MIRALLES

NEWSLETTER

Date: March 2024
From: Miralles Abogados
To: Contacts

A) NEWS OF DISPATCH:

1. International Activity:

We are pleased to announce that Miralles is one of the founding members of the International Labour Law Network (ILLN), a global alliance of labour law firms. Find the link to the website here: ILLN: International Network of Leading Labour Law Specialists

ILLN is dedicated to offering labour law services in a unified way to accompany any matter our clients may have, as well as, for example, coordinating cross-border projects (e.g. advising on applicable labour conditions in different countries, relocations etc.). ILLN also organises events and webinars related to international and European labour law, which we will share with you.

On 7 and 8 March, Miralles organised an event in Barcelona with all ILLN members to discuss developments in the field of European law and future actions of the network.

At Miralles we also have an extensive network of foreign law firms that we know personally and visit every year, which can provide support in any labour process outside Spain.

In particular, we have close relations with German law firms specialising in labour law through our German Desk. We cooperate closely with German law firms through the exchange of professional matters and we also liaise with the corporate headquarters of German companies in certain processes and circumstances.

2. Miralles Team:

Our team has been reinforced with the incorporation and experience of Maria Muñoz, a lawyer with more than 15 years of experience in the field of labour law in one of the leading law firms in Spain.

We have also reinforced the organisational and labour consultancy team, with the incorporation of Cristina Miralles as an economist-consultant.

B) LEGISLATIVE HIGHLIGHTS 1ST QUARTER 2024:

1. **ROYAL DECREE-LAW 6/2023, OF 19 DECEMBER,** *approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan for the public service of justice, civil service, local government and patronage was* validated by Congress on 10 January 2024, defining the two main objectives of this regulation:

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1. Digitisation of justice: It aims to implement the digitisation of all data relating to justice and judicial processes at state level (creation of the "justice folder", digitisation by the Judicial Office of documents presented in paper format, publication of judicial proceedings in streaming, holding of hearings and procedural acts by telematic means...).
2. Introduction of procedural efficiency measures, which are introduced through the reform of the Social Jurisdiction Regulatory Law that will enter into force on **20 March 2024**.

2. RD-Law 6/2023 introduces important amendments to **LAW 36/2011, OF 10 OCTOBER, REGULATING THE SOCIAL JURISDICTION, which come into force on 20 March 2024:**

- **Possible joinder of actions (Art. 25 LRJS):** The concept of title or cause of action is extended to include, in addition to the same facts, the same or similar business decision or several similar business decisions. If the plaintiff or plaintiffs do not bring the actions jointly, the court, ex officio, must agree to join them, except when it could cause disproportionate prejudice to the effective judicial protection of the other parties involved.

- **Possible accumulation of actions in special cases (Art. 26 LRJS):**
  1. Two new cases of joinder of actions are added. On the one hand, it provides for the joinder of MSCT actions by different parties against the same defendant, provided that they arise from the same facts or the same business decision. On the other hand, it provides for the joinder of actions for dismissal on objective grounds by different parties against the same defendant, provided that the cause of dismissal in the letter is identical.
  2. The accumulation of actions for dismissal and claiming amounts is modified, limiting it to amounts that are due, payable and of a determined amount**.**
  3. The possibility for the Court to order the dismissal to be dismissed due to the special complexity of the concepts claimed, when this could cause excessive delays to the dismissal process, is eliminated.

- **Compulsory joinder of actions (Art. 28 and 29 LRJS):** The obligation to join proceedings against the same defendant is agreed, provided that the cause of action is the same, both when the proceedings are brought before the same court or tribunal and when they are brought in different social courts in the same district.

- **Extension of the effects of a final judgment (Art. 247 bis LRJS) when:**

  1. That the interested parties are in the same legal situation.
  2. That the sentencing judge or court had jurisdiction, by reason of territory, to hear the proceedings to which the effects are to be extended.
  3. That the interested parties request the extension of the effects of the judgement within one year of the last notification of the judgement to those who were parties to the proceedings.

- **New situation for the imposition of a financial penalty (Art 97.3 LRJS):** When the conviction essentially coincides with the claim contained in the conciliation or mediation request, provided that the convicted party is the employer. It is interpreted that, in order to file this sanction, it is not enough that there is a connection between the claim and the ruling, but rather that there is an intuition of an attitude of abuse of the public service of justice by the defendant.

- **Appointment of counsel within 2 days** of receipt of the court summons.

3. INCREASE IN THE INTERPROFESSIONAL MINIMUM WAGE: The increase in the minimum wage to 1,134 euros in 14 payments is approved.

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4. **Amendment of Article 49.1 e) Workers' Statute.** Opening of public consultation on the preliminary draft law in relation to the automatic termination of the contract due to permanent incapacity**.**
5. **Order PJC/51/2024, of 29 January, which develops the legal rules on social security contributions, unemployment, protection in the event of cessation of activity, the Wage Guarantee Fund and vocational training for the financial year 2024, which sets out the minimum and maximum bases for social security contributions.**

C) NEW JURISPRUDENTIAL DEVELOPMENTS:

Judgment of the High Court of Justice of the European Union of 22 February 2024. Case C-589/22.
Calculation of voluntary redundancies for collective dismissal.

