

NEWSLETTER

Date: September 2024
From: Miralles Abogados
A: Contacts

A) NEWS OF THE FIRM.

1. International activity:

During the first half of 2024 Miralles attended the annual labour law congresses of the International Bar Association (IBA) and the European Employment Lawyers Association (EELA). During these congresses we had a great opportunity to discuss international labour latest trends in labour law. It also allowed us to meet with our network of international law firms and to continue establishing new relationships with law firms from all over the world.

On the other hand, the International Labour Law Network (ILLN), a global alliance of law firms dedicated to labour law founded by Miralles and other law firms, has 2 new members (Poland and Sweden). On 19 and 20 September the Association will meet in Amsterdam to review the latest news in labour law at European level and set the objectives for the year 2025.

You can find the link to the ILLN website here: [International Network of Leading Labour Law Specialists.](#)

2. Outing Miralles:

On the 13th and 14th of June, the Miralles team spent some days outside the office, where we reviewed the current and future objectives of the firm, and we were able to strengthen the values of teamwork.

We also had the opportunity to hold a session with Agustín Riviere (Dale Carnegie Certified Coach) to discuss topics such as recognition for achievements or the management of teams and processes for the benefit of our clients.

You can access the post on LinkedIn [here](#).

B) LEGISLATIVE NEWS HIGHLIGHTS 3rd QUARTER 2024.

1. **REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 JUNE 2024 laying down harmonised rules in the field of artificial intelligence.**

It is developed with the aim of establishing harmonised standards for the use of AI systems in the European Union, seeking to ensure the protection of health, safety and fundamental rights.

An AI system is defined as a system that operates with elements of autonomy and, based on data and inputs from humans or machines, infers how to achieve proposed objectives, using machine-learning or logic and knowledge-

based techniques, and generates as output content, predictions, recommendations or decisions that influence the environment with which the system interacts.

In the field of employment, AI systems used in the areas of employment and management of workers are classified as high risk, in particular: recruitment, selection of staff, decision-making affecting working conditions (promotion, termination, assignment of tasks, based on individual behaviour or personal traits or characteristics, and supervision or evaluation of individuals).

It shall apply (generally) from 2 August 2026.

However, the prohibited AI practices will apply from 2 February 2025.

In this respect, **obligations** are laid down for companies:

- 1) Implement a **risk management system** consisting of:
- 2) **Data governance**. High-risk AI systems shall be subject to appropriate data governance and management practices.
- 3) **Need for human supervision**. High-risk AI systems shall be designed and developed in such a way that they can be effectively monitored by natural persons during the period they are in use.
- 4) **Information to the RLPTs and to the affected workers themselves**, informing them that they will be exposed to the use of the high-risk AI system.
- 5) **The worker's right to a clear and meaningful explanation of** the role that the AI system has played in the decision-making process and the main elements of the decision taken.
- 6) **Literacy obligation (training/recruitment of person in charge)**. Companies shall take measures to ensure that, to the greatest extent possible, their staff and others who are responsible for the operation and use of AI systems have a sufficient level of AI literacy.

2. LO 2/2024, OF 1 AUGUST, on equal representation and balanced presence of women and men.

There is a transposition of Directive (EU) 2022/2381 on a better gender balance among directors of listed companies, extending to certain unlisted companies, professional bodies and other organisations such as trade unions or business associations.

Equal representation and balanced presence between women and men is understood as a situation in which the number of persons of each sex is not more than 60% and not less than 40%.

In addition to applying to the board of directors, the obligation applies to senior management (although it is only stated that companies should "ensure" that senior management has a balanced composition).

In addition to this regulation in the commercial sphere, in the labour sphere this regulation regulates several issues:

- Together with the concept of gender violence, the concept of sexual violence is reintroduced: initially incorporated by Organic Law 10/2022, on the comprehensive guarantee of sexual freedom, it had been eliminated, by mistake, by Law 4/2023, for the real and effective equality of trans persons and the guarantee of the rights of LGBTI persons.
- As of 22 August 2024, the objective nullity of the termination of the contract for objective causes or disciplinary dismissal disappeared for (i) those workers who request or are taking five days' leave due to accident or serious illness, hospitalisation or surgery without hospitalisation that requires rest at home for family members, and (ii) for those who request or take an adaptation of the working day in accordance with art 34.8 ET.

