must make during the period that he contributes, and the amount of the pension that he will receive once he retires. On the other hand, the results of the field investigation of this work show that more than 80% agreed that it is a legal option, it does represent a financial advantage, since it is verified that it does increase the standard of living of those who they chose it. Therefore, choosing the voluntary continuation in the mandatory regime does represent the best retirement option for workers.

## Discussion

The results of this research show that two out of three people surveyed do not consider the option of voluntary continuation in the mandatory regime as an economic strategy to increase the pension they will receive. In the same proportion, the interviewees show ignorance about the topic addressed, since they doubt the legality of the analyzed option. Most of the studies carried out recommend the option subject of analysis of this work as a facility for the worker to complete the number of contributions that he needs to be able to reach and process his retirement, with the exception of the comments made by the editorial staff of El Financiero (April 13, 2021), where it is considered as an element of economic strategy to plan the pension to be received by the worker when he retires, which fits within the example of wages and pensions that was reviewed in this work. It is worth mentioning

that, according to IMSS figures as of October 2021, there are 235,534 insured workers in the voluntary continuation of the mandatory regime, therefore, the option proposed in this work is totally legal. One of the main limitations of this study was the lack of knowledge that workers have about its existence; another no less important is that the majority of people lack the resources to pay the fees of the mentioned scheme on their own, whose economic situation makes it urgent to receive an amount, even if it is small, to have to continue paying a monthly fee on their own.

## **Conclusions**

According to the comments of specialists on the subject, the voluntary continuation in the mandatory regime, known as module 40, is an excellent option to improve the amount of the pension, based on the provisions of the 1973 social security law. Therefore, it is convenient to opt for the option of voluntary continuation in the compulsory regime; yes, it can be used as a financial strategy to plan the amount of the desired pension. Consequently, and according to the results obtained in the field research of this work, the mentioned option does represent an economic strategy to obtain financial benefits that allows raising the standard of living during the retirement stage.

## **Future lines of research**

During the current year 2022, some workers who began to contribute with the Social Security Law of 1997 will begin to request their retirement. It is considered of interest to carry out this study applied to the new law, since it also establishes in its article 218 the option of voluntary continuation in the compulsory regime in the same terms as the 1973 law, therefore, what benefits will it have for the worker the voluntary continuation in the mandatory regime of the IMSS in the 1997 law in force to date?



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Recursos	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Curación de datos	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Escritura - Preparación del borrador original	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Escritura - Revisión y edición	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Visualización	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Supervisión	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Administración de Proyectos	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)
Adquisición de fondos	Leonel Rosiles López (principal), Berenice Martínez Pérez, Lorena Vélez García (apoyan)