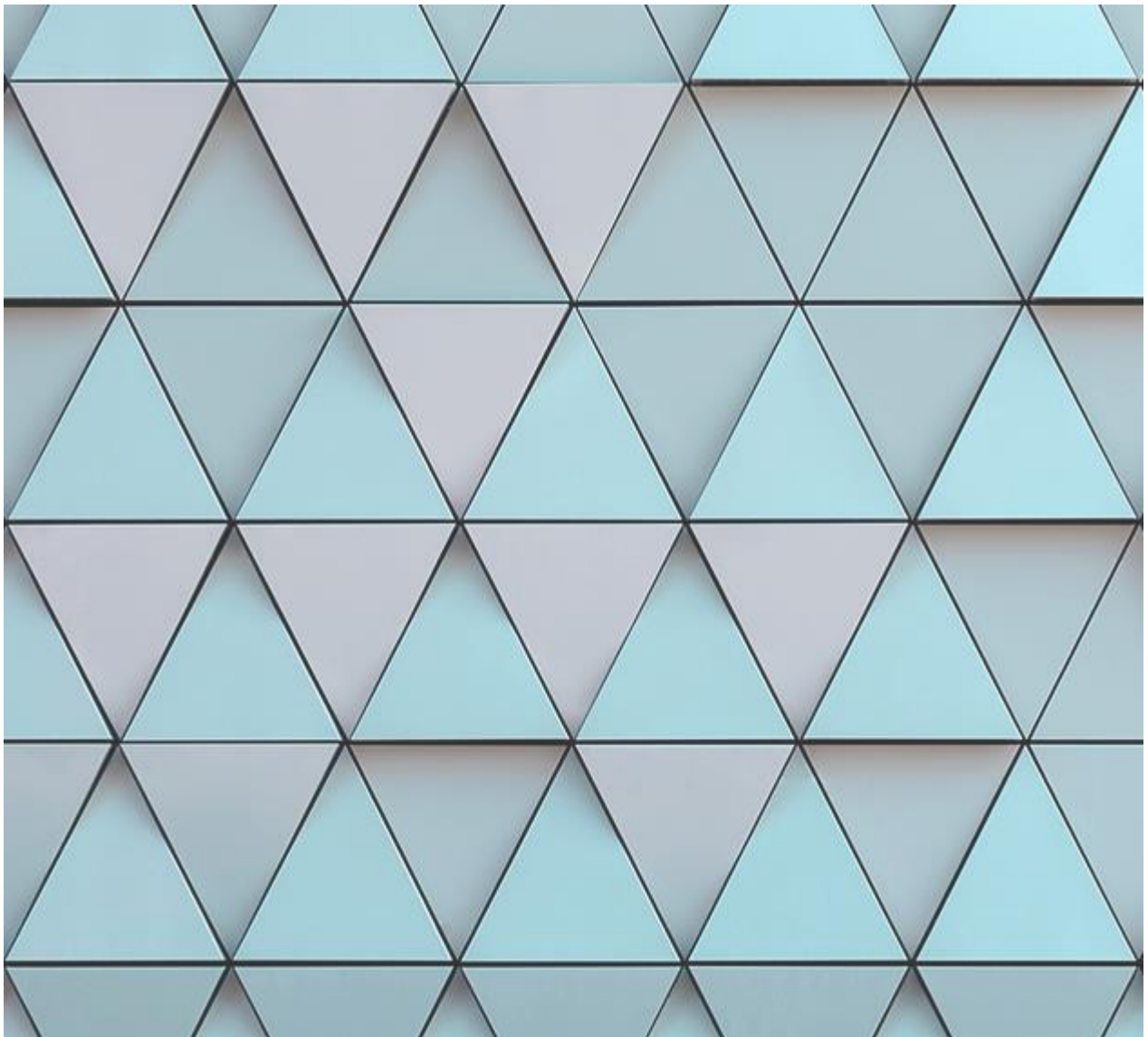


# SPAIN - Labor and Employment Newsletter



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# VIOLENCE AND HARASSMENT

- Convention 190 of the International Labour Organization (ILO), in force in Spain since May 2023, establishes requirements for companies in relation to the prevention and elimination of work-related violence and harassment.
- Convention 190 establishes the following:
  - It defines the concepts of violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof” aimed at or likely to result in “physical, psychological, sexual or economic harm, and includes gender-based violence and harassment” meaning “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”
  - Its scope of protection is broad, covering both persons and physical spaces; it “protects workers and other persons in the world of work” and “applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work,” including acts occurring outside of the traditional physical workplace.
  - The convention establishes the following measures for protecting from and preventing violence and harassment in the world of work:
    - Drafting and applying—following consultation with the workers and their representatives—a policy on violence and harassment. National regulations already require all companies to have specific procedures for preventing sexual harassment and gender-based harassment.
    - Considering violence and harassment, as well as the related psychosocial risks, when managing health and safety at work.
    - Identifying and assessing the risks of violence and harassment—with the participation of the workers and their representatives—and adopting measures for preventing and monitoring them.
    - Providing the workforce with the necessary information and training regarding the risks identified and the corresponding measures, as well as regarding the rights and responsibilities arising from the policy on violence and harassment.
  - In addition to the measures under Equality Act 3/2007, the measures under Act 10/2022 on the comprehensive guarantee of sexual freedom; under Act 4/2023, of February 28, for the full and effective equality of transgender people and for the guarantee of LGBTI rights; and under Royal Decree 901/2020 governing equality plans and their registration must be considered.



