



NEW LEGISLATION

- I. Reform of collective bargaining
- II. New regulations governing collective layoff procedures: royal decree 801/2011, of 10 June, approving the regulation of procedures for collective layoff and administrative action in relation to collective transfers
- III. Reform on the protection granted by the salary guaranty fund (“FOGASA”)
- IV. Amendment of the procedure for the imposition of penalties: royal decree 772/2011 of 3 June, amending the general regulations on procedures for the imposition of penalties for social order infringements and for cases relating to settlement of social security contributions.

I. REFORM OF COLLECTIVE BARGAINING

On 12 June on Royal Decree Law 7/2011 of June 10, on urgent measures for the reform of collective bargaining (the “RDL”) came into force. The main innovations introduced by the RDL are:

1. Applicable priority of the company collective agreement

As long as collective agreements at the regional or state level do not prohibit it, the company collective agreement will take precedence in implementation over that of the business sector, state, regional or of a lower level, as well as in relation to collective agreements for a company group or a number of companies in the areas listed below:

- a) The amount of base salary and wage supplements, including those relating to the situation and results of the company.
- b) The payment or compensation for overtime and specific remuneration for shift work.
- c) Working hours and the distribution of working time, the shift work system and annual planning of vacations.
- d) Adaptation of the occupational classification of workers to the ambit of the business.

- e) Adaptation of aspects of the hiring procedures that are attributed by this Law to company collective agreements.
- f) Measures to promote compatibility between work, family and personal life.

2. Possibility of establishing agreements affecting the national collective agreement

Trade unions and business associations that meet the requirements for legal standing may negotiate autonomous agreements that establish provisions affecting those envisaged in the collective agreement at the state level, except in certain areas such as trial period, procedures for hiring, job classification, maximum annual working days, disciplinary system, minimum standards for the prevention of occupational hazards and geographical mobility.

3. Reform of the minimum content of collective agreements

It is established that the collective agreement must have a certain minimum content, within which the governing of the following issues is noteworthy:

- a) Procedure for dispute resolution.
- b) The determination of a “minimum” term for denouncing the collective agreement, which shall be three months before the end of its validity.
- c) The fixing of a deadline for the start of negotiation.
- d) The fixing of a deadline for negotiating of the new agreement.
- e) Accession and submission to the procedures for out-of-court settlement of employment disputes in the event that, after the maximum period of negotiation, no agreement is reached.
- f) Establishment of measures to contribute to the internal flexibility in the business.

4. Rules regarding the duration and denouncement of collective agreements

Specifically, the RDL provides that:

- a) The duration of a collective agreement, once it has been denounced and after completion of the agreed duration, will be on the terms that are established in the collective agreement itself.
- b) During the negotiations for the renewal of a collective agreement, if agreement is not reached, and as a general rule, it will remain in effect.
- c) The parties may enter into partial agreements for the amendment of one or more of the contents carried over.

- d) Finally, procedures to effectively resolve disputes after the expiry of the maximum terms for negotiation without an agreement being reached, must be established by inter-occupational agreements at the state or regional level, as provided in Article 83 of the Workers’ Statute, and shall include the prior commitment to submit disputes to arbitration.

5. Reform of legal standing to negotiate collective agreements

- a) Workers’ representation

On the one hand, there is a strengthening of the role of trade union branches, which will have legal standing to negotiate company collective agreements and those of a lower level, as well as the so-called band agreements, i.e. those aimed at a group of workers with a specific occupational profile. Moreover, the affiliated union “organizations”, in federations or confederations of the most representative trade unions may negotiate on behalf of the workers collective agreements for a “business group” and those affecting a number of linked companies for organizational or productive reasons.

- b) legal standing in employers’ representation

The initial legal standing in company collective agreements or those of a lower level corresponds to the employer himself/herself. In collective agreements of business groups and those that affect a number of related companies or productive or for organizational reasons, the initial legal standing corresponds to the representative of such companies.

Sector collective agreements may be negotiated by business associations that meet certain minimum representation requirements.

- c) In connection with the establishment of the special negotiating body, the following is established:

The allocation of members with full voting rights within the collective bargaining committee shall be conducted with respect for the rights of all parties with legal standing and in proportion to their representativeness.

