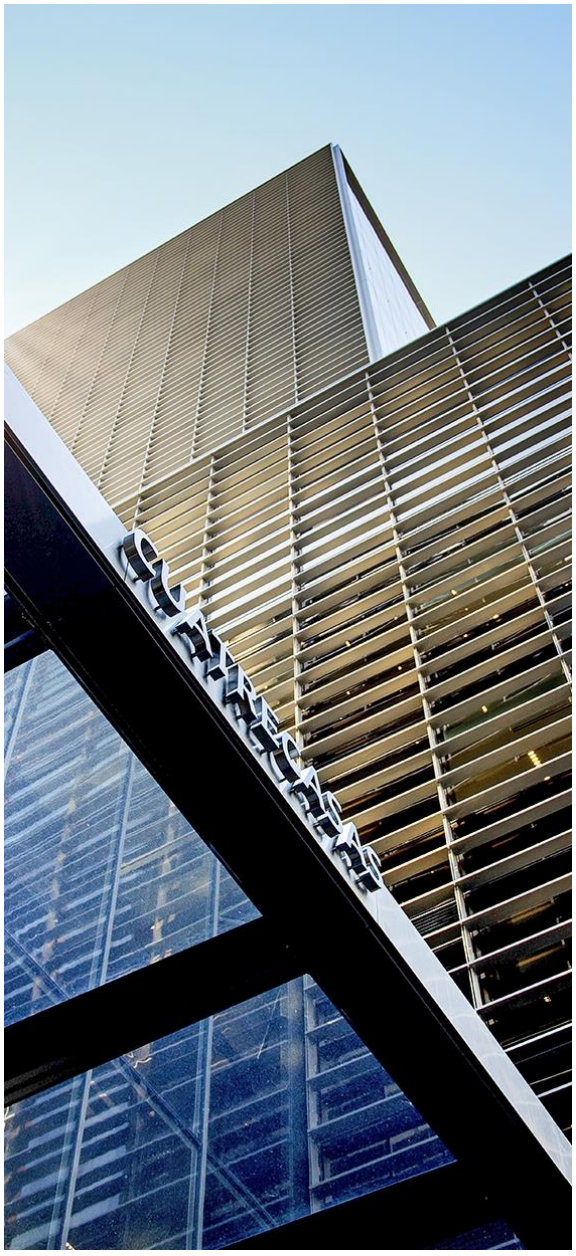
CUATRECASAS

10 impacts of the 2021 Spanish labor reform

Royal Decree-Law 32/2021, of December 28, 2021, affects key labor points, such as temporary employment contracts and the application of collective bargaining agreements. Below we analyze its 10 most relevant aspects.

Legal flash

December 31, 2021



Key aspects

1. **Restrictions on fixed-term employment** contracts
2. **Review** of **training contracts**
3. **Reinforcement** of **permanent seasonal** contracts (*fijo discontinuo*)
4. Specific termination rules for indefinite contracts in the **construction sector**
5. Promotion of temporary layoffs (**ERTE**) and promotion of training while they are in force
6. The Spanish government may activate the **RED Employment Flexibility and Stabilization Mechanism**
7. **Determination of collective bargaining agreements** applicable to **contracting and subcontracting companies**
8. **Company-based collective bargaining agreements** can no longer lower salaries over industry-based collective bargaining agreements
9. Restoration of unlimited **extended validity** (***ultraactividad***) of collective bargaining agreements
10. Reinforcement of workers' representatives' **information rights** and the Labor and Social Security Inspectorate's **monitoring capabilities**

Moreover, Act 21/2021 sets limits on compulsory retirement in collective bargaining agreements

1. Tighter restrictions on fixed-term employment contracts

- Indefinite-term contracts continue to be the most common type of contract in Spain. The new regulation restricts the number of exceptions to this (in the form of fixed-term contracts).

- Companies can no longer enter into temporary employment contracts for a specific work or service *(contrato por obra o servicio determinado)*. Temporary recruitment **is only allowed** when it is necessary to cover situations of production overload (see below) and to replace another worker.

- Companies are legally required to specify **the reason for the temporary nature of contracts**. They must indicate (i) the grounds enabling the temporary recruitment, (ii) the specific circumstances justifying it, and (iii) the link between the reasons and the expected duration of the contract.

