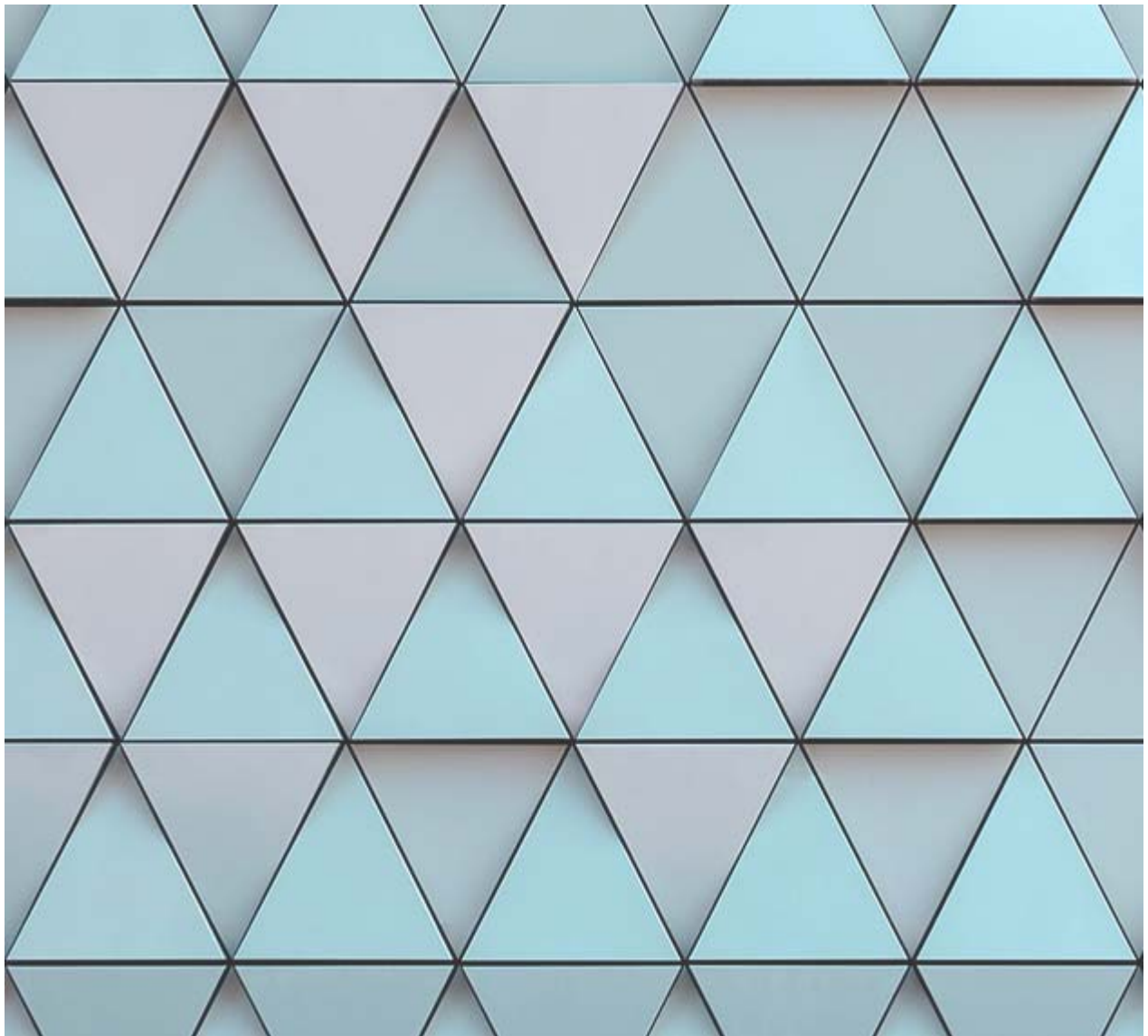


# Labor and Employment Newsletter



First quarter 2024 | January – March



---

# Contents

REMUNERATION

DIVERSITY

SOCIAL SECURITY

DIGITAL RIGHTS

TERMINATION OF EMPLOYMENT

WORK-LIFE BALANCE

UPCOMING NEWS

---



## REMUNERATION

- The accumulated increase in the inflation rate in recent years, closing the 2023 CPI at 3.5%, has resulted in many companies having to **carry out salary reviews and updates** as provided under their respective collective bargaining agreements. In this adaptation phase, it will be crucial to apply the compensation and absorption mechanisms in line with existing judicial criteria; to be aware of the exceptions specified in the regulations; and to consider, on negotiating any agreements, the possibility of setting other parameters on conducting salary reviews.
- The **minimum wage** for 2024 is set at €1,134 per month (€15,876 per year in 14 payments), representing a 5% increase over 2023, which will have considerable cost implications for companies.
- The Court of Justice of the European Union (CJEU) has declared **supplementary social security benefits** to be a **basic working and employment condition** for the purposes of the principle of **equal treatment** applied to temporary agency workers and those of user undertakings, which will have an impact on the costs of any recruitment through this means. *Judgment of February 22, 2024, Case C 649/22.*
- In the area of taxation, several significant rulings have been handed down concerning the deductibility of directors' remuneration for corporate income tax ("CIT") purposes. These rulings evidence a potential discrepancy between the Spanish Central Economic and Administrative Tribunal ("TEAC) and the Supreme Court, specifically regarding the mandatory fulfillment of commercial regulations for directors' remuneration to be deductible. The Supreme Court has recently ruled (*March 13, 2024, appeal no. 9078/2022*) that remuneration paid to three employees having a double employment link as senior managers and directors is deductible for CIT purposes, **despite** no provision being made to that effect in the company's bylaws.

