

RocaJunyent Reports

Labour Law Department
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Legislative news: Urgent measures for labour reform, the guarantee of stability in employment and the transformation of the job market.

On 30 December 2021, *Royal Decree-Law 32/2021, of 28 December, on urgent measures for labour reform, the guarantee of stability in employment and the transformation of the job market*, (hereinafter “**RD 32/21**”) was published in BOE (Boletín Oficial del Estado [Official State Gazette]) No. 313 after a long negotiating process between union and employer organisations and the Government. It culminated in a labour reform that mainly affects and modifies the following fundamental rules in the workplace:

1. Royal Legislative Decree 2/2015, of 23 October, approving the Consolidated Text of the Workers’ Statute.
2. Law 32/2006, of 18 October, regulating subcontracting in the Construction Sector.
3. General Social Security Law, approved through Royal Legislative Decree 8/2015, of 30 October.
4. Law 30/2015, of 9 September, which regulates the Vocational Training System for employment in the workplace.

5. Royal Legislative Decree 5/2000, of 4 August, which approved the consolidated text of the Law on Labour-related Offences and Penalties.

The entry into force is stipulated for the day after its publication in the BOE, except with respect to certain matters (matters of temporary contracting, for example), in which a different entry into force regime is established.

1. Royal Legislative Decree 2/2015, of 23 October, approving the Consolidated Text of the Workers' Statute (hereinafter the "WS").

Article one of RD 32/21 provides for the modification of the WS, which can be grouped as follows:

1.1. Modification of Article 11. Training contract.

The most relevant developments are:

The following contractual modalities are eliminated:

- Internship contract (university degree or intermediate-superior vocational training)
- Contracts for training and learning
- Contract for dual university training

The new Training Contract is created, which has two categories:

- Alternating training with work paid by a third party; or
- Performance of a work activity aimed at acquiring adequate professional experience.

Alternating training contract (Art. 11.2):

- Purpose: to balance paid work with the training process
- Recipients: those who do not have a qualification to enter into a training contract and obtain professional experience. People with another qualification, provided that they have not had a previous training contract at the same training level and in the same sector.
- Maximum age of 30: entered into within the framework of level 1 and 2 professional certificates and alternating employment/training programmes
- Substantial part of the contract: theoretical training and practical training
- Duration of the contract: minimum of three months and maximum of two years

- Effective working time: will be a percentage of the maximum working day provided for in the Collective Bargaining Agreement and must be compatible with training activities:
 - No greater than 65% during the first year
 - No greater than 85% during the second year
- Remuneration:
 - No less than 60% in the first year, nor 75% in the second year, of the pay established in the agreement for the professional group and compensation level corresponding to the functions performed
 - Under no circumstances may the remuneration be lower than the Minimum Interprofessional Wage in proportion to the actual working time.

Training contract to obtain the professional experience appropriate for the level of studies.

- Recipients: those who have a university degree, mid- or high-level vocational qualification, specialist, professional master's degree or certification from the professional training system, or an equivalent qualification from the education system for artistic or sports teaching
- Time limits:
 - It must be entered into within three years, or five years in the case of a person with a disability, following the completion of the corresponding studies.
 - It cannot be entered into by anyone who has obtained professional experience or carried out a training activity for the same activity within the company for a period of more than three months.
- Duration of the contract: may not be less than six months or exceed one year
- Trial period: maximum 1 month
- Remuneration:
 - Established in the collective bargaining agreement applicable in the company for these contracts or, failing that, the agreement for the professional group and compensation level corresponding to the functions performed
 - Under no circumstances may the remuneration be lower than the minimum remuneration established for the alternating work/training contract, or lower than the Minimum Interprofessional Wage in proportion to the actual working time.

