



Labour market reform in Spain

ROYAL DECREE LAW 10/2010, 16 JUNE

On 18 June, Royal Decree Law 10/2010, dated 16 June, came into force, approving the labour law reform in Spain. It has been agreed that it will be processed as a law and it is very likely that there will further changes in the near future, which we will let you know about.

The main aspects of the reform are the introduction of measures aiming to limit fixed-term employment and encouraging indefinite employment, changes related to the termination of employment agreements and changes to improve internal flexibility within companies.

Introduction

This briefing summarises the labour market reforms enacted by Royal Decree Law 10/2010, dated 16 June (RDL), which entered into force on 18 June, with some exceptions.

Limits to fixed-term employment

Maximum term

There are two types of fixed-term agreements (other than training and substitution agreements):

- those for the performance of a specific job or service, which, although they are for a fixed term, do not have a pre-defined term because the duration depends on how long the job or service is needed; and
- those for dealing with specific market circumstances.

The RDL states that fixed-term agreements for the performance of a specific job or service to be entered into from 18 June will have a maximum term of 18 months (which may be extended by 12 months or more if permitted under any relevant collective bargaining agreement). Once this period has elapsed, if the employee continues providing services after the agreed term ends he will be considered an indefinite employee (as already happens with the other temporary agreements).

There is no change in the regulation of temporary agreements entered into for dealing with specific market circumstances.

Chain of contracts

Until now, employees who, within a 30-month period, had been hired through two or more fixed-term agreements for the same position in the same company over a period longer than 24 months became indefinite employees.

From now, this situation is extended to hires not only in the same position, but also in different positions and not just within the same company but within different companies of the same group.

Severance in the event of termination

The amount of severance compensation in the event of termination of a fixed-term agreement (except for training and substitution agreements) is also amended and will increase on a yearly basis from the current eight days' salary to 12 days' in 2015.

Training agreements

The RDL sets out a total exemption from employer social security contributions for training agreements.

As regards internship agreements (*contratos de prácticas*), the maximum term for entering into these contracts from the date the individual obtains the relevant degree is extended from four to five years. In addition, each degree will enable a candidate to enter into a training agreement for a maximum period of two years (irrespective of whether different agreements are entered into with different companies).

Promotion of indefinite employment

Since 2001, Spain has had a specific type of agreement set out for the promotion of indefinite employment. This agreement may be entered into with specific groups of individuals – the current reform has extended the groups of individuals that a company may engage through this agreement.

Severance compensation in the case of unfair redundancy is 33 days' salary per year of service, with a maximum of 24 months. This has been the case since 2001. Having said that, the changes made to redundancies (see below) are likely to promote the use of this type of termination, rather than the current practice of implementing disciplinary unfair dismissals.

Measures to facilitate termination of employment for ETO reasons

The new legislation has modified the rules governing redundancies – ie terminations based on economic, technical or organisational reasons or reasons linked to production (ETO reasons).

Defining the grounds that may justify the redundancy

The RDL has introduced a definition of ETO reasons that may justify a redundancy – and they apply whether the redundancy is collective or non-collective. Having said that, the definitions still include ambiguous terms, which will not help when looking for some certainty, as employers would like.

Changes in the procedure for redundancy

From a formal point of view, the notice period, which used to be 30 days, is now reduced to 15 days (the possibility of payment in lieu was already set out by law and has remained unchanged).

One of the most important changes from an employer's point of view is that failure to meet the formalities set out by law will now render the redundancy unfair, but not null and void.

It is likely that this will spread the use of redundancies with acknowledgement of unfairness (insufficient grounds) – ie in the case of agreements for the promotion of indefinite employment. For these

agreements, severance for unfair redundancy is lower than that for unfair disciplinary dismissal: 33 days' salary per year of service, rather than 45 days'.

Measures to minimise compensation costs

As an additional temporary measure, to minimise the high cost assumed by employers in Spain (until the government provides for a new capitalisation fund), in cases of redundancies, whether collective or non collective, the Salary Guarantee Fund (FOGASA) will pay compensation equivalent to eight days' salary per year of service, provided that the following requirements are met:

- the agreement (whether ordinary or for the promotion of indefinite employment) was entered into after 18 June 2010; and
- the agreement has been in force for at least one year.

Measures to increase internal flexibility within companies

Substantial changes (including changes of location)

The RDL limits the negotiation periods for substantial changes to terms and conditions or transfers: whereas previously the term could not 'be less' than 15 days, now it can not be extended – the maximum term is 15 days.

In companies with no employees' representatives, employees may now grant the right to negotiate on their behalf to a commission made up of a maximum of three members of the most representative trade unions in the company. The company may be represented by the relevant sector's industrial organisations.

The RDL also sets out the possibility of replacing the consultation period with a mediation or arbitration procedure, even to modify the terms and conditions set out in the statutory collective bargaining agreement (which under the previous regulation could not be amended in this way).

Not applying salary conditions

The RDL sets out the possibility of not applying certain salary conditions set out by a collective bargaining agreement if there are ETO reasons that justify it and provided this is agreed between the employer and the employees' representatives (without the need to follow the procedure set out by the relevant collective bargaining agreement).

Temporary suspension of employment agreements

The RDL extends the reasons that allow employers to suspend employment agreements on ETO grounds.

On the other hand, the RDL expressly provides for the possibility of working time reductions based on objective grounds (as a measure to cut costs). The reduction may be between 10 and 70 per cent of the normal working time. In this event, the RDL includes an increase in the reduction of the company's social security contributions, from 50 to 80 per cent. In addition, the regulation of total and partial unemployment is adjusted.

If an employee is dismissed after a suspension of his employment agreement or a working time reduction period, he will be entitled to replacement of his unemployment benefits period for the total or partial unemployment he may have received, up to a maximum of 180 days (as opposed to the 120-day limit currently in force), provided that the suspension or working time reduction is authorised before 31 December 2011 and the termination of the employment agreement takes place between 18 June 2010 (when the RDL entered into force) and 31 December 2012.

Other measures

In addition to the above, the RDL introduces the following reforms:

- it establishes new reductions to social security contributions to promote employment of certain groups (the young and unemployed);
- it regulates employment agencies, which may now be profit-making; and
- in relation to temporary employment agencies, European Directive 2008/104/CE, of 19 November 2008, is implemented into Spanish law – this legislation extends the protection and rights of temporary employees, establishes subsidiary liability of the user company in relation to severance payments, establishes limits to the restrictions on providing service in certain sectors and provides for the elimination of all restrictions and prohibitions that are in place under the agreement for provision of personnel from 1 January 2011.

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