CUATRECASAS

Labor

Newsletter Spain 2 – 2019

Contents

The Spanish Courts, Government and Labor Inspectorate have issued criteria on several matters, specifically on Royal Decree Law 6/2019, of March 1, on urgent measures guaranteeing equal treatment and opportunities for men and women at work, which has already inspired a series of rulings, and Royal Decree Law 8/2019, of March 8, on urgent social protection measures aimed at fighting job insecurity in relation to the working day, on the compulsory record of hours worked, applicable since May, which has resulted in a Ministry Guide and a Technical Opinion from the Labor Inspectorate.

For a review of these matters please see:

Legal flash | Royal Decree Law on equal treatment and opportunities for men and women

Legal flash | Royal Decree Law on urgent social protection measures aimed at fighting job insecurity in relation to the working day

Moreover, other issues have been the subject of relevant court decisions.

Equality

Adjustment of working hours

One of the most significant changes under Royal Decree Law 6/2018 is the new regulation on the adjustment of working hours without reduction of working time, and the obligation for companies to justify the refusal of the requested adjustment on organizational and production grounds.

Several rulings have been made that are based on the new regulation despite not directly applying it, declaring that requesting employees are entitled to determine their reduced working hours (under article 37.6 of the Spanish Workers Statute), irrespective of their normal working day, under article 34.8 of the Spanish Workers Statute.

However, the right to adjusted hours is not automatic or unconditional. It must be calibrated to the interests at play, placing particular emphasis on (i) the circumstances surrounding the employee's initial request, or changes in circumstances that might justify subsequent changes in working hours; and (ii) the company's objective reasons for refusing to adjust or reduce the working hours.

High Court of Justice of Andalusia (Seville, Labor Division). Judgment no.1082/2019, of April 11

High Court of Justice of the Canary Islands (Las Palmas, Labor Division). Judgment no. 255/2019, of March 12

Termination of a pregnant employee's contract during the trial period

High Court of Asturias (Labor Division). Judgment no. 721/2019, of April 9

The court states that, under Royal Decree Law 6/2019's regulations on terminating pregnant employees' contracts during the trial period, the termination is objectively null.

Therefore, all employees should be monitored during the trial periods, keeping a record of their performance and of any reasons why they may have not passed their probationary period.

Record of hours worked

Labor and Social Security Inspectorate Technical Opinion 101/2019, on registration of standard working day

The Labor and Social Security Inspectorate has handed down a Technical Opinion with guidelines on how to register the hours worked. A relevant conclusion is that complying with the obligation to record hours worked involves properly identifying the time periods that are not classified as working time, so they can be excluded from the record.

It is then essential to determine what is working time, so the following recent rulings on the consideration of certain periods as working time are particularly noteworthy:

- **Attending, even voluntarily, company events for commercial purposes is classified as working time for all purposes.**

Supreme Court (Labor Division).Judgment no. 229/2019, of March 19

- **Time dedicated to training that is not necessary to continue performing a job, even though it might be later, is not classified as working time.**

Supreme Court (Labor Division). Judgments nos. 179/2019, of March 6, and 131/2019, of February 20

Other relevant rulings

Contributions for work-related accidents and occupational illnesses

- **Companies must pay the contributions of workers with class "A" jobs (office jobs) for accident insurance premiums in the case of directors, engineers, technicians, managers, work center coordinators, and similar employees, who, on an ordinary and habitual basis, perform sales work, plan purchases, prepare and lead engineering plans and solutions in the company's offices, and only occasionally visit worksites.**

Supreme Court. (Administrative Division). Judgment no. 762/2019, of June 3

Salaries

- **Salary bonuses and performance bonuses should be taken into account when calculating the minimum wage, and they partially offset the increase for 2019**

National Audience (Audiencia Nacional) (Labor Division).Judgment no. 71/2019, of May 24

- **The condition of having to continue working for a company on a given date to receive bonuses accrued previously is null if the contract was terminated on objective grounds**

Supreme Court (Labor Division).Judgment no. 254/2019 of March 27

Digital platforms relationships

- **Labor Courts remain divided on the employment status of delivery workers who work for digital platforms (home delivery apps)**

Regulatory developments

There were no **regulatory developments** because it was an electoral period.

Of note is the opportunity **to rejuvenate workforces** under the new mandatory retirement regulations introduced by Royal Decree Law 28/2018, of December 28, on the appreciation of public pensions and other urgent social, labor and employment measures, which allows collective bargaining agreements to regulate the grounds for terminating employment contracts due to reaching ordinary retirement age, and which is being implemented in several sectors and companies.

Collective bargaining agreements can 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.

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

For additional information on the contents of this document, please contact Cuatrecasas.