## DIVERSITY

- March 2, 2024, was the deadline of the **12-month term** granted under *article 15 of Act 4/2023, of February 28, for the full and effective equality of transgender people and for the guarantee of LGBTI rights* to companies with over 50 employees to negotiate through collective bargaining a **planned set of measures and resources to ensure full equality for LGTBI people**, including a plan of action to prevent harassment and violence against this community. The regulatory development of this obligation is expected to be approved soon.
- Likewise, Act 4/2023 imposes the requirement to **include transgender women in equality plans** (*article 55 of Act 4/2023*).



## SOCIAL SECURITY

- Since January 1, 2024, companies are obliged to register **remunerated external trainees** with the social security and pay the corresponding contributions. Although the 100% rebate on social security contributions no longer exists, it has been replaced with a 95% reduction applicable to contributions for common contingencies for all types of trainee programs (*Royal Decree-Law 2/2023*).
- With regard to the **eight-week parental leave** regulated under article *45.1.o* and new article *48 bis* of the Workers Statute, the General Treasury of the Social Security has clarified that companies must pay contributions during this period for common and professional contingencies and report them through the RED system.
- The Contribution Order (*Order PJC/51/2024*) has been amended by Order PJC/281/2024 to update the contribution bases in accordance with the minimum wage set for 2024. Under the provisions of *the RED 5/2024 Gazette*, companies must **regulate** the settlement of payments made for January and February 2024, which are subject to this new Order.
- *Royal Decree 322/2024* has modified the general regulations for collection and for contributions made. Among other developments, it regulates the new “additional solidarity contribution” (*article 19.bis of the Social Security Act*) and obliges companies — from 2025 to 2045—to pay an additional contribution applicable to the salaries of employees that exceed the maximum contribution bases.

