

RocaJunyent Informs

Labour Law Department
30 December 2021



On 29 December 2021, the long-awaited **Law 21/2021, of 28 December, on guarantee of the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system** was published in the Official State Gazette (BOE), which introduces part of the reform of the pension system into the Spanish legislation.

This law, which is the result of social dialogue (Government, trade unions and employers), will come into force on 1 January 2022 and seeks to fulfil two main objectives:

- To offer certainty to pensioners and to society as a whole about the pension system and to guarantee the maintenance of the purchasing power of pensions through a revaluation criterion linked to the evolution of inflation.
- To strengthen the balance of the system to ensure an adequate capacity to respond to demographic and economic demands, including the increase in expenditure associated with the retirement of the so-called “baby boomers”.

The most relevant points are summarised below:

Pension revaluation

- Repeal of the sustainability factor introduced by Law 23/2013, of 23 December (which has never entered into force), and its replacement by a new intergenerational equity mechanism, the details of which are provided in the regulation.
- It establishes that pensions will be revalued at the beginning of each year in accordance with the average inflation recorded in the previous year, with the guarantee that, in the rare case of negative inflation, pensions will not suffer any reduction.
- In addition, with the aim of preserving the purchasing power of pensions and guaranteeing the economic sufficiency of pensioners, the Government and the most representative business and trade union organisations will carry out, within the framework of social dialogue, a periodic assessment, every five years, of the effects of the annual revaluation, which will be reported to the Commission for the Monitoring and Evaluation of the Toledo Pact Agreements. In the event of any deviation, this assessment shall include a proposal for action to preserve the purchasing power of pensions.

Voluntary early retirement

- The applicable reduction coefficients are revised in order to promote retirement closer to the legal retirement age and to encourage longer contribution careers.
- However, the reduction coefficients corresponding to retirement for reasons not attributable to the worker are allowed to be applied in the event of receiving unemployment benefit at least three months in advance.
- The reduction coefficients corresponding to this type of pension will be applied to the amount of the pension, respecting the maximum limit each year, which is approved each year in the corresponding General State Budget Law, although this modification will be carried out progressively over a period of ten years.

	Contribution period: less than 38 years and 6 months	Contribution period: equal to or more than 38 years and 6 months and less than 41 years and 6 months	Contribution period: 41 years and 6 months or more but less than 44 years and 6 months	Contribution period: 44 years and 6 months or more
Months of early retirement	% reduction	% reduction	% reduction	% reduction
24	21.00	19.00	17.00	13.00
23	17.60	16.50	15.00	12.00
22	14.67	14.00	13.33	11.00
21	12.57	12.00	11.43	10.00
20	11.00	10.50	10.00	9.20
19	9.78	9.33	8.89	8.40
18	8.80	8.40	8.00	7.60
17	8.00	7.64	7.27	6.91
16	7.33	7.00	6.67	6.33
15	6.77	6.46	6.15	5.85
14	6.29	6.00	5.71	5.43
13	5.87	5.60	5.33	5.07
12	5.50	5.25	5.00	4.75
11	5.18	4.94	4.71	4.47
10	4.89	4.67	4.44	4.22
9	4.63	4.42	4.21	4.00
8	4.40	4.20	4.00	3.80
7	4.19	4.00	3.81	3.62
6	4.00	3.82	3.64	3.45
5	3.83	3.65	3.48	3.30
4	3.67	3.50	3.33	3.17
3	3.52	3.36	3.20	3.04
2	3.38	3.23	3.08	2.92
1	3.26	3.11	2.96	2.81

Involuntary early retirement

- It should be recalled that this type of retirement, unlike the aforementioned type, is taken on termination of employment for reasons not attributable to the free will of the worker.
- The aforementioned regulation adds to the causes of contractual termination that give access to this type of retirement the rest of the causes of termination for objective reasons, as well as voluntary termination by the worker, in the cases provided for in Articles 40.1, 41.3, 49.1m) and 50 of the Workers' Statute. In other words, the events from which this modality, which is more beneficial than voluntary early retirement, can be accessed are extended.
- The coefficient applicable to the pension is now determined per month of early retirement and not per quarter as before.
- In the two years immediately prior to the ordinary retirement age, the same coefficients are applied as in the voluntary mode, in those cases in which the new coefficient is more favourable than the one in force until now.
- The reduction coefficient corresponding to each of the six months prior to the ordinary retirement age is reduced with respect to those established for voluntary retirement.