- **Temporary contracts grounded on production overload** may be justified on two grounds and will be subject to the following terms:

    - Ground 1: **Occasional and unexpected increase and fluctuations** (i.e., not seasonal) in the company's normal activity, resulting in a temporary imbalance between the staff available and the staff required. In this case, contracts can last **up to six months** (or one year if so specified in the industry collective bargaining agreement). Fluctuations in activity include those resulting from annual vacations.

    - Ground 2: **Occasional, foreseeable situations that have a short, limited duration**, in which case companies can enter into this type of contract with an unlimited number of workers for up to **90 (non-continuous) days in a calendar year**.

- Companies cannot use temporary contracts to execute **contracting, subcontracting and administrative concessions** that are part of the company's normal activity.

- **Companies may enter into replacement contracts** on the following grounds:

    - Ground 1: To replace a worker with the right to return to the same job, in which case the contract can start up to 15 days before the beginning of the leave of the worker to be replaced.

- Ground 2: To cover the full working day of another employee whose hours have been reduced (for legal or contractual reasons).

- Ground 3: To temporarily cover a position during a selection or promotion process to find an indefinite employee, in which case the term of the temporary contract cannot exceed three months—or a shorter term if so provided under the collective agreement—and cannot be renewed for the same purpose once the temporary contract has expired.

- Enforceability: This new regulation on hiring will apply from March 30, 2022 (three months after its publication in the Official Gazette).

  Companies may continue to apply the previous regulation:

  - in the case of fixed-term contracts entered into before December 31, 2021, until their maximum duration is completed;

  - in the case of fixed-term contracts entered into between December 31, 2021, and March 30, 2022, for six months from their signature, as the maximum duration of these contracts is six months.

- **Reclassification of fixed-term contracts as indefinite contracts**: the new law **presumes** that all contracts are indefinite, and sets out circumstances where they could become fixed-term contracts.

  - Basic non-compliance with legal requirements.

  - Failure to register the employee with Spanish Social Security after the probationary period.

  - Consecutive temporary contracts:

    - **Affecting the same person**: Employees will be considered indefinite workers if, within 24 months, they work under two or more subsequent temporary contracts for over 18 months, including periods in which they are hired under a temporary-work agency ("TWA") contract.

    - **Affecting different people covering the same position**: the fixed-term contract will be reclassified as an indefinite contract if, for 18 out of 30 months before this contract, the employee's work position has been covered with workers employed under other fixed-term contracts on the grounds of production overload, or hired though a TWA.

- These reclassification requirements imposed on subsequent contracts are applicable to contracts entered into after December 31, 2021, without considering previous contracts.

- **Any breach of temporary recruitment regulations** is considered an infringement for each worker affected by the breach, with penalties ranging between €1,000 and €10,000.

- The government has established a **new additional social security contribution system for temporary contracts lasting less than** 30 days, which is more expensive than for other longer temporary contracts.

2. Changes to the training contracts system

WORK EXPERIENCE CONTRACTS

- Change of name: these contracts are now called "contract to obtain professional practice."

- They can only be entered into **within three years** (or five years in the case of workers with disabilities) from the time employees complete their studies.

- The maximum duration is **one year** (or less, as set out in the collective agreement).

- They are not available to those that have already acquired **work experience or followed a training course** in the same activity within the company lasting for over **three months**.

- The company must set up an **individual training program** focusing on the professional activity and assign a **tutor**.

- **The salary** must fall within the scale established for the **professional group and level of remuneration** corresponding to the tasks carried out. It can no longer be decreased to 60% during the first year and 75% during the second year as foreseen in the prior regulation.

- **Overtime** is forbidden, except in cases of *force majeure*.

- Once the contract terminates, the company must certify the contents of the professional practice.

