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Developments in Spanish labor and employment law



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Key points

- > The impact on employment of a “no-deal” BREXIT
- > EU Directive on work-life balance
- > EU Directive on transparent and predictable working conditions
- > Establishment of the European Labour Authority (ELA)
- > Collective redundancies: affected workers, how to calculate the number of redundancies and notification to workers’ legal representatives
- > Order issued by the Spanish Labor Inspectorate (Inspección de Trabajo) on the approval and implementation of plans against fraudulent contracting and irregular part-time employment



> THE IMPACT OF BREXIT ON EMPLOYMENT

If the United Kingdom leaves the EU without a withdrawal agreement on November 1, 2019, [Royal Decree-Law 5/2019](#) will enter into force in Spain.

This piece of legislation provides for an adjustment of the Spanish legal system in several matters (including citizens' rights, international judicial and police cooperation, economic activities and transport) based on the principles of reciprocity and continuity. All measures apply to the factual situations before BREXIT.

In particular, this Royal Decree:

- > regulates the transitional regime applicable to employees relocated to provide services;
 - > maintains European Works Councils;
 - > establishes a procedure for issuing work permits to UK nationals, complemented by a set of orders passed by the Spanish Government in the [Council of Ministers Resolution](#) dated March 22, 2019;
 - > regulates access to and the exercise of professional activities when professional qualifications have been recognized;
 - > establishes measures to protect employees subject to the British and Spanish social security systems; and
 - > regulates the rules applicable to the provision of healthcare services based on two principles: continuity and reciprocity.
- > **DIRECTIVE (EU) 2019/1158 ON WORK-LIFE BALANCE FOR PARENTS AND CARERS** [\(OJEU, July 12, 2019\)](#)

The purpose of this Directive is to improve access to work-life balance measures, and to promote the equal sharing of caring responsibilities between men and women.

The Directive:

- > requires Member States to guarantee payment or an allowance during the period of leave.
- > Establishes the right to carers' leave of five working days per year, to provide personal care or support to a relative, or to a person who lives in the same household, who may be in need of significant care or support for a serious medical reason.
- > Member States must ensure workers' right to (unpaid) time off on grounds of force majeure for family reasons where the immediate attendance of the worker is indispensable.
- > **DIRECTIVE (EU) 2019/1152 ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS IN THE EUROPEAN UNION** [\(OJEU, July 11, 2019\)](#)

The purpose of this Directive is to enhance the guarantees on the provision of information currently laid down in article 8.5 of the Spanish Workers Statute (*Estatuto de los Trabajadores*). These guarantees apply to all employment contracts, regardless of their duration:

The employer must provide basic information to the workers (namely, the parties to the employment relationship; workplace; job description; date on which the employment relationship begins and terminates, if appropriate; duration of the employment contract, remuneration and working hours, the duration and conditions of the probationary period and any training entitlement provided by the employer).

Also, specific information regarding remuneration and allowances is necessary where a worker is required to work in a Member State or third country.

Another significant modification refers to the predictability of work:



- > If the work schedule is entirely or mostly predictable, the company must inform of the length of the worker's standard working day or week, and any overtime arrangements and remuneration, and any arrangements affecting shift changes.
- > If the work pattern is entirely or mostly unpredictable, the employer must inform the worker of:
 - > the variability of working hours, the number of guaranteed paid hours and the remuneration any work carried out in addition to those guaranteed hours;
 - > the hours and days on which the worker may be required to work; and
 - > the minimum notice period to which the worker is entitled before taking on a work assignment and, where applicable, the deadline for cancellation.

Finally, the Directive sets forth the following minimum working conditions, in general terms:

- > It sets the maximum duration of probationary period at six months.
- > It bans exclusivity clauses.
- > It requires a minimum level of predictability of work and that work assignments be informed within a reasonable notice period.
- > It provides that a worker with at least six months' service with the same employer may request a form of employment with more predictable and secure working conditions.
- > **REGULATION (EU) 2019/1149, ESTABLISHING A EUROPEAN LABOUR AUTHORITY (ELA)** ([OJEU, July 11, 2019](#))

The European Labour Authority (ELA) has been established to help Member States and the Commission strengthen access to information, and to support compliance and cooperation between the Member States in the consistent, efficient and

effective application and enforcement of EU legislation related to labor mobility, and the coordination of social security systems within the Union.

> COLLECTIVE DISMISSAL

There are some significant judgments on affected workers and on how to calculate the number of redundancies; and on notifying workers' representatives of the end of consultation periods.

Workers particularly susceptible to certain risks

[Court of Justice of the European Union, September 11, 2019 \(Case C-397/18\)](#)

As for workers qualifying as "particularly susceptible to certain risks" under domestic occupational risk prevention law, the risk of indirect discrimination should be examined where they may be affected by a dismissal on objective grounds or a collective redundancy as they can be considered persons with a "disability."

In the case of an agreement on collective dismissal, it is not necessary to notify the workers' representatives of the employer's final decision

[Spanish Supreme Court, May 13, 2019 \(Judgment no. 366/2019\)](#)

If an agreement is reached following consultations within a collective redundancy procedure, the Supreme Court has confirmed that there is no need to notify the workers' representatives of the employer's final decision. It is only necessary to notify the competent public authority of the content of the agreement.



> **ORDER 4/2019, OF AUGUST 7, 2019, ISSUED BY THE LABOR AND SOCIAL SECURITY INSPECTORATE (INSPECCIÓN DE TRABAJO Y SEGURIDAD SOCIAL) ON THE APPROVAL AND IMPLEMENTATION OF PLANS AGAINST FRAUDULENT CONTRACTING AND IRREGULAR PART-TIME EMPLOYMENT**

(Text)

Up until 2020, there will be more inspections to tackle the high temporary employment rates and abuse in part-time employment in Spain. Strengthening and increasing inspections has a twofold purpose: (i) to tackle and regularize the fraudulent practices found within temporary and part-time employment, and (ii) to deter employers from fraudulent contracting. Thus, the spotlight is on companies in this regard.

Inspections will be conducted in two stages:

- > **Detection:** The Labor and Social Security Inspectorate (“ITSS”) will notify the companies that may be operating fraudulently regarding temporary or part-time employment detected through the Anti-Fraud Program (Herramienta de Lucha contra el Fraude). The ITSS will notify these companies that, based on the information collected, they may be committing fraudulent practices in this regard, and it will urge them to re-assess the situation and regularize employment relationships, where appropriate. Failure to comply will lead to inspection actions being taken.
- > **Verification:** By means of the Anti-Fraud Program, the ITSS will verify whether the notified companies have regularized their employment relationships accordingly. If they have failed to do so, or if they have done so partially, they will be subject to further inspection.

Please contact our Labor and Employment team if you have any questions or require further information.

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