	Contribution period: less than 38 years and 6 months	Contribution period: equal to or more than 38 years and 6 months and less than 41 years and 6 months	Contribution period: 41 years and 6 months or more but less than 44 years and 6 months	Contribution period: 44 years and 6 months or more
Months of early re- irement	% reduction	% reduction	% reduction	% reduction
48	30.00	28.00	26.00	24.00
47	29.38	27.42	25.46	23.50
46	28.75	26.83	24.92	23.00
45	28.13	26.25	24.38	22.50
44	27.50	25.67	23.83	22.00
43	26.88	25.08	23.29	21.50
42	26.25	24.50	22.75	21.00
41	25.63	23.92	22.21	20.50
40	25.00	23.33	21.67	20.00
39	24.38	22.75	21.13	19.50
38	23.75	22.17	20.58	19.00

	Contribution pe- riod: less than 38 years and 6 months	Contribution pe- riod: equal to or more than 38 years and 6 months and less than 41 years and 6 months	Contribution pe- riod: 41 years and 6 months or more but less than 44 years and 6 months	Contribution pe- riod: 44 years and 6 months or more
Months of early re- irement	% reduction	% reduction	% reduction	% reduction
37	23.13	21.58	20.04	18.50
36	22.50	21.00	19.50	18.00
35	21.88	20.42	18.96	17.50
34	21.25	19.83	18.42	17.00
33	20.63	19.25	17.88	16.50
32	20.00	18.67	17.33	16.00
31	19.38	18.08	16.79	15.50
30	18.75	17.50	16.25	15.00
29	18.13	16.92	15.71	14.50
28	17.50	16.33	15.17	14.00
27	16.88	15.75	14.63	13.50
26	16.25	15.17	14.08	13.00
25	15.63	14.58	13.54	12.50
24	15.00	14.00	13.00	12.00
23	14.38	13.42	12.46	11.50
22	13.75	12.83	11.92	11.00
21	12.57	12.00	11.38	10.00
20	11.00	10.50	10.00	9.20
19	9.78	9.33	8.89	8.40
18	8.80	8.40	8.00	7.60
17	8.00	7.64	7.27	6.91
16	7.33	7.00	6.67	6.33
15	6.77	6.46	6.15	5.85
14	6.29	6.00	5.71	5.43
13	5.87	5.60	5.33	5.07
12	5.50	5.25	5.00	4.75
11	5.18	4.94	4.71	4.47
10	4.89	4.67	4.44	4.22
9	4.63	4.42	4.21	4.00
8	4.40	4.20	4.00	3.80
7	4.19	4.00	3.81	3.62

	Contribution pe- riod: less than 38 years and 6 months	Contribution pe- riod: equal to or more than 38 years and 6 months and less than 41 years and 6 months	Contribution pe- riod: 41 years and 6 months or more but less than 44 years and 6 months	Contribution pe- riod: 44 years and 6 months or more
Months of early re- tirement	% reduction	% reduction	% reduction	% reduction
6	3.75	3.50	3.25	3.00
5	3.13	2.92	2.71	2.50
4	2.50	2.33	2.17	2.00
3	1.88	1.75	1.63	1.50
2	1.25	1.17	1.08	1.00
1	0.63	0.58	0.54	0.50

Early retirement on the grounds of activity

- The law revises the procedure for the recognition of age-related reduction coefficients, and now regulates separately these situations from those in which the early retirement derives from the worker's disability.
- The legal standing to initiate the procedure is modified.
- A reference is made to the regulations to be approved, within the framework of social dialogue, with regard to the indicators that accredit the existence of objective circumstances that justify the application of such coefficients.
- A commission is created to evaluate and, where appropriate, to urge the approval of the corresponding decrees recognising reduction coefficients.
- A provision is made for the establishment of a procedure for the review of the age reduction coefficients, with a periodicity of ten years.

Promoting the permanence of active workers by adapting and improving existing incentives.