A recent ruling of the CJEU interprets that companies which, in the context of a restructuring plan, find it necessary to reduce a certain number of jobs that exceed the thresholds for collective redundancies, must resort to the legal procedure of collective redundancy regardless of the legal form used for the redundancy.

In this particular case, the Court considers that voluntary departures count for these purposes.

Judgment of the High Court of Justice of the European Union of 18 January. Case Ca Na Negreta C-631/22.
Automatic termination due to permanent disability.

The CJEU rules on a preliminary ruling by the Supreme Court of the Balearic Islands on whether the automatic termination due to permanent incapacity provided for in Article 49 ET contravenes the European Directive 2000/78 on non-discrimination on the grounds of disability.

The CJEU establishes that Article 5 of the aforementioned directive rejects the possibility of the employer terminating the employment contract due to a supervening incapacity without first adopting reasonable accommodation in order to adapt the work to the abilities and needs of the worker. It therefore considers that Article 49 e) of the Workers' Statute would be exempting the employer from its obligation to make or, where appropriate, maintain reasonable adjustments for those workers who, not being competent to perform the job due to a permanent incapacity, could perform duties in another job.

Judgment of the Central Economic-Administrative Tribunal of 18 December 2023.
Inspections of dismissals close to retirement based on age.

The TEAC rejects the IRPF regularisations made to the Treasury for two dismissed workers because the only evidence provided by the Inspectorate to prove that the departures were agreed was the age of those affected.

A first case states that the Treasury alleged that it was an agreed dismissal because the worker was 62 years old, had not rejoined the labour market, accepted a compensation 25% lower than that which would correspond to him and the reasoning for the termination was "vague". The TEAC points out that these circumstances, in the absence of other evidence pointing in the same direction, are insufficient to deduce that the dismissal was agreed, and therefore annuls the adjustment made.

Judgment of the Supreme Court, Social Division, 21 November 2023.
Calculation of breastfeeding days for part-time workers.

The Supreme Court understands that the correct calculation is as follows:

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Number of working days between the end of maternity leave and the child's 9th month divided by the number of working hours per day. This calculation, in this case, would give the following result: 113 days / 4 hours per day (part-time) = 28.25 days of breastfeeding.

Judgment of the Supreme Court of 12 November 2023.
Right to a reduction in working hours under Article 37.6 and 7 ET.

The Supreme Court confirms that, on the basis of article 37.6 and 7 of the ET, the working day may only be reduced within the limits of the ordinary working day, i.e., the applicant may reduce her working day within her ordinary working day, but under no circumstances may she alter the shift work regime that she had been performing.

Judgment of the Supreme Court of 14 December 2023.
Compensation for non-competition in the event of a declaration of partial nullity of the agreement.

The effects of this nullity are debated: must the worker reimburse the money paid to him or, on the contrary, does the company lose its right due to the abuse and nullity of the agreement?

In the judgment it is proven that the compensation of the agreement was an integral part of the basic salary, the salary offered remaining unchanged, the amount paid by the company is understood as salary remuneration and not as compensation for non-competition, and the Chamber concludes that no amount should be refunded.

Judgment of the Supreme Court of 30 November 2023.
The disruption of the social bank after a long period of negotiating vacuum.

The consolidated doctrine of the Supreme Court establishes that the only time to determine the levels of representation of trade unions in the company is the constitution of the negotiating table, which remains unchanged even after new elections.

In the present case, the Supreme Court, exceptionally, accepts a modification of the levels of representativeness because (i) there is a great chronological distance between the time of the constitution of the negotiating table and the present, with no agreement having been reached on the Collective Agreement in 6 years (negotiating vacuum), (ii) there have been important changes in union representativeness, with the USO union obtaining 4 representatives in the last elections, (iii) and the plaintiff union USO has been claiming its negotiating legitimacy since the results of the last elections came out, which demonstrates a real interest in being part of the negotiating table of the Collective Agreement.

Finally, the Supreme Court admits the USO union to join the negotiating table after 6 years have passed since its creation without having reached an agreement.

Ruling of the Supreme Court, dated 6 February 2024.
Corporate policy on the use of digital devices.

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This judgment declares that instructions on the use of digital devices given unilaterally by the employer to the workforce without the participation of the workers' representatives in drawing them up are null and void.

The Supreme Court establishes that not having the participation of workers' representatives to establish the criteria for the use of digital devices violates article 87.3 of the LOPD, 3/2018.

Judgment of the Audiencia Nacional, 17 November 2023.
Repeated failure to provide the relevant documentation to draw up an equality plan.

The National High Court condemns a company for unjustifiably failing to provide the relevant documentation in the negotiation of an equality plan over a period of 3 years, finding a violation of the right to freedom of association and condemning the company to compensation for damages.

Please do not hesitate to contact us if you have any questions.

Cordially yours,

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