ALTERNATE TRAINING CONTRACT

- Previous "training and apprenticeship" contracts are now known as "alternate training" contracts. They involve alternating academic study with practical work experience in the same field under Act 11/2020 on dual training.
- **Duration**: minimum of three months (previously one year) up to two years (previously three years).
- Only one contract can be offered for each professional training course and university degree, unless different activities are encompassed within the training course or program.
- **There is no age limit**, unless the contract is entered into in the framework of level 1 and level 2 professional certificate programs and public or private programs included in the Catalog of Training Specialties of the Spanish National Employment System, in which case the age limit is set at **30 years**.
- These contracts can be entered into when they are linked not only to professional training courses, but also to a university degree, as long as the potential employee has not been a party to a previous training contract on a course at the same level and in the same productive sector.
- The contract cannot include a **probationary period**.
- It may be part-time.
- The recruited person will have two tutors, one **tutor** appointed by the work center or training organization, and **another tutor** appointed by the company.
- The training organization must, together with the company, set up an **individual training program** specifying the content of the training course, the schedule, and the activities and tutorial requirements to achieve the set goals.
- The **maximum working time** during the first year is reduced from 75% to 65%, and it cannot exceed 85% during the second year.
- **Remuneration** cannot be less than 60% in the first year, and 75% in the second year with regard to the salary established in the collective agreement in proportion to the working time.

RULES APPLICABLE TO BOTH TRAINING CONTRACTS

- The new regulation will enter into force on March 30, 2022, three months after its publication in the Official Gazette. The termination date of any previous training contracts will be in accordance with the previous regulation.
- Both types of training contracts, which must be formalized in writing, are required to include the text of the individual training plan.
- The age limits and the maximum duration of the training contract will not apply when they are entered into with people with disabilities or with individuals from groups in a situation of social exclusion.
- Companies applying an ERTE or under the RED Mechanism may enter into training contracts as long as the workers hired under this agreement do not substitute the functions or tasks usually performed by workers affected by the suspension or reduction of working hours.

3. Reinforcement of permanent seasonal contracts (*fijo-discontinuo*) regime

- The new regulation of these contracts will enter into force on March 30, 2022, three months after its publication in the Official Gazette.
- Permanent seasonal contracts include **seasonal jobs** and also jobs requiring an intermittent provision of services, that must be performed during **specific, definite or indefinite periods**.
- **Companies that work as subcontractors** must now enter into permanent seasonal contracts with workers employed under a contractor agreement, whose periods of inactivity (i) can only occur while they are waiting to be reassigned to a new outsourced job, and (ii) cannot extend beyond the maximum period provided under the sector-specific collective bargaining agreement or, failing that, three months, after which the company must take the contingency measures set out in the Workers' Statute.
- TWA can also enter into these contracts.

- Collective bargaining agreements can govern how to employees can be hired during periods of inactivity for their reintegration in the activity and provide other details on their contracts. Agreements with permanent seasonal workers must be in writing, or in a way ensuring that these workers are properly and timely notified of the exact conditions for their incorporation.

- **The seniority of permanent seasonal workers** will be calculated considering the whole effective length of the employment relationship and not the time during which they have effectively provided services, unless the conditions must be considered differently owing to their nature, respecting at all times the principles of objectivity, proportionality and transparency.

4. Specific termination of indefinite employment agreements in the construction sector

- The termination of employment agreements in the construction sector will qualify as a termination **for reasons attributable to the worker** subject to the following requirements and with the following consequences:

    - Fifteen days before the construction project ends, the worker must receive from the company a written **proposal to relocate that worker to another site** (as an annex to the work contract) or, if necessary, an offer to place the worker on a training program.

    - Once the proposal has been received, the contract may be terminated for reasons attributable to the worker in any of the **following circumstances** (the company must give 15 days' notice, except in the first case below):

        - The worker **rejects the proposal** (whether explicitly or by not responding **within seven days**).

        - After receiving training, **the worker is not sufficiently qualified** to work on the new construction projects in the same province.

        - There are **too many workers** with the qualifications necessary to carry out those tasks.

- **The company has no construction projects underway in the province** that require the worker's professional qualifications, level, function and professional category.

- Workers whose contract is terminated on these grounds will **be entitled to a 7% compensation payment**, calculated based on the salary items listed in the tables of the applicable collective bargaining agreement and that have accrued while the contract was in force, or any higher amount established in the General Agreement for the Building Sector.

5. Promotion of temporary layoffs (ERTE) and promotion of training while they are in force

- Some of the **deadlines for processing ERTEs** have been shortened, allowing for a quicker response:

  - In the case of companies with fewer than 50 employees, the period of consultations has been reduced **from 15 to 7 days**.