1.2. Modification of Article 12. Part-time contract

Introduces the possibility of part-time hiring in training contracts

1.3. Modification of Article 15. Temporary hiring.

Modalities of the fixed-term contractual category are eliminated, which reduces temporary hiring options to only two possibilities:

- Production circumstances
- Replacement

Production circumstances contracts

Two subtypes are included:

- a) Unforeseeable circumstances:
 - Purpose: This type of temporary contract may be entered into in the case of an occasional and unforeseeable increase and oscillation (including those relating to annual holiday periods) that, even in the case of normal activity of the company, generate a temporary mismatch between the stable employment available and that which is required, provided that it does not meet the assumptions listed in Article 16.1. (fixed-discontinuous contract).
 - Duration: maximum six months, extendible to one year by sectorial collective bargaining agreement, extendible upon agreement of the parties only once if less than the maximum, respecting the maximums.
- b) Foreseeable circumstances:
 - Purpose: This type of temporary contract may be entered into to address occasional, foreseeable situations that have a shorter duration.
 - Duration: maximum of 90 days per calendar year, regardless of the workers necessary on each of those days, whose situations must be identified in the contract. These 90 days cannot be continuous.

In both cases, the Worker's Legal Representative must be informed in the last quarter of the year of the annual planned use of these contracts.

It is important to note that production circumstances cannot be used for jobs within the framework of contracts, subcontracts or administrative concessions that would constitute the usual or ordinary activity of the company.

Finally, serious attention must be paid to the time limit, since anyone who occupies a position for more than 18 months within a period of 24 directly or through a temporary employment agency will acquire the status of a permanent worker.

It should be noted that the workers who have been hired under production circumstances for a period of more than 18 months within a 24-month period for the same or different job position within the same company or group of companies, with or without a continuity solution and through two or more contracts, either directly or through temporary employment agencies, will acquire permanent worker status.

Anyone who occupies a position for more than 18 months within a period of 24 directly or through a temporary employment agency will also acquire the status of a permanent worker.

Contract for the replacement of an employee with a reserved position

- Purpose: to replace workers with a reserved position or to complete a reduced work schedule, as well as to cover long-term vacancies during a selection or promotion process.
- Start: The provision of services may begin before the absence of the person to be substituted has begun to ensure the proper performance of the position and, at most, for 15 days.
- Term: In the case of covering a long-term vacancy, the duration cannot be longer than three months (non-renewable) or shorter if so established in the collective bargaining agreement.

Temporary provisions

- Internship and training and learning contracts in force prior to the entry into force of the Royal Decree will be applicable until their maximum duration.
- Ongoing contracts for specific works and services that were entered into before 31 December 2021, as well as the permanent contracts for works signed under the provisions of the State Construction Agreement that are in force on the aforementioned date, will be applicable until their maximum duration.
- Temporary contracts based on market circumstances, an accumulation of tasks or excess orders, and the temporary replacement contracts based on the provisions of Article 15.1.b) and c) of the WS, entered into under the wording applicable before the entry into force of the RD, will apply until their maximum duration.
- Contracts for specific works and services and temporary contracts due to market circumstances, accumulation of tasks or excess orders entered into from 31 December 2021 until 30 March 2022 will be governed by the legal or conventional regulations in force on the date on which they were entered into and their duration may not exceed six months.
- Provisional regime on limits to consecutive contracts The provisions of the wording given by the RD in this matter shall apply to employment contracts signed after the RD's entry into force. With respect to previously signed contracts, for the purposes of calculating the number of contracts and the period

and term provided for in the aforementioned Article 15.5, only contracts in force upon the entry into force of the RD shall be taken into consideration.

1.4. Modification of Article 16. Fixed non-continuous contract

The scenarios for fixed non-continuous contracts are expanded to include:

- Work of a seasonal nature
- Work linked to seasonal production activities
- Work that does not have this nature but that, as it is intermittent, has certain, determined or undetermined performance periods
- Provision of services within the framework of the execution of commercial or administrative contracts that, being foreseeable, are part of the company's ordinary activity.
- Between a temporary employment agency and a person hired to be assigned

Important new developments have also been introduced into this contract:

