The 10 end-of-year most relevant labor, employment and social security measures

Spanish Royal Decree Law 28/2018, of December 28, on the appreciation of public pensions and other urgent social security, labor and employment measures

Legal Flash: Labor Area

January 7, 2019

Spanish Royal Decree Law 28/2018, of December 28, on the appreciation of public pensions and other urgent social security, labor and employment measures was published in the *Official Gazette of the Spanish State* (*BOE*) of December 28 and came into force on January 1, 2019.

While waiting for either approval of the 2019 Spanish Budget Act (*Ley de Presupuestos*) or extension of the 2018 Spanish Budget Act , Royal Decree Law 28/2018 provides relevant changes to:

- Collective bargaining, restoring the possibility of agreeing on compulsory retirement clauses in collective bargaining;
- Retirement contributions, regarding both the general rules (e.g., maximum contribution base and contribution for internships) and the special rules for independent contractors (minimum base, types of contributions, "flat-rate"); and
- Appreciation of public pensions.

Collective bargaining

1. Is it possible to introduce compulsory retirement clauses in collective bargaining agreements?

Yes. The Spanish Workers Statute has been amended to allow collective bargaining agreements to include clauses enabling employment termination when the employee reaches the legal retirement age, provided they meet the following requirements:

a) The employee whose contract is terminated must meet the requirements specified under social security regulations to be entitled to 100% of the ordinary retirement pension.

b) The clause must include objectives that are consistent with the employment policy specified in the collective bargaining agreement, such as improving job stability by turning temporary employment contracts into permanent ones, hiring new employees, generational replacement, or any other measures intended to improve job quality.

2. How will the 22.3% increase in the minimum wage for 2019 affect the collective bargaining agreements in force on December 28, 2018?

Royal Decree Law 28/2018 provides the application of the new minimum wage (SMI) approved in Spanish Royal Decree 1462/2018, of December 21 (published in the *Official Gazette of the Spanish State* on December 27) to collective bargaining agreements in force on December 28 in which the “benchmark for determining the sum or increase of base salaries or benefits” is the minimum wage.

However, collective bargaining agreement salaries below €12,600 a year must be increased to bring them up to the minimum wage, subject to the rules on absorption and compensation under article 3.3 of Spanish Royal Decree 1462/2018.

See the Legal Flash on Spanish Royal Decree 1462/2018 here.

Hiring

3. What are the most relevant measures arising from the fact that the current unemployment rate in Spain is below 15%?

- It will no longer be possible to sign permanent entrepreneur employment contracts [*contratos indefinidos de apoyo a los emprendedores*] as set under article 4 and transitory provision 9 of Spanish Act 3/2012, of July 6, on urgent measures to reform the labor market.

- The reference to young workers in training employment contracts (article 11.2[a] of the Spanish Workers' Statute) will be "under 25 years old" again (instead of "under 30").

Contributions

4. What is the maximum contribution base under the Spanish General Social Security Regime for 2019?

The cap on social security contributions and contribution bases will be €4,070.10 a month in 2019.

5. Have specific measures been approved regarding temporary "short-term" contracts?

Yes, for temporary contracts for five days or fewer:

- The contribution rate for common contingencies has been increased from 36% to 40%; and
- A contribution of 1.4 days will now be recognized for every day of employment when calculating the minimum contribution periods required for retirement, permanent and temporary disability, death and survivor benefits, maternity and paternity leave, and care of minors affected by cancer and other severe illnesses.

6. Will companies have to pay contributions for all internships, regardless of whether they are paid or unpaid?

Yes. All non-employment interns and all external interns in companies must be included in the General Social Security Regime, with the contribution rules for training contracts applying, but with no need to make contributions for unemployment, the wage guarantee fund [FOGASA] or for professional training.

The scope of this obligation for internships extends to students in official undergraduate and master's programs, as well as to students in mid-level vocational training programs or higher. The party responsible for compliance will be (i) for paid internships, whoever is specified in the applicable regulations;[1] and (ii) for unpaid internships, the company, institution or entity where

[1] Spanish Royal Decree 592/2014, of July 11, regulating external internships of university students and Spanish Royal Decree 694/2017, of July 3, implementing Spanish Act 30/2015, of September 9, regulating the Vocational Training System for Employment in the labor field.

the internship is performed, except where the collective bargaining or collaboration agreement specifies that the intern's school is responsible.

Concerning non-employment and unpaid internships, this obligation will affect anyone who begins an internship on the first day of the month after the regulations developing this law come into force, for which the Spanish government has three months.

7. Which activities have had their contributions for work-related injuries and occupational diseases modified?

The most relevant activities are: food and beverage services (56); motion picture, video and television program activities, sound recording and music publishing (59); programming activities and radio and television broadcasting (60); telecommunications (61); programming, consulting and other activities related to computer science (62); financial services, except insurance and pension funds (64); insurance, reinsurance and pension funds (65); ancillary activities to financial and insurance services (66); legal and accounting activities (69); central office activities; business management and consulting activities (70); other professional, scientific and technical activities (74, except for 742); loading and unloading: stevedoring (X); call center activities (8220); education (85); and exclusive office work personnel (a, table II).

8. Will deductions for worker compensation contingencies for workplace accident reduction in companies remain in effect?

No. Royal Decree Law 28/2018 has suspended the system of deductions for worker compensation contingencies for workplace accident reduction in companies, regulated in Spanish Royal Decree 231/2017, of March 10, which will be amended during 2019.

9. What are the most relevant measures related to the special independent contractor system contributions [RETA]?

- All of the contingencies that were voluntary to date (e.g., protection against cessation of activity and professional contingencies) will now be mandatory, with a new method for determining when cases of work-related injuries or occupational diseases have occurred.
- Bringing contributions in line with "income actually received" based on what is occurring in the general system, the contribution base has been raised by 1.25%, setting a general monthly minimum of €944.40 per month and a general monthly maximum of €2,077.80 per month.
- The law keeps in place the usual special rules for contributions for workers who were 47 or older on January 1, 2019, and for employers who simultaneously had 10 or more external employees at any point in 2018.
- It envisages a progressive increase in the applicable contribution rates for professional contingencies and business closures for workers included in the independent

contractors' system:

- Professional contingencies: 1.1% in 2020, 1.3% in 2021 and, as of 2022, whichever permanent rate is specified in the Spanish General State Budget Act.
- Cessation of activity: 0.8% for 2020, 0.9% for 2021 and, as of 2022, whichever permanent rate is specified in the Spanish General State Budget Act.

› The "flat-rate" system or one-time monthly payment, when applicable, will be increased to €60 per month during the first 12 months and immediately after the date on which the independent contractors' registration in the special social security system takes effect.

› The law also establishes a new procedure for the verification of payment of social security contributions have been paid. This procedure entitles the Spanish General Treasury of Social Security to open urgent proceedings against any independent contractor who has stopped paying to verify whether the activity continues, which could result in the independent contractor being removed from the system.

10. Has the law been amended to prevent false independent contractors?

Yes. Royal Decree Law 28/2018 adds section 16 to article 22 of the Spanish Social Security Violations and Sanctions Act [*Ley sobre Infracciones y Sanciones en el Orden Social*], making it a severe violation for workers being removed from the general system if they continue to perform the same activity or continue to provide identical services under fraudulent registration in the special independent contractors' system.

This violation will be considered for each affected worker, with the law establishing a fine between €3,126 and €10,000.

Royal Decree Law 28/2018 has also approved other employment measures, including a new contribution schedule for domestic employees, with an increase "beyond" the maximum range, and an overall 1.6% increase in public pensions and spouse pensions calculation.

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