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Labor and Employment



Fourth quarter 2019

October-December 2019

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In the last quarter of 2019 the EU's directive on the protection of persons who report breaches of Union law—the Whistleblower Directive-, and Spanish Royal Decree-Law 18/2019 extending certain measures under Spain's caretaker government have come into force

There were also some significant court judgments relating to video surveillance, fair grounds for dismissal, temporary employment contracts, and taxation of severance pay for senior management.

Lastly, we highlight the main labor-related features of the recent pact to form a government.

- **Directive 2019/1937 of October 23, 2019, on the protection of persons who report breaches of Union law** ([OJEU of November 26, 2019](#)). The purpose of the directive is to provide protection for persons in the public or private sector who report or publicly disclose information on breaches of EU law obtained in a work-related context, subject to the condition that they have reasonable grounds to believe that the disclosure was true when it was made.

Salient new features contained in this directive include:

- The directive requires enterprises having 50 or more workers to establish internal reporting channels.
- It lays down a series of safeguards against retaliation for persons who report breaches of EU law who have obtained their information during their work-related activities.
- As a minimum harmonization directive, it affords the Member States broad discretion in transposing it into domestic law. The deadline for transposing the directive into domestic law is December 17, 2021.

View Legal Flash [here](#).

- **Spanish Royal Decree-Law 18/2019, of December 27, approving measures relating to**

tax, cadastral, and social security measures [Real Decreto-ley 18/2019, de 27 de diciembre, por el que se adoptan determinadas medidas en materia tributaria, catastral y de seguridad social] ([Official Gazette of the Spanish State, of December 28, 2019](#))

Spain's current caretaker government has issued this royal decree-law to extend a series of measures into 2020. In particular, it:

- freezes public pensions;
- extends the bases for paying all manner and category of Spanish tax and social security contributions;
- extends the 2019 minimum wage [SMI]; and
- extends the more beneficial retirement pension regulations in effect prior to entry into force of Spanish Act 27/2011 for pensions meeting certain requirements that start before January 1, 2021.

➤ **New case law**

- **Video surveillance at work** [European Court of Human Rights, October 17, 2019 \(López Ribalda II\)](#). The ECHR overturned its judgment of January 9, 2018 (López Ribalda I) and ruled temporarily installing hidden cameras without notifying workers to be lawful and proportionate when there is reasonable suspicion of serious misconduct clearly detrimental to a company.
- **Termination of employment because of absences due to temporary disability** [Spanish Constitutional Court \[Tribunal Constitucional\], October 16, 2019](#). The Constitutional Court has upheld termination of a contract of employment for objective reasons recognized under section 52(d) of Spain's Workers Statute [*Estatuto de los Trabajadores*], namely, warranted absences by a worker, even though due to temporary disability, on grounds that this does not infringe the rights to life, bodily integrity, health, and work (sections 15, 43.1, and 35 of the Spanish Constitution [CE]) and



is in conformity with free enterprise and productivity.

- **Grounds for casual contracts of employment** [*Spanish Supreme Court \[Tribunal Supremo\], October 30, 2019*](#) Sporadic requirements for labor due to staff absences as a result of leave, holidays, etc. may not be met by resorting to casual hires, because absences of this kind are not a cause of temporary work and are not justification for casual substitution contracts or casual work overload contracts.

- **Taxation of severance pay for senior management** [*Spanish Supreme Court \(Judicial Review Division \[Contencioso-Administrativo\]\), November 5, 2019*](#). The Supreme Court has reversed course and held that in the event of termination of a contract for senior management personnel, the minimum compulsory severance pay in the absence of any other agreement— the cash amount of seven days' salary for each year worked, capped at six months— is exempt from personal income tax.

- **Pact to form a government.** [*Progressive coalition: a new pact for Spain*](#). The pact declares its intent to make changes to the law, including changes to the 2012 labor law reform. The ultimate scope of the program set out in the pact is not yet fully known.

The following areas may be affected:

- **Termination:** a proposal to do away with absenteeism due to sick leave as fair grounds for objective termination and to undertake a review of the economic, technical, organizational, and production grounds for dismissal.
- **Internal flexibility:** limits on the ability to make changes to working conditions and disregard collective bargaining agreements.
- **Decentralization of production:** limits on corporate activities that may be outsourced, which are restricted to subcontracting

specialized services outside a company's primary area of business.

- **Collective bargaining:** a return to the extended enforceability of collective bargaining agreements and an end to subordination to company agreements.
- **Minimum wage:** gradual increase to 60% of the average salary in Spain.
- **Spanish social security contributions:** restrictions on exemptions/reductions.
- **Employment contracts:** legislative changes regarding contracts for internships and work placements; limits on justifications for fixed-term contracts; incentives for permanent seasonal contracts; and prevention of using part-time contracts for fraudulent purposes.
- **Work-life balance and workplace violence:** a proposed pact to rationalize work schedules and enhance the right to disconnect digitally from work and prevent workplace harassment.
- **Occupational risk prevention:** changes regarding the list of occupational diseases; reporting workplace accidents; assessing psychosocial risk and risks associated with new technologies; and promoting gender-based policies.
- **Labor inspection:** strengthening the government's fight against labor fraud using new technologies and big data.

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