- When the fixed non-continuous hiring is justified by the performance of contracts, subcontracts or due to administrative concessions, the periods of inactivity may only occur as waiting periods for relocation between subcontracts.
- The sector-specific collective bargaining agreements may determine a maximum period of inactivity between subcontracts, which, in the absence of a contractual provision, will be three months.
- Sector-specific collective bargaining agreements may implement a sector-specific jobs pool in which persons with fixed non-continuous contracts may be integrated during periods of inactivity, with the aim of promoting their hiring and continuous training.
- Collective bargaining agreements, in general, may introduce the possibility of entering into fixed non-continuous, part-time contracts.
- The rights of the persons hired through fixed non-continuous contracts are extended in matters of work-life balance, absences with the right to a reserved position, etc.
- The calculation of seniority is modified according to the effective duration of the employment relationship and not on the time of services actually provided.
- Persons hired through fixed non-continuous contracts will have a right of priority for access to training from the professional training system and for employment during periods of inactivity.
- It must be formalised in writing and reflect the essential elements of the work activity, including the duration of the activity period, the workday and the work schedule.

- Information to the Worker's Legal Representative: The planned use of the call for these contracts at the beginning of the financial year.

1.5. Modification of Article 42. Subcontracting.

References to “*business owners*” are modified to “*businesses*” and the precept is adapted with inclusive language.

Section 6 of Article 42 is modified, establishing that the collective bargaining agreement applicable to contractors and subcontractors shall be the sector-specific one for the activity performed in the contract or subcontract, unless another sector-specific agreement exists, in accordance with the provisions of Title III of the WS. Nonetheless, when the contractor or subcontractor has its own collective bargaining agreement, this will be applied, under the terms resulting from Article 84 of the WS.

1.6. Modification of Article 47. ETOP and FM ERTes

The current ERTE (Expediente de Regulación Temporal de Empleo [Temporary Redundancy Plan]) model has been revised. Likewise, several elements created for the COVID-19 ERTE are applied to both ETOP (causas económicas, técnicas, organizativas o de producción [economic, organisational or production-related causes]) and FM (force majeure) ERTes.

ETOP.

- A **consultation period** of no more than **seven days** is established for companies of **less than 50** people in the workforce.
- The maximum **period** to **establish** the representative **commission** is reduced from seven to **five days**, when all affected **workplaces** have legal **representatives** for the workers, for company management to communicate to the workers or their representatives its intention to initiate the procedure. In the event that the work centre does **not** have **representation**, the term will be **ten days**, shortening the previous term of 15 days.
- After the end of the consultation period, when the employer notifies the workers and the labour authority of its decision, it must include the **period** during which the **application** of the measures will be carried out.
- At any time during the term of the measure, the company may notify the workers' representative, with whom it communicated during the consultation period, a proposal to **extend the measure**. The need for this extension must be addressed within a consultation period of a maximum duration of five days. The business decision to reduce working hours or suspend the employment relationship must be communicated to the labour authority within a period of seven days, taking effect from the day after the end of the initial period.

FM ERTE.

- The procedure is implemented in the case of force majeure. The existence of force majeure must be confirmed by the labour authority, regardless of the

number of workers affected, and the labour authority must request the pertinent report from the Labour and Social Security Inspectorate before issuing a resolution. The authority's resolution on the occurrence of force majeure must be issued within five calendar days of the request. It will take effect from the date of the underlying event until the date stated in the resolution. Likewise, a non-response shall constitute authorisation. If the force majeure event continues to exist, a new authorisation must be requested.

- A specific cause of force majeure is added to the classic concept of force majeure: **impediment or limitations to normal activity caused by decisions from a competent public authority**, including ones aimed at protecting public health. The procedure will be the same as for the rest of cases of force majeure, but the report from the Labour and Social Security Inspectorate will not be compulsory and the company must, in any case, justify the specific limitations or impediments to its activity derived from the government decision.

