



JONES DAY  
**COMMENTARY**

## SPANISH LABOR REFORM 2010

On June 17, 2010, Royal Decree-Law 10/2010, of June 16, governing urgent measures for the reform of the labor market (“RDL 10/2010”), was published in the *Official State Gazette*. This regulation came into general force on June 18. Without prejudice to its current validity, it is anticipated that RDL 10/2010 will be tabled as a draft bill, in which case it is possible that certain modifications will be made to the current reforms.

RDL 10/2010 regulates certain innovations with respect to employment contracts, procedures, and dismissals; collective negotiations; labor flexibility; social security rebates; and the regulation of temporary employment agencies and job placement agencies.

In this series of *Commentaries*, we will analyze the most relevant innovations introduced by RDL 10/2010, starting with the new regulations governing the Employment Contract to Promote Hiring for an Indefinite Period.

### EXPANSION OF THE TRADITIONAL GROUPS

The First Additional Disposition of Law 12/2001, of July 9, on urgent measures for the reform of the

labor market intended to increase employment and improve the quality of the same (“Law 12/2001”), introduced a new Employment Contract to Promote Hiring for an Indefinite Period (*Contrato de Trabajo de Fomento de la Contratación Indefinida*, or “CFCI”), the main goals of which were to promote stable contracting by means of a series of social security quota rebates and to reduce dismissal severance to 33 days of salary per year of service, up to a maximum of 24 monthly installments.

RDL 10/2010 has extended the cases in which the CFCI may be used. Under the recent reform, the 33-day dismissal severance may be applied not only to the traditional groups—young unemployed persons, unemployed women in jobs with a low female-occupation rate, persons over age 45, and disabled persons—but also to the following:

- Unemployed persons who have been registered as job applicants for an uninterrupted period of at least three months (previously six months).
- Unemployed persons who had been employed exclusively under temporary employment contracts, including training contracts, during the two-year period prior to the execution of the contract.
- Unemployed persons who, during the two-year period prior to the execution of the contract,

had an indefinite-term employment contract at a different company that had expired.

With regard to the group of persons in employment, RDL 10/2010 retains the possibility of *transforming* fixed-term or temporary contracts into CFCIs, including training contracts executed prior to June 18, 2010, so long as such transformation takes place prior to December 31, 2010. Also, if such fixed-term or temporary contracts (including training contracts) are executed after June 18, 2010, the employer may transform them into CFCIs prior to December 31, 2011, so long as the duration of the previous temporary contracts does not exceed six months (this is not a requirement in the case of training contracts).

## SPECIAL DISMISSAL SEVERANCE REGIME

As far as the dismissal severance regime is concerned, the previous rules and regulations are maintained as established in Law 12/2001: 33 days of salary per year of service, up to a maximum of 24 monthly installments. Said reduced severance applies to the termination of contracts for objective grounds if the dismissals are legally declared to be unfair or if the company directly acknowledges the unfair nature of the same.

## OTHER MEASURES THAT AFFECT THE REDUCTION OF THE COST OF DISMISSAL

In the case of dismissals for objective grounds, the prior-notice term, which must be granted (or compensated monetarily) by the employer, has been reduced from one month to 15 days.

Also, RDL 10/2010 has introduced a new savings measure for companies that are in the process of extinguishing contracts. The Salary Guarantee Fund (*El Fondo de Garantía Salarial*, or "FOGASA") will assume payment of part of the dismissal severance (eight days of salary per year of service) in dismissals for objective grounds, collective dismissals, or expirations as a result of insolvency proceedings, so long as such dismissals refer to indefinite employment contracts (ordinary or CFCI) executed after June 18, 2010. Notwithstanding the above, the contract, at the time of expiration, must be for a term of more than

one year (if not, the company shall assume payment of the whole of the corresponding severance).

As a procedural requirement, the employer must state in the notification of expiration sent to the employee the daily salary used for the calculation of the dismissal severance for which it is liable.

In accordance with the current wording of RDL 10/2010, and with the rules and regulations governing this disposition still to be developed, FOGASA will directly pay the part of the dismissal severance corresponding to the eight days at the request of the employee, which means that the employer is not required to assume this cost and then claim repayment of the same.

The amount of the dismissal severance covered by FOGASA, as detailed herein, will be transitional until the Capitalization Fund provided for in the Second Final Disposition of RDL 10/2010 comes into force. Said Capitalization Fund should be operative on January 1, 2012.

## FINAL NOTE

Notwithstanding the above, and without prejudice to the full effectiveness of RDL 10/2010, as mentioned at the beginning of these comments, the measures approved by RDL 10/2010 will be tabled as a draft bill, in which case it is possible that certain modifications will be made to the approved reforms.

## LAWYER CONTACTS

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