

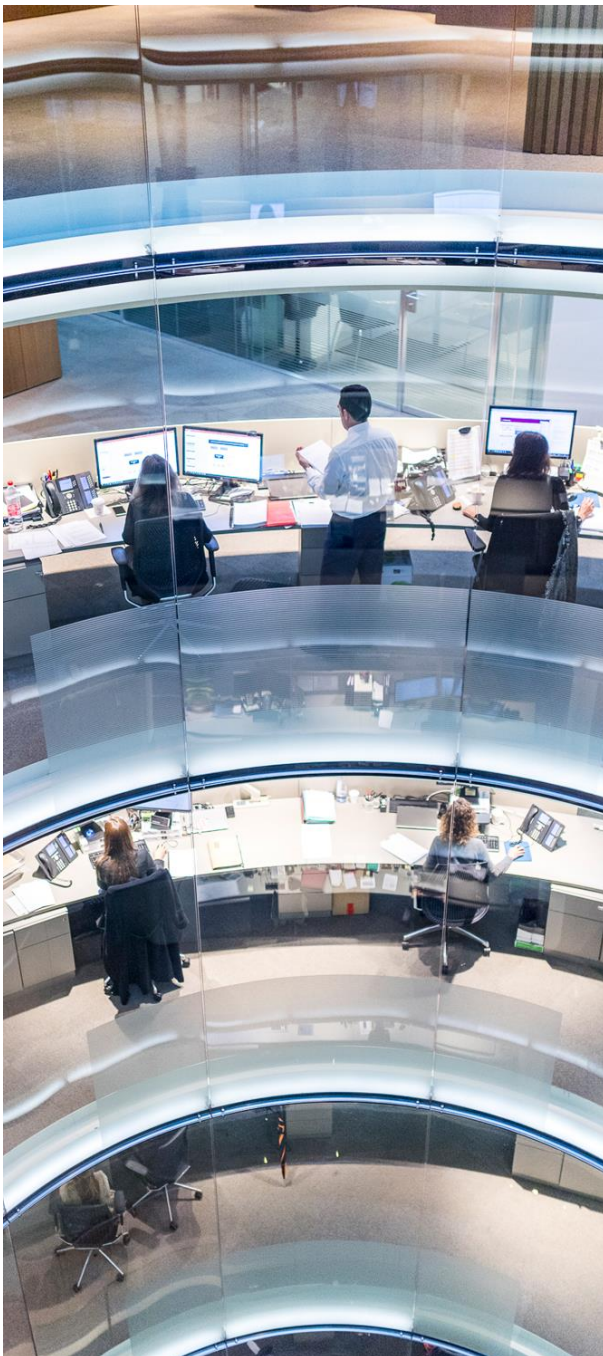


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Labor and Employment

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Upcoming new developments



2020 has started with new developments in labor and employment law affecting labor relations management and related costs in companies. This reform trend is expected to continue in the coming months.

Below we discuss the 10 main new developments—both legislative and judicial—explaining their content, their consequences and which types of companies are mainly affected.

1. Coronavirus and people management

The increased number of people affected by COVID-19 (coronavirus) and its expansion beyond China, including Spain, has generated many queries regarding the management of employees.

The action plan for companies, which must be adapted to each case, consists of the following:

- Analyzing the health and safety measures to adopt in each case, depending on the level of risk and exposure of employees, and the geographic area where the services are carried out.
- Deciding in which cases employees would have to take leave for temporary disability. Regarding preventive isolation periods, the Directorate General for Managing Social Security issued criterion 2/2020, stating that these periods constitute temporary incapacity arising from common illness.
- Analyzing the viability of the temporary suspension of employment contracts in cases in which it is impossible for companies to guarantee their activity.
- Reviewing the travel policy, considering the possibility that the health issues a relocated employee may have had could be declared a work-related contingency due to a risk associated with infectious diseases, and that the company may be held responsible for not acting correctly from the perspective of occupational health.

2. Repeal of dismissal based on absenteeism

- Objective dismissal based on absenteeism established in article 52.d) Workers Statute has been repealed through Royal Decree-Law 4/2020, of February 18, which entered into force on February 20.
- Under the repealed article, an employment contract could be legally terminated with a lower severance compensation, on the grounds of intermittent absences, even if justified, when the absences amounted to certain percentages of the employee's working days within certain periods.
- To fight absenteeism, there is still the option of legally dismissing on disciplinary grounds, when employees reach an unjustified level of absenteeism established in the applicable collective bargaining agreement.

3. Minimum wage increase in 2020

- Effective from January 1 to December 31, 2020, Royal Decree 231/2020, of February 4, increased the minimum wage ("SMI") by 5.6% for 2020, setting it at €950 per month (€13,300 per year).
- Companies that pay full-time employees salaries below €13,300 per year must increase them to that amount, as the minimum wage is raised by 5.6%, with the aim of it amounting to 60% of the average remuneration of Spanish employees in the future.

