December 2013

Labour Law Department

FURTHER "ADJUSTMENTS" AFTER EMPLOYMENT REFORM

Royal Decree-Law 16/2013, of December 20, on measures to benefit the stable employment and to improve the employability of workers

The Cabinet has approved on December 20, 2013 the Royal Decree-Law on improvement of stable employment and employability of workers (the "**RD-L**").

This RD-L, in line with Act 3/2012, of 6 July (the "**Employment Reform**"), that favoured the adoption of internal flexibility by firms, raises measures on working time seeking the promotion of stable employment, employability of workers and flexibility of work organization. The rule adopted by the Government, as published in the State Official Gazette of December 21, applies from the day following its publication and seeks primarily to boost (i) the system of part-time employment, (ii) the contract of support to entrepreneurs, and (iii) the trainees' contracting.

We resume now the above in four sections by setting out the changes related to the three approaches mentioned above. They are:

(i) Management of Working Time

The first set of measures contained in the Royal Decree-Law introduces greater flexibility in the management of working time in contracts of part-time employment, while introducing measures to allow better control by the Inspectorate of Labour and Social Security and to prevent fraud: Among them:

- performing overtime is prohibited, but complementary hours may be used;
- working hours may be extended under the contract of part-time employment through complementary hours, distinguishing between agreed and voluntary complementary hours. However, complementary hours may be included only in contracts for part-time employment with a minimum of contracted hours, at least an average of 10 hours per week as calculated annually;
- a maximum of agreed complementary hours is set in 30% of the working day agreed with the worker, to be extended up to 60% under collective agreement;
- the notice period for working agreed complementary hours is reduced from 7 to 3 days to speed up the organization of firms;
- a new system of complementary hours for part-time permanent contracts is introduced with a working day of not less than ten hours on the basis of the voluntary agreement of the worker, where the employer may offer at any time that complementary hours of voluntary acceptance may be worked in a

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number that may not exceed 15%, to be extended up to 30% under collective agreement;

- in addition, it is set up a requirement to record daily the working hours, either regular or complementary, to allow better control by the Inspectorate of Labour and Social Security;

- the reduction in working hours for care of a minor child, from 8 to 12 years, is extended. This measure facilitates the reconciliation of personal, working and family life;

- the employer's contribution for unemployment in temporary part-time contracts is put to the same level as temporary full-time contracts. From now on, it is provided that the employer's contribution rate for unemployment in temporary contracts shall be unique (6.70%);

- the uneven distribution of working time is enhanced by allowing to regulate the excesses or defects of working hours in the "time pools" beyond the current year.

(ii) Trial Period

- The implementation of permanent contracts to support part-time entrepreneurs is allowed. Thus, it is also acknowledged the possibility of enjoying the rights to tax and Social Security incentives in proportion to the time of contracted work.

- The duration of the trial period in temporary contracts is limited to a maximum of one month in those employment contracts not exceeding six months.

(iii) Encouragement to Employability

- Part-time companies are authorized, in the same way as they already enter into contracts for training and learning, to be able to make training contracts for availability to companies using this system.

- It is extended until December 31, 2014 the possibility to enter into contracts for training and learning in matters in which there is no professional training diploma or professional certificate or training centres available for teaching such matters.

- The concept of enterprise group is clarified for purposes of financial contributions for layoffs affecting workers of fifty or more years old in profitable companies.

(iv) Contribution to Social Security

- The bases for contribution of fees in cash and in kind are clarified in order to exclude from it any amounts allocated to the employer for training and courses required for the job.

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- Additionally, it is included the obligation to give notice to the General Treasury of the Social Security of the amount of any tax items paid to the workers, whether they are included or not in the basis of contribution.

- The minimum contribution bases of autonomous workers with more than 10 employees and corporate autonomous workers are adjusted, making equal their minimum base to that provided for workers included in the group 1 contribution to the General System. Those autonomous workers that become adhered for the first time therein are excepted during the first 12 months of their activity, as from the effective date of such adhesion.

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Bill on Public Healthcare Companies of the Social Security

Furthermore, the Cabinet also approved on December 20, 2013 the bill on public healthcare companies of the Social Security. The private healthcare companies may request the discharge of the worker, although the physician of the Public Health Service shall decide. Thus, the private healthcare companies may make, as it is currently happening, a proposal of "motivated" medical discharge.

Its proposal will then be sent to the physician of the Public Health Service who issued a sick leave report through the inspection services of the relevant Public Health Service, which shall have a period of five business days after the receipt of the proposal for discharge in order to give notice to the private healthcare company of the acceptance or rejection of that proposal. If no notice of the report of the confirmation of discharge is given within that period, it shall be deemed that the proposal is accepted and that the medical report of discharge shall be issued. The private healthcare company must then inform the worker thereof and the employer of the termination of the service.

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