## DIGITAL RIGHTS

- On March 13, 2024, the European Parliament approved the **AI Act**, the rules of which are aimed at regulating the use of **artificial intelligence (AI)** by manufacturers and providers of AI systems, and by those responsible for the deployment of AI within the EU. This groundbreaking, landmark and complex set of regulations imposes obligations on companies that use AI systems for their activities. The act is currently undergoing the corrigendum procedure and pending publication in the Official Journal of the European Union. The regulation sets out a **cross-sectoral** approach and addresses the **potential risks** of using AI in employment, management of workers and access to self-employment, and it imposes obligations aimed at removing or mitigating systemic risks.
- With regard to the **rules on the use of digital devices** (provided under article 87 of the *Spanish Act on Data Protection and Guarantee of Digital Rights*), the Supreme Court has ruled that workers' legal representatives are entitled to participate in drafting the usage policies and in making amendments, clarifications and updates to them.



- The *Platform Work Directive, on improving working conditions in platform work* has been approved. It establishes a broad scope of application and a legal presumption of employment relationship for digital labor platforms.

## TERMINATION OF EMPLOYMENT

- The Court of Justice of the European Union (CJEU) has handed down two significant judgments for companies related to the termination of employment agreements:
  - Regarding the **individual termination** of an employment relationship when the worker is in a situation of permanent incapacity to work, the CJEU (in its *judgment of January 18, 2024, Case C-631-22*) has declared contrary to EU law the possibility granted under Spanish law to terminate an agreement without compensation for total permanent incapacity provided under current article 49 of the Workers Statute. As a result of this judgment, the Spanish government will amend article 49 to adapt it to this case law.
  - With regard to **collective redundancy**, its judgment of February 22, 2024 (*Case C-589/22*), the CJEU states that voluntary terminations or outplacement in the company carried out in the context of a restructuring process could bring forward the obligation to start a procedure for collective redundancy.

## WORK-LIFE BALANCE

- The National High Court has declared to be invalid the general provision whereby paid leave for the hospitalization or death of a close family member (*article 37 of the Workers Statute*) refers to calendar days instead of working days. *Central Criminal and Administrative Court (Labor), judgment of January 25, 2024, no. 9/2024*.
- The National High Court has also ruled on remuneration for *force majeure* leave established under article 37.9 of the Workers Statute, in cases where a company assumed it had to pay this leave and later tried to retract. The court states that employees that take *force majeure* leave are entitled to payment, with there being no need for a provision to be made in the collective bargaining agreement, and that the company cannot escape this obligation without carrying out the procedure to modify work conditions set out under article 41 of the Workers Statute (*judgment of February 13, 2024, (no. 19/2024)*).



# UPCOMING NEWS

We are currently awaiting the following regulations to complete processing:

- *Draft bill amending the consolidated text of the Workers Statute, and other labor regulations, for the transposition of Directive 2019/1152, on transparent and predictable working conditions*, which will amend, among others, (i) the regulation of part-time contracts (regarding changes in working hours and supplementary working hours), (ii) trial period, and (iii) full-time employment agreement.
- *Draft bill on sustainable mobility*, which will impose obligations on large companies with the aim, among others, of creating mobility solutions for employees, clients, suppliers, and visitors.
- *Draft bill on families*, which will allow the parent that is not the biological mother to use 10 days of leave before the birth.
- *Non-legislative proposal on reducing the maximum ordinary working week* to 38.5 hours in 2024 and 37.5 hours in 2025.
- *Draft Bill Proposal* amending article 49 of the Workers Statute, to eliminate the possibility of terminating employment contracts due to total permanent incapacity without having to make previous adjustments.
- Final approval and publication of the proposal for the *Due Diligence Directive*, which sets obligations regarding impacts on the environment and human rights for business chain of activities on companies with (i) over 1,000 employees, and (ii) an annual turnover of more than €450 million; and non-EU companies with a turnover in the EU of more than €450 million. See our post on [Progress on the Due Diligence Directive](#).

For additional information on the contents of this document, please contact our [Knowledge and Innovation Group](#) or your regular contact person at Cuatrecasas.



©2024 CUATRECASAS | All rights reserved.

This newsletter is a compilation of legal information prepared by Cuatrecasas. The information and comments in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment, or any other full or partial use of this document is prohibited, unless with the consent of Cuatrecasas.