6. Strengthening of the role of trade union branches

The RDL provides that, if they meet the requirements of representativeness, trade union branches may act as partners in terms of geographical mobility, substantial change in working conditions, redundancies and non-application of the wage system.

7. Criteria for the non-application of a wage system established in a collective agreement

With regard to the grounds that allow the non-application of provisions on wage systems of collective agreements of a higher level than that of the company collective agreement, there is the introduction of the “persistent decline in the level of income” and reference is made to the “economic situation and outlook” of the company that could be “adversely affected” as a result of the application of the salary system established in collective agreements of a higher level than company collective agreements.

8. Creation of the Collective Bargaining and Employment Relations Council

Also noteworthy is the creation of the “Collective Bargaining and Employment Relations Council and as a body for consultation and advice under the Ministry of Work and Immigration, tripartite and with management and workers representatives with equal status, and composed of representatives of the general state authorities, as well as of the most representative trade unions and business organizations”.

2. NEW REGULATIONS GOVERNING COLLECTIVE LAYOFF PROCEDURES: ROYAL DECREE 801/2011, OF 10 JUNE, APPROVING THE REGULATION OF PROCEDURES FOR COLLECTIVE LAYOFF AND ADMINISTRATIVE ACTION IN RELATION TO COLLECTIVE TRANSFERS

The most important aspects of the new Regulation are:

1. Legal standing:

The legal standing of the company and the workers is recognised through their respective legal representatives. If there is no legal representation of workers in the company, the workers may confer their representation to a committee of up to three members designated pursuant to Article 41.4 of the Workers’ Statute, which may consist, at the choice of the workers, of either (i) workers of the company itself democratically elected, or (ii) members appointed, in accordance with their representativeness, by the most representative trade unions representing the sector to which the company belongs and that have legal standing to be part of the negotiating committee of the collective agreement applicable to such company.

2. Grounds for requesting a collective layoff procedure:

The grounds provided for in Article 51 of the Workers’ Statute, as amended by Law 35/2010, are invoked. To wit:

- a) economic grounds: when the results of the company reveal a negative economic situation, in cases such as the existence of current or expected losses, or

a persistent decline in income, which could affect its viability or its capacity to maintain the level of employment;

- b) technical grounds: when there are changes, among others, within the area of the means or instruments of production,
- c) organizational grounds: when changes occur, among others, within the area of systems and working methods of personnel; and
- d) productive grounds: when changes occur, among others, in the demand for the products or services that the company intends to place on the market.

3. Documents that the employer must include with the application for a collective layoff procedure:

If the collective layoff procedure is based on economic grounds, as well as the financial documents of the company itself, if it is part of a group of businesses required to submit consolidated accounts, it must also provide, “the duly audited consolidated annual accounts and management report of the group’s parent company” for the past two years, provided that “in the group there are companies engaging in the same business or belonging to the same business sector, and there are debit or credit balances of the applicant company with any group company”. In the event that there is no obligation to consolidate accounts, it must provide those of “the other group companies duly audited, in the case of companies required to perform audits, provided that these companies have their registered office in Spain, have the same business activity as the applicant, or belong to the same business sector and have debit or credit balances with the applicant company”.

4. Social support plan:

The social support plan, the filing of which is mandatory for companies with fifty or more workers, must include, with specificity and detail, the measures taken or planned by the company to avoid or reduce its effects, the measures necessary to mitigate its consequences for affected workers, as well as measures to enable the continuity and viability of the business as a going concern. It must be submitted with the collective layoff procedure application and be discussed during the consultation period. Its final content will be communicated to the employment authorities at the end of the consultation period.

Among such measures the following examples are cited:

- Measures to avoid or reduce the effects of the collective layoff procedure: internal relocation of workers in a company or group of companies, functional mobility, geographical mobility, substantial change in working conditions, training or retraining or any other measures aimed at reducing the numbers of affected workers.

- Measures to mitigate the consequences for affected workers: outplacement, training or retraining, promoting self-employment, measures to offset the costs of geographical mobility or compensatory measures for the wage differential in a new job.
- Measures to facilitate the continuity and viability of the company: economic, financial, industrial or other measures to preserve or promote the company's competitive position in the marketplace, technical, organizational or production measures to help prevent a negative evolution of the company or to improve its situation through a more efficient organization of resources.

