

Labour News 3-7-2023

Date: July 3, 2023
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To: Contacts
Subject: News regarding leaves

ROYAL DECREE-LAW 5/2023, of June 28, adopting and extending certain measures in response to the economic and social consequences of the War in Ukraine, supporting the reconstruction of the island of La Palma, and addressing other situations of vulnerability; transposing European Union directives on structural changes in commercial companies and the reconciliation of family and professional life of parents and caregivers; and implementing and enforcing European Union law.

The Council of Ministers recently approved a new decree-law which was published on June 29th in the Official State Gazette (BOE). Taking advantage of this decree-law on extension and new anticrisis measures, measures that were included in the Family Law Bill, whose processing in Congress lapsed with the calling of elections, are also approved.

Thus, as we mentioned, this decree-law is used to approve measures that were expected to be included in other regulations, justifying the urgency in the need to transpose into Spanish law European directives whose incorporation into our current legislation have been delayed for various reasons.

We attach below a preliminary summary of the most relevant issues, without prejudice to further expansion considering the extent of the Royal Decree-Law. Given the poor wording of the regulation in several provisions, we believe that the specific application of the same will be subject to interpretation by our Labour Courts, which is important to consider when starting to apply it in day-to-day operations.

MAIN NEWS RELATED TO LABOR MATTERS:

A. AMENDMENT OF THE WORKERS' STATUTE. Title I of Book II of the Royal Decree-Law, in Article 127, modifies certain provisions of the Workers' Statute, transposing Directive (EU) 2019/1158 of the European Parliament and of the Council of June 20, 2019, on work-family life balance for parents and caregivers.

1. **CONCEPT OF DISCRIMINATION. Article 4.2.c)** is modified, including as a basic labor right the non-discrimination arising from unfavorable treatment of women or men due to the exercise of the rights of work-family balance or shared responsibility, and eliminating the previous second paragraph of the provision.
2. **ADAPTATION OF WORKING HOURS AND DISTRIBUTION.** The regulation of the right provided for in Article 34.8 of the Workers' Statute is modified with the following:
 - a. The right is extended to those workers who have care needs for children over the age of twelve, spouses or de facto partners, blood relatives up to the second degree of the worker, as well as other dependents who live in the same household and who, due to age, accident, or illness, are unable to care for themselves, and must justify the circumstances on which they base their request.

- b. The **negotiation process** is indicated to be carried out with the **utmost speed, reducing it from 30 to 15 days**.
 - c. **The granting of the requested measure will be presumed if there is no motivated opposition expressed within 15 days of the request.** The company must justify its decision, provided that it does not grant the request.
 - d. The worker **may return to the previous situation** before the adaptation once the agreed or scheduled period has ended or when the circumstances that motivated the request cease. In the other cases, if there is a change of circumstances that justifies it, the company may only deny the requested return if there are justified objective reasons for doing so.
3. **LEAVE FOR WORK-LIFE BALANCE.** Leave entitlements for personal, work, and family life are extended by modifying subparagraphs a) and b) of paragraph 3 of Article 37, and adding a new subparagraph b) bis, as follows:
 - a. **Leave for de facto partners unions.** De facto partners are included in the scope of leave for serious illness or injury, bereavement leave, the right to reduce working hours, and the right to 15 calendar days in the case of registration of de facto partnerships.
 - b. **5 days of paid leave** for serious illness or injury, hospitalization, or non-hospital surgical intervention (modification of subparagraph b).
 - c. **2 days of paid leave** for the death of a spouse, de facto partner, or relatives up to the second degree of consanguinity or affinity. If the worker needs to travel for this reason, the period will be extended by two days (new subparagraph b. bis).
4. **NEW PAID LEAVE EQUIVALENT TO 4 DAYS, to be absent from work due to force majeure when it is necessary for urgent and unforeseen family reasons, in the case of illness or accident that requires their immediate presence,** subject to what is established in the Collective Agreement or in the Company Agreement. This is created by adding a new paragraph 9 to Article 37.
5. **BREASTFEEDING LEAVE (EXERCISE).** Paragraph 4 of Article 37 is modified, stating that in the event of simultaneous exercise limitations of breastfeeding leave when two workers request it in the company for the same subject, based on justified and objective reasons related to the functioning of the company, which must be duly justified in writing, **the company is now also required to offer an alternative plan that ensures the enjoyment of both workers and enables the exercise of their rights of work-life balance.**
6. **REDUCTION OF WORKING HOURS.** Paragraph 6 of Article 37 is modified, **expanding the cases of reduction of working hours for caregiving purposes to include spouses or de facto partners.**
7. **LEAVE OF ABSENCE.** Paragraph 3 of Article 46 is modified, **expanding the leave of absence for the care of children or family members to include spouses or de facto partners and blood relatives of the de facto partner.**
8. **SINGLE-PARENT FAMILIES.** Paragraph 6 of Article 48 is modified to establish that, **in the case of disability of the minor, full extensions of leave may be enjoyed** (as if it were two-parent families).
9. **NEW PARENTAL LEAVE FOR THE CARE OF A CHILD OR MINOR UNDER GUARDIANSHIP FOR MORE THAN ONE YEAR, UNTIL THE CHILD REACHES EIGHT YEARS OF AGE.** This is created by adding a new Article 48 bis:
 - a. A leave is established, **which will not exceed eight weeks in duration**, continuous or discontinuous, and may be taken full-time or on a part-time basis as established by regulation.