# TELEWORK AND INTERNATIONAL MOBILITY

- Significant developments have been made in relation to registering with and contributing to social security in cases of international telework.
  - Spain has signed the Framework Agreement relating to application of article 16.1 of Regulation (EC) No. 883/2004 in the cases of regular crossborder telework, in force since July 1, 2023, which:
    - (i) enables an exception to be applied to the general rule that crossborder teleworkers are subject to the laws of their resident state, meaning that those teleworkers that carry out their duties regularly in one or several different states other than that where the employer is based, will contribute to social security in the employer's state, provided the time dedicated to telework in the resident state is less than 50% of the total work time; and
    - (ii) has an initial validity of five years, which is extended automatically, and only applies to the states that signed the Framework Agreement, currently 19.
  - Also, in its answers to several queries, the General Social Security Treasury ("TGSS") has been applying a flexible criterion since July in relation to the social security of the teleworkers residing in another country and working for a company in Spain. In particular, this involves a flexible interpretation of article 12 Regulation (EC) No. 883/2004, meaning that in cases in which the telework in another EU member state is random, limited in time and does not form part of the usual service provision, the TGSS will consider that the teleworkers continue to be subject to the law of the state where they carry out their usual activity, and the teleworkers can request an A1 certificate.
- Also [Order ISM/835/2023](#), of July 20 was published, regulating the situations of workers having full social security rights, but are not necessarily registered in the social security system, and who are sent abroad to provide services to the companies for which they work in Spain.

# HIRING INCENTIVES

- On September 1, 2023, the new regulation on access, compatibility, follow up, amount and duration of the hiring incentives ([RDL 1/2023](#)), came into force, under which:
  - Companies can continue to apply the allowances and reductions of social security contribution rates recognized under the previous regulation; however, from September 1, 2023, they can only do so in the referred cases and if they meet the requirements established in RDL 1/2023.



- The companies applying these incentives must maintain the persons benefiting from these measures enrolled in the social security scheme, or having similar status with obligation to contribute, in the corresponding social security scheme, for at least three years from the start date of the contract, contract conversion or hiring, and it is not considered non-compliance with this requirement if employment contracts are terminated on the grounds of reasons inherent to the workers' will.
- From now on, one of the requirements for accessing these incentives will be that the companies obliged to have an equality plan must have a properly negotiated and registered plan.

## COMPLEMENTARY SOCIAL WELFARE

- Royal Decree 668/2023 amends the Pension Plans and Funds Regulation, approved by Royal Decree 304/2004, completing the pending implementing regulation for finalizing the new regulation established in the Recovery, Transformation and Resilience Plan, in relation to reviewing and promoting the complementary pension systems.
- Specifically, it refers to the following:
  - The procedures for converting occupational pension plans and other employer complementary social welfare systems into simplified occupational pension plans, and the procedures for converting associated pension plans into simplified occupational pension plans or into individual pension plans.
  - In relation to occupational pension plans, it refers to the classification as “employees” of the administrators and directors that are registered with the social security as having a similar status as individuals enrolled in the social security scheme.
  - The carrying out of contributions by persons in flexible, active and partial retirement to the retirement coverage, and companies' obligation to maintain the carrying out of contributions in such cases.
  - The adaptation of the statement of the principles of the pension funds' investment policy to include the consideration of the sustainability factors and the engagement policy in listed companies.
  - The adaptation of the investment eligibility rules to investments in venture capital entities.



# SIGNIFICANT JUDGMENTS

## Voluntary redundancies and risk of collective dismissal

Supreme Court (labor, plenary session), judgments of June 22, 2023 ([no. 449/2023](#)) and September 19, 2023 ([no. 558/2023](#))

The doctrine of these judgments, both issued in a plenary session of the Supreme Court, must be considered; the judgments declare calculable, for collective dismissal purposes, employment terminations based on voluntary resignations or by mutual consent carried out in the reference period, which are due to the company's initiative in the framework of a voluntary redundancy or a reduction of the workforce.

## Collective dismissal and communication to workers' legal representatives

Supreme Court (Labor), judgment of July 5, 2023 ([no. 484/2023](#))

The Supreme Court declares the validity of the communication to the workers' legal representatives of a collective dismissal several days after the communication to the worker, as that communication does not have to occur before or simultaneously to the dismissal notification. That said, this communication must be carried out at an appropriate time and in an appropriate manner, providing adequate information, enabling the workers' legal representatives to assess the dismissal, the company's situation, and the correct use of the objective termination, as well as advising the affected workers.

## Modification of variable remuneration

Supreme Court (Labor), judgment of June 7, 2023 ([no. 407/2023](#))

This judgment declares the validity of a company modifying the objectives and criteria for calculating the variable remuneration if that modification follows the criteria of the company's incentive policy, which expressly establishes that the criteria are discretionary and cannot be consolidated, regardless of whether the modifications are significant because, among other things, the policy places more importance on collective rather than on individual factors.

## Incentive policy and sick leave

National High Court (Labor), judgment of June 19, 2023 ([no. 80/2023](#))

- This judgment —of instance and pending cassation before the Supreme Court— declares an incentive plan discriminatory due to its penalizing of temporary incapacity situations, considering that it constitutes direct discrimination towards workers that are ill, contrary to Act 15/2022 on Equal Treatment and Non Discrimination. It also considers that computing the permit for accompanying individuals to medical





appointments for the purpose of absenteeism constitutes direct discrimination because, generally, it is women that care for minors and ascendants, and discrimination by association because the latter are the main users of medical appointments.

## UPCOMING NEWS

- > We do not expect legislative initiatives while there is no new government.

For additional information, please contact our [\*Knowledge and Innovation Group\*](#) lawyers or your regular contact person at Cuatrecasas.



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