5. Consultation period: the following aspects must be highlighted:

- A maximum limit of 30 calendar days is established, which will be reduced to 15, also calendar days, in the case of companies with fewer than 50 workers.
- At any time, the employer and the workers' representative may agree to replace the consultation period by the mediation process or arbitration proceedings which may be applicable in the company's area, regulated by the state or regional agreements on out-of-court settlement of employment disputes.
- After the consultations, the company will have 5 days to send to the employment authorities the final application for collective layoff procedure and the terms and conditions thereof, together with the result of the consultation period and the final content of the social support plan.

6. Completion of the procedure:

There is a shortening of the deadline for the employment authority to issue its decision to 7 calendar days in the event that the consultation period concludes with an agreement.

Furthermore, in accordance with administrative practice that has been followed, the employer may seek authorization to change the timeframe of the collective layoff procedure, increase the number of layoffs or the terms and conditions thereof, all provided it is during the period established to make layoffs under the collective layoff procedure. This authorization shall be given in an additional decision to the main one, without the need to begin a new collective layoff procedure, and shall remain subject to the same grounds that led to the main decision, and shall require proof of agreement with the workers' representatives.

7. Suspension of contracts and reduction of hours on economic, technical, organizational or production grounds:

The Regulation provides for a single procedure for implementing these two measures:

- In the event of economic, technical, organizational or production grounds of a short-term nature, the employment contract may be suspended "when the cessation of the activity that the worker had been carrying out affects entire days, whether continuous or alternating, for at least one normal working day".
- Under these same conditions, working hours may be reduced temporarily by a percentage between 10 and 70 percent calculated daily, weekly, monthly or annually.

The scope and duration of the suspension of contracts or reduction in working hours shall be in line with the economic situation which the company intends to overcome.

The duration of the consultation period is reduced by half when compared to the collective layoff procedure, so that it will not exceed fifteen calendar days, not exceeding eight days in the case of companies with fewer than fifty workers.

8. Other procedures:

Without significant developments, the Regulation also regulates procedures for

- termination and suspension of employment and reduced hours due to force majeure;
- termination of employment due to the disappearance of the contractor's legal status; and
- administrative action relating to collective transfers.

3. REFORM ON THE PROTECTION GRANTED BY THE SALARY GUARANTY FUND ("FOGASA")

Under the new rules, on a temporary basis until the establishment of the Capitalization Fund, FOGASA will reimburse the employer the amount corresponding to 8 days of salary per year of service (provided that it has already paid the legal compensation in full) in cases of termination of permanent contracts entered into after 18 June 2010 that have had a duration exceeding one year and that are based on the grounds provided for in Articles 51 and 52 of the Workers' Statute and Article 64 of the Insolvency Law.

Another ruling sets out the requirements, documentation and procedures in relation to FOGASA's obligation to pay 40% of the compensation arising from the termination of an employment contract on economic, technical, organizational or production grounds in companies with less than 25 workers. This possibility, however, is only available in the case of contracts entered into prior to 18 June 2010. Conversely, if the contracts have been entered into after that date, the transitional measure of the reimbursement of 8 days of salary per year of service will apply.

4. AMENDMENT OF THE PROCEDURE FOR THE IMPOSITION OF PENALTIES: ROYAL DECREE 772/2011 OF 3 JUNE, AMENDING THE GENERAL REGULATIONS ON PROCEDURES FOR THE IMPOSITION OF PENALTIES FOR SOCIAL ORDER INFRINGEMENTS AND FOR CASES RELATING TO SETTLEMENT OF SOCIAL SECURITY CONTRIBUTIONS.

The Royal Decree complements and implements the reforms introduced by previous laws. In this regard, the following aspects are noteworthy:

- Penalty and settlement proceedings are changed, for example by clarifying the procedure to be followed for very serious infringements regarding workers, etc.
- There is clarification of certain issues relating to the jurisdiction of the general state authorities and that of the autonomous regions and
- There is an attempt to bring into line the wording of the Regulation in those areas where it has been outdated by the passage of other legislation and to clarify some issues that have raised doubts regarding its implementation on the part of those affected.

FOR MORE INFORMATION



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