COMMON MEASURES

- A series of common measures are established for both types of ERTes. The most notable are:
 - **Priority should be given to reduction of working hours** over the suspension of the contract.
 - Workers may be released during the procedure's application period, after providing information to the workers' legal representation and after communicating this to the entity managing the social benefits.
 - No overtime may be carried out within the procedure's application period, no new outsourcing activity may be established and no new employment contracts may be arranged, except when the employees affected by the procedure cannot, for reasons related to training, skills **or other objective and justified reasons**, carry out the functions entrusted to them. The company must first inform the workers' legal representation of this situation.
 - **Training actions** are strengthened.
 - Benefits relating to contributions linked to temporary redundancy procedures, when of a voluntary nature for the company, will also be conditional upon maintaining the affected workers' employment, in accordance with the content and requirements provided for in section 10 of the 39th additional provision of the General Social Security Law.

1.7. RED Mechanism for Employment Flexibility and Stability.

This new mechanism, **once activated by the Council of Ministers**, will allow companies to request measures to reduce working hours and suspend work.

It consists of **two categories**:

- **Cyclical:** when a macroeconomic situation is observed that advises the adoption of stabilization instruments, lasting **no more than one year**;
- **Sectorial:** when permanent changes are observed in a specific sector that generate the need for professional requalification and transition. In this case, it will be accompanied by a requalification plan. This measure will have a duration of one year with the possibility of two extensions of six months each (**total of 24 months**).

The procedure shall be initiated when **the company sends a request to the competent labour authority and simultaneously notifies to the workers' representation**, subject to the mandatory consultation period.

The labour authority must obtain a compulsory report from the Labour and Social Security Inspectorate confirming that the corresponding requirements are met. This Inspectorate must issue a resolution within seven calendar days from the notification that the consultation period has ended. Again, non-response shall constitute authorisation.

It is important to note that when the consultation period ends with an agreement, the labour authority must authorise the measure under the agreed-upon terms. However, if it concludes without an agreement, the decision it issues may accept or dismiss the request from the business.

During periods when contracts are suspended or working hours reduced, companies may voluntarily apply partial exemptions in their Social Security contributions linked to training and employment maintenance activities.

In addition, The RED Fund is introduced: it stems from the Ministry of Labour and Social Economy. It will finance the needs of the RED Mechanism in terms of benefits and exemptions, including training.

1.8. Modification of Article 84. Concurrent bargaining agreements

The **prevalence of the company-specific bargaining agreement is maintained with respect to those of a higher scope, except** as regards the **base salary amount and salary supplements**, including those linked to the company's situation and results.

The company-specific bargaining agreement may continue to regulate other aspects on a preferential basis, such as the choice between payment or offsetting of overtime hours, the schedule and distribution of effective working hours, the adaptation of the professional classification, the adaptation of the hiring practices linked to the company-specific agreements and work-life balance measures.

1.9. Modification of Article 86. Validity of bargaining agreements

Section 4 of Article 86 is modified, establishing the **full extended validity of collective bargaining agreements**. After the initial validity period expires without being replaced by another, collective bargaining agreements will continue to be applicable, unless otherwise agreed (the limitation of one year to the duration of the extended validity is repealed).

2. Royal Legislative Decree 5/2000, of 4 August, which approved the consolidated text of the Law on Labour-related Offences and Penalties.

The following is added:

- An extremely important note regarding the **transgression of the regulations on the subject of temporary hiring**, stipulating an **infraction for each of the affected workers**.
- The non-disclosure of provisional vacancies of employees hired under training or fixed contracts, among others, is subject to a sanction.
- The violation of the prohibition of carrying out new contracts and outsourcing is sanctioned when an ERTE is being applied.

3. Law 32/2006, of 18 October, regulating subcontracting in the construction sector.

Changes are introduced to the indefinite employment contracts assigned to a worksite (those whose tasks or services have a purpose and result linked to construction works).

4. General Social Security Law, approved through Royal Legislative Decree 8/2015, of 30 October.

Various changes are introduced, with an extremely relevant one being the change referring to social security contributions for temporary contracts lasting less than 30 days. These will entail an additional contribution paid by the employer at its end, which will be calculated by multiplying by three the minimum daily base contribution from group 8 of the General Social Security Regime for common contingencies, which is the general contribution that the company must pay to cover common contingencies.

This shall not apply to substitution contracts or those entered into with employees on behalf of agricultural workers employed by a third party or domestic employees.