

New obligation to register standard working day and other new developments regarding social security obligations

Legal Flash: Labor Law

March 2019

On [March 12, 2019, the Official Gazette of the Spanish State \(“BOE”\)](#) published Royal Decree Law 8/2019, of March 8, on urgent social protection measures aimed at fighting job insecurity in relation to the working day (“RDL 8/2019”). This regulation, which will come into force on May 12—if the Permanent Parliamentary Council approves it—stands out because it expressly introduces an obligation for all companies to keep a daily register of each employee’s standard working day.

RDL 8/2019 also introduces new discounts to encourage indefinite employment and includes improvements in certain social security contributions.



Main developments:

- It introduces the obligation for all companies to keep a daily register of all employees’ start and finish times and classifies noncompliance as a serious offense.
- It introduces the obligation for companies to negotiate how to organize and keep that register—which should be kept for four years—with the employees’ representatives.
- It establishes that the employees, their representatives and the labor inspectorate must be able to access these registers.
- It establishes discounts in companies’ social security contributions to encourage (i) companies to hire the long-term unemployed for indefinite employment, and (ii) companies in the tourism sector and in the tourism-related business and hotel sectors to start or continue their activity during the off-peak season.
- It extends or adapts the social security cover in certain cases of extreme social vulnerability.



Introduction

The [Council of Ministers](#) held on March 8, approved RDL 8/2019 which was published in the [BOE of March 12](#) and due to enter into force the day after its publication, March 13, 2019, excluding the part regarding the daily register of the working day, which will come into force on May 12.

Although RDL 8/2019 introduces other interesting measures concerning social security, one obligation stands out: the new obligation for companies to have the necessary means to register the working day of each employee. To facilitate this, a new section 9 has been introduced in section 34 of the Workers Statute (“SWS”) regulating the working day, and the Labor Infringements and Sanctions Act has been amended to classify noncompliance with this obligation as a serious offense.

The issue of registering working days has been debated in the courts, by the labor inspectorate and the unions since 2015. Finally, the government has approved RDL 8/2019, which regulates the employers’ obligation to keep a daily register of the working day, to facilitate the monitoring and processing of overtime. Overtime must be communicated to employees and social security contributions for overtime are not limited to the maximum base of contribution, unless this overtime is compensated with leave in the four months after it has taken place.

Below, we answer the 10 key issues arising from this regulatory change and we inform about some of the new discounts in companies’ social security contributions.

Obligation to keep daily register of working day

1. Does this obligation come into force immediately?

No. This obligation will apply to companies two months after publication of RDL 8/2019 in the BOE, i.e., from May 12. By that date, all companies should have implemented the most suitable method for registering their employees’ working days.

2. If overtime is not carried out, must companies still keep a daily register of their employees’ working day?

Yes. RDL 8/2019 expressly establishes the obligation for companies, with no exception, to guarantee a daily register of the working day, indicating the start and end time. The ultimate purpose of this regulation is to facilitate monitoring of overtime.



3. If companies have a document with the planned working day of each employee, including the general start and finish time, will this be understood to be a register of the working day?

No. Companies must keep a daily register for each employee and the corresponding start and end time.

4. Can companies be excused from this obligation due to difficulties arising from flexible working hours?

No. The obligation to keep a register must be adapted to companies' flexible working hour arrangements, in line with article 34 SWS, i.e., irregular distribution of the working day over the course of the year and adaptations of the length and distribution of the working day due to a work-family balance.

5. Is the method for organizing and keeping the register regulated by law?

No. The method used to organize and keep the register, i.e., the technical solution used; the employees' cooperation obligations and the companies' corresponding monitoring; and the devices, format and presentation of the information compiled must be defined *“through collective bargaining or company agreements and in their absence, through the employer's decision after consultation with the employees' representatives,”* notwithstanding subsequent court monitoring.

6. Must companies store the daily registers?

Yes. Companies must store the registers for four years.

7. To whom must companies provide these registers?

Companies must make the registers available to their employees, their representatives and the labor **inspectorate, whenever any of these request them.**

8. Is it possible that special situations could be introduced into the regulation regarding the registers of the working day?

Yes. The government could introduce a special regulation for those sectors, jobs and professional categories that require it due to their nature (amendment of article 34.7 SWS).



9. If, based on the monitoring of the working day, it is clear that the working day is excessive and unavoidable, what obligations arise for companies?

- > Companies must (i) compensate the overtime with leave (within the four months following the overtime carried out); or
- > (ii) Pay the compensation corresponding to that overtime, indicating the overtime in the payslip as overtime and paying the corresponding contributions (there is a yearly limit of 80 hours).
- > Companies must inform the corresponding employee and the employees' representatives.

10. Has a penalty been established for noncompliance with the obligation to keep a daily register of the working day?

Yes. The labor inspectorate will issue an infringement report for a serious offense under article 7.5 Labor Infringements and Sanctions Act, with a fine of up to €6,250.

MEASURES FOR PROMOTING INDEFINITE EMPLOYMENT

One of the measures RDL 8/2019 introduces relates to discounts on employers' social security contributions for common contingencies:

EMPLOYER ACTION INCENTIVIZED	GROUP AT WHICH MEASURE AIMED	INCENTIVE AMOUNT	INCENTIVE DURATION	LIMITS/REQUIREMENTS						
Indefinite employment agreement	Unemployed persons registered with the employment office for at least 12 months of the 18 months before hiring (long-term unemployed)	<table border="1"> <tr> <th>Sex</th> <th>Discount</th> </tr> <tr> <td>Male</td> <td>€108.33/month (€1,300/year)</td> </tr> <tr> <td>Female</td> <td>€125/month (€1,500/year)</td> </tr> </table>	Sex	Discount	Male	€108.33/month (€1,300/year)	Female	€125/month (€1,500/year)	Three years	<p>Keeping employee hired in employment for a minimum of three years from the start date of the employment relationship</p> <p>Keeping the employment level reached in the company</p>
		Sex	Discount							
Male	€108.33/month (€1,300/year)									
Female	€125/month (€1,500/year)									
For part-time agreements, the discounts will apply in proportion to the working day established in the agreement										

RDL 8/2019 also introduces other discounts for companies in the agricultural and tourism sectors (and in tourism-related business and hotel sectors).



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