4. Adaptation of working day

- There are increasingly more judgments issued by the labor courts interpreting the new regulation on the right to request adaptation of the working day for family reasons under article 34.8 Workers Statute, amended by Royal Decree-Law 6/2019.
- When companies receive a request for adaptation of the working day from an



employee, they should follow the applicable collective bargaining agreement and carry out a specific procedure; if they do not do this, the employee's claim would probably be upheld.

5. Equality plans in companies with over 150 employees

- On March 7, the deadline ends for companies with a workforce of between 150 and 250 employees to implement an equality plan (according to the transitional regime established in [Royal Decree-Law 6/2019](#)).
- This measure currently affects all companies with over 150 employees; from March 7, 2021, the threshold will be 100.
- Due to this obligation, companies must prepare a negotiated diagnosis considering the items specified in [Royal Decree-Law 6/2019](#), to later be able to negotiate the content of the plan.
- If companies do not meet their obligations in this area, the Labor and Social Security Inspectorate could issue an infringement report for a serious offense. They could also be banned from signing public contracts ([Act 9/2017](#), on Public Sector Contracts).

6. Salary while on paid leave

- Regarding paid leave, the Spanish Supreme Court ("SC") has issued a judgment, analyzing the calculation of employees' salaries while on paid leave. The SC considered that a collective bargaining agreement can limit the payment of a productivity incentive (linked to effective work) in the case of certain types of paid leave established in article 37.3 Workers Statute (marriage, death, change of family home, elections, and union duties). However, it does not consider it appropriate to exclude the incentive when the paid leave affects equality or work-life balance (this is the case of leave for family misfortunes—except death—and for prenatal appointments and classes on

childbirth techniques) [judgment 815/2019, of December 3].

- This decision affects companies whose applicable collective bargaining agreement excludes certain incentives when calculating the salary of employees during paid leave.

7. Paid parental leave

- The National Audience ("NA") has issued a judgment establishing that employees continue to be entitled to enjoy the paid parental leave established in the collective bargaining agreement, although the paid parental leave that was established in the Workers Statute (two days, with possibility of four days if travel involved) was abolished in the reform of March 2019 [judgment 140/2019, of November 29].
- This criterion affects companies that still offer paid parental leave in their collective bargaining agreement (company or sector agreement).

8. Calculation of effective work of permanent seasonal employees

- The SC has changed its opinion on the calculation of seniority in relation to the effective work of permanent seasonal employees considered to calculate additional salary elements, such as the seniority salary element.
- From now on, therefore, regardless of the applicable collective bargaining agreement referring only to the effective working time of permanent seasonal employees, the total period of relationship with the company of permanent seasonal employees must be considered, and not just the actual time spent providing the services [judgment 790/2019, of November 19].
- This judgment affects companies that hire permanent seasonal employees that make the accrual of some additional salary elements



dependent on the calculation of the effective provision of services by the employee.

9. Criminal record information

- In judgment 14/2020, the NA has declared that companies cannot require new hires to state in writing the absence of a criminal record if it is not necessary for performance of the contract or there is no legal authorization expressly requiring this. The company in the case was from the private security sector.
- This judgment affects all companies that, due to their sector or specialty, do not have the legal capacity to make that request.
- The practice can be considered invalid and the company could be ordered to pay high fines in line with the personal data protection regulations.

10. “Flat rate” for corporate self-employed employees

- The SC has ruled that corporate self-employed employees can apply the reduced rate of Social Security payments if they meet the legal requirements, against the interpretation of the Social Security authority.
- This interpretation benefits the shareholders of capital companies registered in the Special Social Security Scheme for Self-employed and Freelance Workers as corporate self-employed employees that have not been able to apply the “flat rate” (in the case of initial registration) in the last four years.
- Therefore, it is now possible for all those corporate self-employed persons to request a refund of paid undue amounts if they meet the requirements for claiming the reduced amount to which they would have been entitled based on their personal circumstances [judgment 1669/2019, of December 3]

Upcoming new developments

In the coming months, we expect there to be more new developments in labor and employment legislation which, according to published information, would affect the following areas:

- False self-employed employees: to regulate the relationship status of what are known as false self-employed employees and avoid hidden employment activity.
- Outsourcing regime: to amend article 42 Workers Statute and possibly reduce activities likely to be outsourced by the main company.
- Dismissal: to amend the objective causes of dismissal and increase the participation of the labor authority in collective dismissals.
- Hiring: to amend the part-time contract.
- Work-life balance: to encourage legislation on streamlining working hours.

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