



SUMMARY OF THE MOST IMPORTANT ASPECTS OF SPAIN'S ROYAL DECREE LAW 3/2012 PROPOSING URGENT MEASURES FOR THE REFORM OF THE SPANISH LABOR MARKET

MEASURES AFFECTING DISMISSALS

1. Collective dismissals

- The reform has eliminated the need to obtain official authorization in order to proceed with a collective dismissal; therefore, the reasons for the dismissal and the dismissal procedure itself are to be monitored solely by the labor courts.
- The reform has simplified the reasons for carrying out collective dismissals.
 - **Economic reasons:** A negative economic situation, such as the existence of current or anticipated loss or a persistent decline in income or sales (extending, in either case, for three consecutive quarters).
 - **Technical reasons:** Among others, changes to the means or instruments of production.
 - **Organizational reasons:** Among others, changes to the systems and methods of the work to be carried out by personnel.
 - **Production reasons:** Among others, changes in the demand for products or services the company intends to place on the market.
- The need for legal assessment of the reasonableness, appropriateness or usefulness of the measure carried out by the company has been eliminated.
- The collective-dismissal procedure has not undergone major changes in terms of timing, the consultation period with the workers, the issuing of a report by the Labor Inspectorate, explanatory documentation, etc.
- The social plan has been replaced by the requirement for the company to offer an outplacement plan to the affected workers through authorized outplacement agencies for a minimum period of six months, provided that the number of workers affected is greater than 50.
- There is an obligation to make a contribution to the Treasury when the layoff affects workers over

the age of 50. The obligation to enter into an agreement with Social Security for workers exceeding age 55 remains in place.

- Collective redundancies will be contested before the labor courts rather than by the contentious jurisdiction, as had formerly been the practice.

2. Objective dismissals (individual)

- The economic, technical, organizational and production reasons have been defined, like those for collective dismissals, and the need for legal assessment of the reasonableness, appropriateness or usefulness of the measure carried out by the company has been eliminated.
- The reform facilitates the right to use objective dismissal for absenteeism: Workers may be dismissed who accumulate 20 percent of certain types of justified absences in two consecutive months or 25 percent in four discontinuous months within a period of eight months, regardless of the company's general level of absenteeism.

3. Effects of unfair dismissal

- The compensation for unfair dismissal of 45 days' salary per year of service with a cap of 42 months has been reduced to 33 days' salary per year of service with a cap of 24 months. The reform also regulates the manner in which compensation is calculated, which will be 45 days per year of service for the period prior to the entering into force of the reform and 33 days per year of service from the date the amendment entered into force, with specific rules for calculating the limit of compensation.
- The accrual of wages during proceedings has been eliminated, except in cases of readmission and/or dismissal of the worker's legal representative.
- The requirement to deposit the compensation at the court in cases of unfair dismissal has been eliminated, which changes the way individual terminations are carried out; terminations for cause will be more generalized.

4. Temporary suspension of contracts or temporary reduction in hours

- The need to obtain official authorization to temporarily suspend workers' contracts has been eliminated, the existence of economic, technical, organizational or production reasons being sufficient. Therefore, it is for the courts to monitor whether or not such reasons exist.

MEASURES AFFECTING CHANGING CONDITIONS

1. First level: Unilateral changes by the company

a. Professional classification system

- Professional categories have been eliminated, leaving a common overall classification for workers by occupation, which unitarily groups the professional skills, qualifications and general content of the services to be provided. The aim is to facilitate the functional mobility of workers within the company's organization.
- If the mobility involves the carrying out of functions belonging to another professional group (whether superior or inferior), the company has to prove the existence of technical or organizational reasons.

b. Irregular distribution of working hours

- Prior to the reform, the company could negotiate the irregular distribution of yearly working hours with the workers. Under the reform, the company is allowed to distribute yearly working hours irregularly by a small *unilateral* margin of up to 5 percent if this matter is not covered by the collective bargaining agreement; such irregular distribution will not be considered a substantial change in the working conditions or a breach of the terms of the collective bargaining agreement.

2. Second level: Geographical mobility/substantial changes to working conditions

a. Geographical mobility

- The company will have to prove the existence of economic, technical, organizational or production reasons for the geographical mobility of workers. These

reasons are related to competitiveness, productivity, technical organization and work reasons, as well as the business activity. Under the reform, neither the company nor the judge nor the court shall deliberate on whether the measure helps overcome a negative economic situation or improves the competitive position of the company on the market, as had been required prior to the reform.

