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Labour reform in Spain: part two. Brief summary of the changes introduced by the new law

Royal Decree-Law 3/2012 of 11 February made very important changes to Spanish labour legislation, making the labour market notably more flexible. Said regulation was processed as a draft law in parliament and the result is Law 3/2012 dated 6 July (Official State Gazette dated 7 July) (the "**Law**"), which substitutes the previous regulation with some modifications, new reforms and technical improvements. We list below the main changes in the Law which entered into force on 8 July and in the attached document we offer a consolidated summary of the reforms made by the previous regulation, including the changes contained in the new Law.

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1. Main changes of the Law regarding termination of contracts

1.1 Unfair dismissal

The tax exemption of the indemnifications due to unfair dismissal acknowledged by the employer without resorting to a conciliation act is permitted provisionally and only until the date on which the Law enters into force. The possibility of applying said tax exemption will disappear thereafter in the event of immediate acknowledgment of the dismissal's unfairness.

For unfair dismissals of contracts prior to 12 February 2012, it is clarified that the calculation of the double compensation includes double rounding off.

1.2 The "objective causes" of objective dismissal and collective dismissal

Regarding the cause consisting of a "*persistent decrease in the level of revenues and sales*", it is clarified that it refers to "*ordinary revenue*" and if previously the decrease during three consecutive quarters was understood as "persistent", it now applies to the decrease during three consecutive quarters provided that the level of each quarter is less than the same quarter the previous year.

1.3 The collective dismissal procedure

The Law adds that the company notification to the employee representative and the labour authority must be accompanied by "*all information needed to prove the motivating causes of the collective dismissal under the terms determined by regulation*".

Additionally, the parties can agree to submit their discrepancies to a mediation or arbitration

procedure or arrange for the mediation of the labour authority, which can also in any case carry out "*assistance duties*" in the procedure.

Regarding the contributions to the Spanish Public Treasury which the previous regulation established for companies (or groups) with more than 500 employees that adopt collective dismissal measures affecting staff members aged 50 or older and having had profits over the previous 3 years, the Law establishes such obligation for the companies (or groups) with more than 100 employees, adding in the calculation of the contribution the costs for unemployment benefits paid due to suspended contracts prior to the decision to terminate.

1.4 Challenge in court of a company's decision to adopt collective dismissal measures

The Law clarifies that trade unions can only challenge a company's decision in the collective process if they have "*sufficient establishment*" in the scope of the collective dismissal. Also, the company can present the collective complaint in order for company's decision to be declared in compliance with the law, if a collective challenge had not been presented previously and within the established term by the employee representatives or an official complaint had not been filed by the Labour Authority. Said action suspends the expiry term for the individual complaints against the dismissals and the judgment issued in said proceedings has *res judicata* effects over such individual processes.

The causes for which nullity of company's decision can be declared are restricted, which will be applicable when a consultation period has not been carried out or the mandatory documentation has not been provided (by comparison to the provision's previous wording which referred to any inobservance of the procedure).

1.5 Clarifications on contract termination due to absenteeism

Leaves "*for medical treatment of cancer or serious illnesses"* are not considered for absenteeism purposes. If the decision to terminate the contract is taken due to absenteeism during 20% of the workdays over two consecutive months, a requirement has been added that absenteeism during the 12 previous months must also have reached 5% of all business days.

2. Main new changes to the Law in contract suspension procedures

The economic, technical, organisational or production-related causes which justify the measure are defined (as they were omitted in the previous regulation), reproducing the definition contained in Article 51 of the Workers' Statute for dismissals. The "persistent decrease" of ordinary revenue or sales is deemed to exist when it happens during two consecutive quarters, also by comparison with the same quarter of the previous year.

3. Main new changes to the Law in respect of internal flexibility in companies

3.1 Work schedule

The percentage of irregular distribution of the work schedule which can be unilaterally decided by the company in the absence of an agreement is increased in the Law from 5% to 10% of an annual working schedule. Additionally the Law establishes the employee's right to know with a minimum prior notice of 5 days the time and date that he or she is to provide services as a result of said irregular distribution of the working schedule.

Lastly, a reference is added regarding the use of the continuous workday, flexible schedule and other ways to organise the work schedule which would allow for harmonisation between work life balance and productivity of companies.

3.2 Geographic mobility

The law adds that disabled employees who must receive treatment related to their disability outside of where they normally reside will have the preferred right to occupy another job vacancy in the same professional group at a work centre located in a city that is more accessible for the treatment.