- b. This leave **will cause the employment contract to be suspended**. For this purpose, a new subparagraph o) is added to Article 45, **and it will be without entitlement to remuneration** (as it causes the contract to be suspended, as established in Article 45.2).
10. **CASES OF UNFAIR DISMISSAL.** Articles 53.4 and 55.5 are modified, **incorporating as cases of objective null and void dismissals**, dismissals carried out during the new parental leave, and dismissals of workers who are enjoying an adaptation of their working hours and distribution, unless the justification for the dismissal is fully justified and proven.
11. **CALCULATION OF SEVERANCE COMPENSATIONS** (in certain cases of reduced working hours). **Additional Provision 19** is modified, expanding the calculation of indemnities without taking into account the reduction, to include the case of exercising the parental leave right under Article 48 bis on a part-time basis.

B. SOCIAL SECURITY CONTRIBUTION OF TRAINING PRACTICES OR EXTERNAL ACADEMIC INTERNSHIPS.

Article 212 is modified by amending Additional Provision 10 of Royal Decree-Law 2/2023, of March 16, **to delay until January 1, 2024, the inclusion in the Social Security system of students who carry out training practices or external academic internships included in training programs, initially planned for October 1, 2023.**

C. NEW MEASURES FOR WORK-LIFE BALANCE WITH THE PROFESSIONAL PERFORMANCE OF LAWYERS, PROCURATORS, AND GRADUATES BEFORE THE COURTS OF JUSTICE.

Articles 83.4 and 225 are modified, and a new Article 225 bis is added to the Law Regulating Social Jurisdiction, introducing a series of measures that allow for greater reconciliation of personal and family life with the professional performance of lawyers, procurators, and graduates before the courts of justice, as well as the regulation of leave for the birth and care of minors as a cause for suspending the course of proceedings, not only hearings or other scheduled events.

D. INVOLVEMENT OF WORKERS IN EUROPEAN PUBLIC LIMITED LIABILITY COMPANIES AND COOPERATIVES.

The second final provision of this decree-law aims to modify Law 31/2006, of October 18, **on the involvement of workers in European public limited liability companies and cooperatives, in order to transpose the provisions regarding the protection of workers' participation or co-management rights in Directive (EU) 2019/2121 of November 27**, adapting the heading and Title IV of this labor law, which is now renamed "Provisions applicable to cross-border intra-European structural changes in capital companies," covering not only cross-border mergers but also transformations and divisions of this nature, thus covering all three types of structural operations.

We remain at your disposal for any clarification regarding this matter.