- The ability to freeze an action proposed by a company, formally reserved for the labor authorities, is now reserved for the judge or the competent court (a precautionary measure).

b. Substantial changes to working conditions

- The same reasons apply here as for geographical mobility, and the consequences of the measures adopted are not evaluated.
- The possibility of reviewing the workers' rate of pay has been expressly included, a possibility not considered before.
- Notice periods have been reduced from 30 days to 15.
- The consideration of collective modifications has been objectivized, depending on the number of workers affected.
- It cannot affect the conditions of the collective bargaining agreement (see "Third level").

3. Third level: Deviation from the conditions of the collective bargaining agreement

- The labor reform has expanded the number of areas in which the company can deviate from a collective bargaining agreement. No longer a mechanism reserved exclusively for salary matters, deviation may now be extended to such issues as working hours, timetables, shifts, roles and voluntary improvements to Social Security (temporary disability benefits, etc.).
- Deviation is conditional upon the existence of economic situations (decline in sales or billing for two consecutive quarters) or technical, organizational or production reasons.
- When the consultation period with the workers has ended and no agreement has been reached, either party may refer the dispute to the National Advisory Committee on Collective Bargaining Agreements or

the equivalent regional body, whose decision shall be effective and binding.

4. Fourth level: Company collective bargaining agreements

- Absolute priority is assigned to company collective bargaining agreements over sectoral collective bargaining agreements for salaries, overtime, timetables (outside working hours), job classification systems, adaptation of the rules for temporary hiring measures, reconciliation measures and other matters established by the sectoral collective bargaining agreements. The negotiation of company collective bargaining agreements will become the key to the modification and ultimate deviation from the conditions of the sectoral collective bargaining agreements.

PROMOTION OF HIRING

1. Education and training contract

- The maximum duration of such contract will be extended by one year, up to a period of three years.
- Once the contract period has expired, the employee may be rehired under this type of contract, provided it is for a work activity or occupation distinct from that of the first education and training contract.
- Companies can provide academic training at their centers upon fulfilling certain conditions; the trade unions and employers will not have exclusive competence.
- The percentage of effective work time (compared to dedicated training) is extended to up to 85 percent during the second and third years of the contract.
- The reform allows the use of this type of contract for people under the age of 30 until the unemployment rate in Spain has been reduced to less than 15 percent.
- The reform regulates a very beneficial bonus scheme for training contracts for unemployed workers and for the conversion of these contracts into permanent ones.

2. Contracts for companies with fewer than 50 workers

- The reform has created an indefinite employment contract for these companies, with a trial period of one year.

- The companies can take advantage of certain tax incentives.
- The employees can voluntarily combine their salary with 25 percent of the unemployment allowance.
- A discount system has been set up for the Social Security contributions of these companies, related to the hiring of young people and those exceeding age 45.

3. Part-time contracts

- Overtime is permitted under the reform.

4. Distance contracts

- The term “working from home” has been changed to “distance working”.
- The rights of distance workers are regulated in more detail.

OTHER MEASURES

- 1. Temporary employment agencies:** Temporary work companies are authorized to operate as employment agencies.
- 2. Permission for training:** Workers with at least one year of seniority shall be entitled to paid leave for 20 hours’ annual training linked to their work posts.
- 3. Training account and training check:** A training account will be created to record the training received by each worker. Furthermore, the government will evaluate the desirability of creating a training check to fund the individual right of the workers to training.
- 4. Temporary suspension of Article 15.5 of the Workers’ Statute:** This article, which limited the succession of temporary contracts to a maximum of 24 months over a period of 30 months and had been suspended indefinitely, will come back into force on 31 December 2012.
- 5. Fogasa:** This public fund covers eight days’ salary per year of service for terminations of indefinite contracts

for objective reasons that have not been declared unfair for companies with fewer than 25 workers.

6. Reduction of working hours for legal guardianship:

The reduction of working hours for legal guardianship should be made over daily working hours.

7. Holidays:

In the event that a holiday period coincides with a period of sick leave, preventing the worker from enjoying his or her holiday totally or partially during the natural year to which it corresponds, the worker can enjoy the holiday period once the sick-leave period has been finalized, provided that more than 18 months have not passed from the end of the year in which the sick leave originated.

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