



JONES DAY
COMMENTARY

NEW HIRING INCENTIVES IN SPAIN AS A RESULT OF ROYAL DECREE LAW 4/2013

On February 23, 2013, Royal Decree-Law 4/2013 of 22 February, on support measures for entrepreneurs and encouraging the growth and creation of employment (hereinafter, “RDL 4/2013”), was published in the Official State Bulletin and entered into force on the day following its publication.

Among the main employment measures to encourage hiring that are governed by this rule, the most significant are the following, which shall be considered to be valid until the unemployment rate in Spain falls below the rate of 15 percent (First Transitional Provision):

PERMANENT CONTRACTS: PERMANENT EMPLOYMENT CONTRACT FOR YOUNG PEOPLE HIRED BY MICROENTERPRISES AND SELF-EMPLOYED CONTRACTORS (ARTICLE 10–RDL 4/2013)

Companies with a workforce of up to nine employees and self-employed workers (“microenterprise/self-employed contractor”) can hire, for an indefinite

period, a young unemployed person under the age of 30, receiving in exchange a 100 percent reduction in the company’s Social Security contributions for common contingencies during the first year of the contract. In principle, this reduction is designed for one single contract; however, the microenterprise/self-employed contractor is allowed to enter into another contract of this type, provided that the total discount period does not exceed, on aggregate, 12 months.

Aside from the maximum workforce requirement indicated above, other requirements must be met:

- The worker must not have had any previous employment relationship with the microenterprise/self-employed contractor.
- The microenterprise/self-employed contractor must not have implemented unfair dismissal decisions within the six months prior to the execution of the contract. This limitation affects only those terminations that occurred after February 24, 2013 and for the work positions in the same professional group as those affected by the termination and in the same workplace(s).

- With regard to maintaining employment, it establishes a double requirement:
 - At an individual level, the employee should continue to be employed for a duration of at least 18 months, unless the termination is for reasons not attributable to the employer or takes place during the trial period.
 - At a collective level, the level of employment reached at the company with the new hire should be maintained for at least one year; otherwise, the microenterprise/self-employed contractor will be obliged to reimburse the discounts. Disciplinary dismissals and dismissals for objective grounds will not be taken into account for the purposes of compliance with maintaining the level of employment, provided that, in both cases, they are declared or acknowledged as fair. Terminations during trial periods or for expiration of the period agreed or completion of the agreed work or service will also not be taken into account, as well as those due to the voluntary redundancy, death, retirement, total permanent disability, absolute disability, or major disability of the employee.
- The grounds of this contract shall be for receiving a first professional experience.
- The minimum duration of the contract is three months, and the maximum is six months, unless the collective bargaining agreement provides for a longer duration that does not exceed, in any event, 12 months.
- The contract can be full or part time, provided that, in the latter case, the working day is in excess of 75 percent of the comparable full-time working day.

Once the minimum period of three months has passed, companies that convert the contract into an indefinite contract will be entitled to a reduction in the company's Social Security contributions of €41.67/month (€500/year) for three years (or €58.33/month, equivalent to €700/year if a woman is hired), provided that the working hours agreed are at least 50 percent of the comparable full-time working day.

In this type of contract, the rules/requirements already explained are applicable regarding (i) the nonperformance of unfair dismissals during the six months prior to the hiring, and (ii) the obligation to maintain the level of employment at the company.

Finally, the benefits of this new type of contract are incompatible with (i) the contract to support entrepreneurs (Article 4 of Law 3/2012), which, among others, allows a trial period of one year, (ii) hiring for permanent seasonal jobs, and (iii) subsidized permanent contracts governed by Article 2 of Law 43/2006 (workers with disabilities, at risk of social exclusion, victims of gender violence or terrorism, etc).

Furthermore, a trainee contract for first employment, subject to the provisions of Article 11.1 of the Spanish Workers Statute, may be entered into with young people under the age of 30 even if five years or more have passed since termination of the relevant studies. Companies entering into these contracts will benefit from a reduction in their Social Security contributions for common contingencies throughout the duration of the contract (maximum of two years), of (i) 50 percent in general, or (ii) 75 percent if the employee is carrying out non-work-based training (RD 1543/2011) at the time the contract is agreed.

TEMPORARY CONTRACTS: FIRST EMPLOYMENT CONTRACT FOR YOUNG PEOPLE (ARTICLE 12–RDL 4/2013) AND INCENTIVES FOR FIRST EMPLOYMENT TRAINEE CONTRACTS (ARTICLE 13–RDL 4/2013)

A first employment contract of a temporary nature is created for young people as well as for unemployed youths under the age of 30 with no work experience or work experience of less than three months. The requirements for this contract are:

PART-TIME CONTRACTS: INCENTIVES FOR PART-TIME HIRING LINKED TO TRAINING (ARTICLE 9–RDL 4/2013)

Companies and self-employed contractors that enter into part-time training-related contracts with unemployed people under the age of 30 will benefit from a reduction in the

company's Social Security contribution for common contingencies for the hired employee of (i) 100 percent for companies with less than 250 employees, or (ii) 75 percent for companies with a workforce equal or superior to that figure.

This incentive is applicable during a maximum period of 12 months but may be extended for a further 12 additional months if the employee continues to combine employment and training, or this has been completed in the six months prior to the completion of the first contract period. Training does not have to be linked specifically to the work position, and it can be:

- Accredited official training or training promoted by the Public Employment Authorities; or
- Training in languages or information and communication technologies for an annual duration of at least 90 hours.

Aside from the training requirements, workers must comply with one of the following requirements:

- Have no work experience or work experience of less than three months, or
- Come from another activity sector, under the terms specified in the regulations, or
- Have been unemployed and continuously registered with the employment office for at least 12 of the 18 months prior to recruitment.

The contract may be entered into on a permanent or temporary basis. The agreed working hours cannot exceed 50 percent of the comparable full working day.

This type of contract is governed by rules/requirements similar to those already indicated (i) not to perform unfair dismissals in the six months prior to recruitment, and (ii) the obligation to maintain the level of employment at the company for at least a period equivalent to the duration of the new contract, with a maximum period of 12 months from its execution.

SELF-EMPLOYED YOUTHS: PERMANENT EMPLOYMENT CONTRACTS OF THE NEW YOUNG ENTREPRENEURS PROJECT (ARTICLE 11–RDL 4/2013)

Young (self-employed) entrepreneurs under the age of 30 with no salaried employees in their charge who initiate a business project following the entry into force of Royal Decree Law 4/2013, recruiting for the first time and for an indefinite period (full- or part-time basis) an unemployed worker aged 45 or more, will be entitled to a 100 percent reduction in the total Social Security contributions during the first year of employment.

The new worker hired must have been registered as unemployed with the employment office for at least 12 of the 18 months prior to recruitment or have been a beneficiary of the professional retraining program for people who have exhausted their unemployment benefit.

Other features of this contract are as follows

- The rules already explained with regard to the continuous employment of the employee for at least 18 months also apply.
- Although, in principle, this incentive is provided for the first contract entered into by the young entrepreneur, new contracts of this type may also be entered into, although the total discount period shall not exceed, on aggregate, 12 months.
- If the new hire is eligible (simultaneously) for other Social Security incentives or reductions, only one of them can be applied, and this is to be decided by the employer.

Finally, with the ultimate aim of promoting youth entrepreneurship, RDL 4/2013 provides other benefits and incentives applicable to young entrepreneurs who start up a business activity (reductions/discounts in the contributions to the Social Security regime for self-employed contractors, reconciliation of the unemployment benefit and the commencement of a self-employed activity, capitalization of unemployment benefits, etc.).

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