

NEW DEVELOPMENTS IN LABOUR DERIVED FROM ROYAL DECREE-LAW 28/2018

The approval of Royal Decree-Law, 28/2018 of 28 December, on the revaluation of public pensions and other urgent social, labour and employment measures (the "RD"), which entered into force on 29 December, has introduced important new developments with regard to labour and Social Security.

INCREASE OF THE MINIMUM INTERPROFESSIONAL SALARY

One of the most significant new developments introduced by the RD is the increase of the minimum interprofessional salary ("SMI") as of 1 January 2019, with regard to the SMI for 2018.

The SMI for 2019 is set at €30/day or €900/month, with the annual figure being a minimum of €12,600. As a result, the SMI has been increased by €2,297.40 with regard to the previous year.

This notwithstanding, the increase will not apply to the collective agreements in force that use the SMI as a benchmark to determine the amount or the increase of the base salary or salary supplements. In these cases, specific rules are established on increases depending on the date the collective agreement in question entered into force.

INCLUSION OF PERSONS CARRYING OUT NON-LABOUR AND ACADEMIC TRAINING PROGRAMMES AND INTERNSHIPS IN THE SOCIAL SECURITY SYSTEM

Until 2019, persons participating in training programmes or in non-labour internships in companies or in external academic internships (commonly referred to as "interns") were only included in the Social Security system if they received some kind of remuneration.

This meant that unpaid interns were excluded from the General Social Security Regime. However, as a result of the entry into force of the RD and pursuant to Additional Provision Five, university students enrolled in undergraduate and master's degrees, as well as students in medium or higher level professional training will be included in the General Social Security Regime as equivalent employees, regardless of whether or not their internships are remunerated.

Key aspects

- Increase of the minimum interprofessional salary (SMI) to €900/month.
- Obligation to register persons carrying out training programmes and non-labour and academic internships as equivalent employees (asimilados) in the General Social Security Regime (RGSS), even if not remunerated.
- Derogation of the forms of contract and incentives that applied when the unemployment rate was above 15%.
- The inclusion of mandatory retirement age clauses in collective agreements is permitted.
- Increase of the contribution rate for short-term contracts and of the occupational accident/professional illness tariffs.
- Suspension of the system of reduction of contributions for professional contingencies as a result of a reduction in occupational accidents.

This new regulation gives rise to two possible scenarios:

1. First of all, persons who were participating in training programmes and non-labour or academic internships prior to the entry into force of the RD will be able to enter into a special agreement that makes it possible to calculate the contribution for the periods completed prior to the entry into force of the RD, up to a maximum of 2 years.
2. Secondly, with regard to those persons who participate in training programmes and non-labour or academic internships as of 1 January 2019, without remuneration, they will contribute to the Social Security system and be included in the General Regime as equivalent employees.

In any event, the contribution rules corresponding to training and apprenticeship contracts will apply, with there being no obligation to contribute for unemployment contingencies, or to the Salary Guarantee Fund or for professional training.

The entity obliged to make the contributions will be (i) in the case of paid training programmes and internships, the corresponding party according to the regulations applicable to each case; and (ii) in the case of unpaid training programmes and internships, the company, institution or entity in which the internship takes place, unless the cooperation agreement or arrangement for the same stipulates that these obligations will correspond to the education centre in which the students are enrolled.

It is envisaged that this provision will be implemented in regulatory terms within 3 months, which will no doubt help to resolve the existing doubts.

DEROGATION OF EMPLOYMENT CONTRACTS AFFECTED BY THE REDUCTION OF THE UNEMPLOYMENT RATE BELOW 15%

As a result of the fall in the rate of unemployment in Spain below 15%, the types of employment contract or those aspects of the regulations on the same that were contingent on a rate of unemployment in excess of that figure are cancelled.

Specifically, the measures implemented are the following:

1. First of all, the indefinite contract to promote entrepreneurs is discontinued, having been created in the 2012 labour reform with a view to addressing a specific situation of difficulty in accessing employment, on the condition that it would be derogated when the unemployment rate fell to 15%.
2. The possibility for businesspersons to enter into training and apprenticeship contracts with employees aged under 30 is removed. This introduction of this age limit cancelled the previous maximum limit of 25 years established in the first paragraph of Article 11.2.a) of the Workers' Statute, as it was extended while the rate of unemployment exceeded 15%. As a result of the reduction of the same, businesspersons can now only enter into this type of contract with young persons aged between 16 and 25.
3. Finally, incentives for internship contracts, part-time hiring for training purposes and the hiring of new youth entrepreneurship projects are discontinued, as is the incentive for the indefinite hiring of young persons by micro-companies and freelance businesspersons and the first youth employment contract.

In any event, and pursuant to Transitional Provision Six, the contracts entered into prior to the entry into force of the RD will continue to be valid, being governed by the regulations in force at the time they were concluded.

MANDATORY AGE RETIREMENT CLAUSES

The RD amends the Workers' Statute in order to make it possible, once again, for collective agreements to establish clauses that allow contracts of employment to be terminated when the employee reaches the ordinary retirement age, with the following requirements:

1. The workers affected by the termination of the contract of employment must comply with the requirements established by the Social Security regulations to be entitled to 100% of the ordinary retirement pension on a contribution basis; and

2. The measure will have to be linked to consistent employment policies set out in the collective agreement, such as the improvement of employment stability by means of the conversion of temporary contracts into permanent ones, the hiring of new employees, generational renewal or any other measures designed to favour the quality of employment.

NEW PENALTIES FOR THE CONVERSION OF EMPLOYEES INTO FALSE SELF-EMPLOYED WORKERS

In order to prevent businesses using false self-employed workers, the RD includes a new kind of serious labour infringement consisting of de-registering an employee who is subsequently registered as self-employed, and who continues to perform the same labour activity or carries out an identical provision of services. This conduct will be sanctioned with a fine of between €3,126 and €10,000 for each employee involved.

INCREASE OF THE CONTRIBUTION RATE IN SHORT-TERM CONTRACTS

Another of the new developments introduced by the RD is the increase in the contribution rate for short-term contracts in order to de-incentivise the use of this kind of contract. Specifically, the contribution rate is increased from 36% to 40%, with a reduction of the duration of the temporary contract to which this rate applies, from 7 days to 5.

Therefore, for those temporary contracts with a duration of 5 days or less, the Social Security quota to be paid by the employer for common contingencies will be 40%.

SUSPENSION OF THE SYSTEM OF REDUCTION OF CONTRIBUTIONS FOR PROFESSIONAL CONTINGENCIES DUE TO A REDUCTION IN OCCUPATIONAL ACCIDENTS

With the entry into force of the RD, the application of the system of reduction of contributions for professional contingencies for companies who have significantly reduced the number of occupational accidents, introduced in Royal Decree 231/2017, of 10 March, is discontinued for contributions generated during 2019.

In any event, the RD envisages that this suspension will last until the Government processes the reform of RD 231/2017, due to take place in the course of 2019.

NEW CONTRIBUTION TARIFF FOR OCCUPATIONAL ACCIDENTS AND PROFESSIONAL ILLNESSES

A new table of tariffs is established for contributions for occupational accidents and professional illnesses; it is worth noting that the percentage applicable to personnel performing exclusively office work increases from 1% to 1.5%.

SOCIAL SECURITY COLLABORATION ENTITIES

Voluntary collaboration in the management of the financial benefit due to temporary incapacitation resulting from a common illness or non-occupational accident is cancelled for all those companies who were authorised for this purpose, effective as of 31 March 2019. As such, these companies will have to opt to formalise the protection for this benefit with a recognised employer's insurance entity no later than 1 April 2019.

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