  - The maximum term to set up the workers' representation body is reduced **from 7 to 5 days, and from 15 to 10 days** if the center does not have any workers' legal representatives.

- Some ERTE procedures have been simplified, such as extensions, modification of employees affected by an ERTE or returning to work, and the Labor and Social Security Inspectorate report.

- Under the new regulation, whenever feasible, ERTE must **prioritize the reduction of working hours** over suspending employment contracts.

- It is considered a serious infringement (per hired worker) to hire new workers while an ERTE is in force, with certain exceptions. Non-compliance with outsourcing rules is considered a **very serious infringement**.

- Companies that provide **training programs for affected workers** while the ERTE is in force (respecting legally established rest periods and work-life balance rights) may benefit from allowances for training and exemptions from social security contributions.

- ERTEs on the grounds of *force majeure*, ordinary ERTEs and those due to constraints or restrictions are also entitled to greater allowances, as companies can benefit from **exemptions from social security contributions up to 90%**, subject to the commitment to maintain jobs.

6. The new RED Employment Flexibility and Stabilization Mechanism

- The Royal Decree-Law introduces a **new channel** for reducing working time or suspending contracts based on business reasons.
- **The government will make this option temporarily available** in the following circumstances:
    - When the overall macroeconomic situation makes it advisable (**cyclical type**), the term of which cannot exceed one year.
    - When training and development in the sector has become obsolete (**sectoral type**), the initial term of which cannot exceed one year, which can be extended by no more than two six-month renewals.
- **Companies will then need to file for this.** Reduction in working time will have a priority over suspension of contracts, and during this system, ERTE-equivalent restrictions will apply to companies.

7. Determination of the collective bargaining agreement applicable to contracting and subcontracting activities

- Contractor companies will be subject to the **industry collective bargaining agreement applicable to the activity carried out under the contractor agreement**, or any other sector-specific agreement applicable under Title III (art. 84 of the Workers Statute).
- If the contractor company has its own agreement or negotiates at a later date, it may be entitled to apply it instead of the industry agreement.

8. Company-based collective bargaining agreements can no longer lower salaries over industry-based collective bargaining agreements

- While an industry or regional collective agreement is in force, company-based collective agreements **cannot establish lower salaries or benefits**, including those related to the company's situation and results.
- If companies have their own agreement in place and that agreement was published before the Royal Decree-Law came into force, establishing salary scales lower than those provided in the industry or regional applicable collective agreement, **those companies will have to apply the latter scales once the company agreement ceases to be in force, and in any case, within one year** from the date the regulation is published in the Official Gazette of the Spanish State.
- **All collective bargaining agreements must adapt to these amendments within six months** from the date they become subject to the specific applicable framework.

9. Restoration of unlimited extended validity (*ultraactividad*) of collective bargaining agreements

- If a collective bargaining agreement has reached its expiration date **and a new agreement is not concluded**, the Royal Decree-Law states that a new agreement must be sought through the **mediation procedures** regulated under the state or regional interprofessional collective agreements. If so agreed, an arbitration procedure may also be initiated.
- If the disputes are not resolved, the law **restores the unlimited extended validity of the disputed collective bargaining agreement** until a new agreement is reached.

10. Reinforcement of workers' representatives' information rights and the Labor and Social Security Inspectorate's monitoring capabilities

- **Workers' representatives' information rights are strengthened** in several ways.
- **The Labor and Social Security Inspectorate's monitoring capabilities are extended**, allowing it to access any information it may require.

Limits on compulsory retirement

- Collective agreements signed from January 1, 2022, may introduce forced retirement clauses, but at a later age than the ordinary retirement age, that is, from 68 years of age, provided that the individual meets the requirements to collect full retirement benefits and the termination of the contract is compensated with the indefinite and full-time hiring of a new worker.
- Exceptionally, the collective agreement may lower the forced retirement age to the ordinary retirement age if the following requirements are met: (i) in the economic activity carried out (defined according to the CNAE), the employment rate of employed women is less than 20% of the total number of workers on the date the termination decision becomes effective; (ii) the worker whose contract is due to expire is entitled to full retirement benefits; and (iii) to replace the retiring employee, the company must employ at least one woman on an indefinite full-time basis. The company is obliged to previously inform the workers' legal representatives.

For additional information, please contact Cuatrecasas.