3.3 Non-application or modification of the working conditions established in the collective bargaining agreement

The financial causes which justify this modification are defined in the same way that the suspension of contracts are justified (section 2 above) and it adds that the non-application of collective bargaining agreements ("**CBAs**") cannot affect the obligation related to the removal of gender-based or any other discrimination established in the company's Equality Plan.

Additionally, procedural obligations are established: (a) the labour authority must be notified of the non-application of agreed conditions and particularly (b) the obligation to appeal to the procedures for resolving discrepancies established in the inter-professional agreements if there is no agreement for non-application and the Joint Advisory Committee has not intervened or resolved the discrepancy. The previous regulation only established the possibility of resorting to such procedures

4. Main changes to the Law regarding collective negotiation

The phenomenon known as “automatic extension” of the CBAs was established in the previous regulation for two years since the expiration of the previous CBA without reaching an agreement or arbitration award. The Law reduces this "automatic extension" term to one year after which the CBAs will no longer be valid. For agreements that have already been expired as at 8 July 2012, the term of one year is calculated as from said date.

5. Main changes to the Law regarding promotion of the indefinite contract

5.1 Indefinite contracts to be used by entrepreneurs

The Law establishes a time limit on the validity of this regulation regarding indefinite work contracts until the unemployment rate in Spain falls below 15%, and it clarifies or explains some questions in relation to the legal regime of this contract category:

- Establishing a trial period is prohibited when the employee has previously performed the same duties at the company under any contract category.
- It refers to Article 43 of the Spanish Corporation Tax (*Ley del Impuesto sobre Sociedades*) (amended in the law itself) as regards tax incentives.
- It subjects the application of incentives to maintaining the employment relationship for at least 3 years with the exception of regulated causes of contractual termination (which are not the same for tax deductions and payments to the Social Security), as well as the maintenance of the level of employment at the company during at least 1 year.
- It is prohibited to arrange for this type of contract to those companies that, in the 6 months prior to entering into the agreement had adopted unfair decisions to terminate (including therefore the acknowledgment of the unfairness of the dismissal).

5.2 Limit on successive temporary contracts

The term between 31 August 2011 and 31 December 2012, regardless of whether or not a provision

of services by the employee existed between such dates, will not be calculated for the purposes of legally limiting successive temporary contracts established in Article 15.5 ET, the validity of which re-established the previous regulation as from 31 December 2012.

6. Main new changes to the Law regarding measures to favour employability of workers

6.1 Labour intermediation

In order to act as placement agencies, temping agencies must obtain administrative authorisations instead of the simple presentation of a "sworn statement" established in the previous regulation. The Law establishes a term of 3 months in order to decide upon the application for authorisation, which will be understood as accepted if, after said term has elapsed, no express decision has been issued.

Additionally, the Law includes the obligation of the temping agencies to inform employees and client companies regarding whether the latter are acting in each case as a temping agency or as a placement agency.

6.2 Professional training

The paid leave of 20 hours of training per year is redefined as referring to the "*professional training for the job, associated to the company's activity*", extending from three to five years the term in which such hours can accumulate.

This right will be understood as complied with when the employee can participate in professional training courses carried out at the company's initiative or which are established in the applicable CBA.

6.3 Modifications to the contract regime for training and apprenticeships

It is worth highlighting the following amendments made by the Law:

- Employees receiving professional training from the educational system can use this contractual category.
- The maximum age of 30 years will not apply, among others, to groups at risk of social exclusion.
- If the initial duration is less than the maximum legal limit, it is admissible to agree up to two extensions that are no less than 6 months without exceeding the maximum total duration according to the law or CBA.
- With regard to the reductions to the employer's contribution to Social Security, applicable when the contact is entered into with registered unemployed individuals, the temporary requirement that the unemployed individual must be registered prior to 1 January 2012 is removed. The Law establishes that these reductions are also applicable to contracts for training entered into prior to 31 August 2011, transformed into indefinite contracts as from 1 January 2012.

7. Other relevant modifications

Nullity of the forced retirement clauses

The law introduces of the nullity of collective bargaining agreement clauses which stipulate the forced retirement of employees at the age of 65.

This will apply to the collective bargaining agreements entered into as from 8 July 2012 and for collective bargaining agreements signed prior to this date the nullity will apply: (a) upon finalisation of the initial valid term of the CBA if this takes place after 8 July 2012 or (b) as from 8 July 2012 if, on said date, the initial valid term of the collective bargaining agreement has ended.

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