However, this is a technical error that will be corrected shortly, but in the meantime, it should be noted that any termination decisions that may be made on the basis of this erroneous regulation may be null and void.

3. ROYAL DECREE 893/2024, OF 10 SEPTEMBER, which regulates the protection of safety and health in the field of family home services:

Domestic workers are entitled to enjoy the same health and safety protections as any other employee: mandatory risk assessment, training and health surveillance, protection against violence and harassment, PPE, among others.

C) LEGISLATIVE PROJECTIONS 2024.

1. Draft Bill: Termination of contract due to permanent incapacity.

The draft law amending the Workers' Statute and the General Law on Social Security with regard to the termination of the employment contract due to permanent disability has been published.

There is an obligation to make the necessary adjustments or transfer to a vacant and available job before the termination of the contract due to a declaration of total or absolute permanent disability, unless it would constitute an excessive burden for the company.

You can access the draft law by clicking [here](#).

2. Reduction of the maximum legal working hours to 37.5 hours per week.

The text has yet to be agreed between the government and the social partners (negotiations continue between the Ministry of Labour and Social Economy, the CCOO, UGT, CEOE and Cepyme).

There is a proposal from the Ministry to flexibly apply the reduction in working hours over 2025, improve the recording of working hours and guarantee workers' right to digital disconnection.

As of today, the consideration of annual working hours has been confirmed and the date of entry into force is being questioned, as well as the possible progressive application.

On the other hand, a criterion of greater flexibility in the application of the irregular working day would also be considered (that the percentage to be applied to the current working day, and not the reduced working day, can continue to be considered).

3. Pending publication of the Royal Decree implementing art. 15 of Law 4/2023 of 28 February, for the real and effective equality of trans persons and for the guarantee of the rights of LGTBI persons.

This regulation, the result of an agreement with the social partners, will include specific guidelines and guidelines for the drafting and approval of LGTBI plans and protocols for the prevention of harassment and violence against LGTBI people in the workplace, an obligation that will affect all companies with more than 50 employees.

D) NEW JURISPRUDENTIAL DEVELOPMENTS.

1. Judgment of the Audiencia Nacional 69/2024, 17 June. Wage review of the General Chemical Industry Agreement.

This National Court ruling, which is now final, establishes that the wage increase of 10.3%, resulting from the difference between the sum of the general Spanish CPI for the years 2021 to 2023 and the increases agreed in the collective agreement for those years, must be applied to all workers hired by the company on 31 December 2023, regardless of their date of employment.

2. Judgment of the Court of Justice of the European Union of 11 July 2024. -C196/23. The termination of contracts in excess of the thresholds of art. 51.1 ET resulting from the retirement of a natural person employer constitutes a collective dismissal.

The Supreme Court concludes that Directive 98/59 does not exclude terminations for reasons beyond the employer's control, such as retirement.

Consultation with workers' representatives is understood to be necessary to reduce redundancies or mitigate their consequences. Therefore, the Court of Justice of the European Union (CJEU) holds that the death of the employer cannot be equated with retirement, since prior consultation is possible in the case of retirement.

3. Supreme Court Ruling 903/2024, 11 June. (Formal) control of the use of working time credit.

The Supreme Court concludes that it is not an infringement of freedom of association when the employer requires (generic) justification for the use of the working time credit and does not remunerate those hours if this is not the case.

The Court concludes that the working time credit is configured as leave and, therefore, reasonable control by the employer is consistent. Furthermore, it considers that the justification required by the company in this case was not excessive.

The justification requested by the company is compatible with trade union freedom because it operates on a formal level, as it requires an indication to the employer of the generic purpose for which the working time credit is intended, without requiring full proof, by appropriate means, of the specific activities carried out during the hours used.

4. Ruling of the Supreme Court 737/2024, 28 May. (Formal) control of the use of working time credit.

The Supreme Court has changed its criteria in relation to the days of compliance with a disciplinary sanction, concluding that it is not necessary to indicate the specific date of compliance with the sanction in the letter of sanction.

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

Kind regards