- In the area of **delayed retirement**: the use of this formula is encouraged by replacing the single incentive established until now with the possibility for the interested party to choose between:
 - o Obtaining an additional percentage of 4% for each full year of effective work accredited after reaching retirement age (additional percentage to be added to that corresponding to the number of years of contributions and applied to the respective regulatory base, for the purpose of determining the amount of the pension).
 - o A lump sum for each full year of proven and contributed work between the date of reaching retirement age and the date of the event giving rise to the pension.
 - o A combination of the two options above.
- Exemption from the obligation to pay contributions for common contingencies, except in the case of temporary incapacity, from the date of reaching the corresponding ordinary retirement age in each case. This option is also extended to pensioners of the passive class regime.
- A 75% reduction in employer's Social Security contributions for common contingencies during temporary incapacity for workers who have reached the age of 62.

Compatibility of the retirement pension with income from a professional activity: active retirement.

- It should be remembered that active retirement is the modality that allows the retirement pension (in full or in part, depending on the requirements and circumstances), in its contributory modality, together with the pensioner's work as an employee or a self-employed person, provided that certain requirements are met.
- A new condition for access to this type of retirement is now that at least one year has passed since reaching ordinary retirement age. It should be borne in mind that until now, it was not unusual to apply for ordinary retirement and then apply to combine it with work (active retirement).

Forced retirement of workers

- In order to encourage longer working lives, collective agreements may establish clauses that make it possible to terminate the employment contract when the worker reaches the age of 68 or over, provided that certain requirements are met:
 - The worker affected by the termination of the employment contract must meet the requirements under Social Security regulations to be entitled to 100% of the ordinary retirement pension in its contributory form.
 - The measure must be linked, as a coherent employment policy objective expressed in the collective bargaining agreement, to generational replacement through the indefinite-term, full-time hiring of at least one new male or female worker.
- The above age limit has an exception: with the aim of achieving real and effective equality between women and men by helping overcome occupational segregation by gender, the above age limit may be lowered to the ordinary retirement age set by Social Security regulations when certain requirements are met:
 - When the employment rate of employed women workers affiliated to Social Security in any of the economic activities corresponding to the functional scope of the agreement is less than 20% of the persons employed in them. The economic activities that will be taken as a reference to determine compliance with this condition will be defined by the codes of the National Classification of Economic Activities (CNAE) in force at any given time, included in the scope of the applicable agreement according to the data provided upon registration with the Register and deposit of collective bargaining agreements and equality plans (REGCON). The Social Security Administration will provide the employment rate of female workers with respect to the total number of employees in each of the corresponding CNAE on the date of constitution of the committee for the negotiation of the agreement.
 - The person affected by the termination of the employment contract must meet the requirements stipulated by Social Security regulations to be entitled to 100% of the ordinary retirement pension in its contributory form.
 - In the CNAE to which the person affected by the application of this clause is assigned there must be an employment rate of less than 20% of the total number of employees at the date of effect of the termination decision. This CNAE shall be the one applicable for the determination of the contribution rates for the coverage of occupational accident and occupational disease contingencies.

- Each contractual termination in application of this provision must simultaneously entail the indefinite-term, full-time hiring of at least one woman in the aforementioned activity.
- The decision to terminate the employment relationship shall be communicated in advance by the company to the legal representatives of the workers and to the affected worker.
- The above shall apply to collective agreements entered into as of 1 January 2022. In collective agreements signed prior to this date, the forced retirement clauses may be applied up to three years after the end of the agreed initial term of the agreement in question.

Other matters of interest

- An improvement is established for early retirement pensions accrued from 1 January 2002 until 31 December 2021, with effect from the entry into force of the regulation, and whose recipients are pensioners who have taken early retirement with 44 years and 6 months of contributions.
- It includes a mandate for the Government to pass a draft law on the creation of the State Agency for Social Security Administration within six months.
- The law makes a number of amendments in relation to unmarried couples for pension purposes. In addition, within one year, the Ministry of Inclusion, Social Security and Migration will analyse the configuration of unmarried couples from the point of view of Social Security, in order to determine its scope to guarantee equal treatment throughout the national territory.