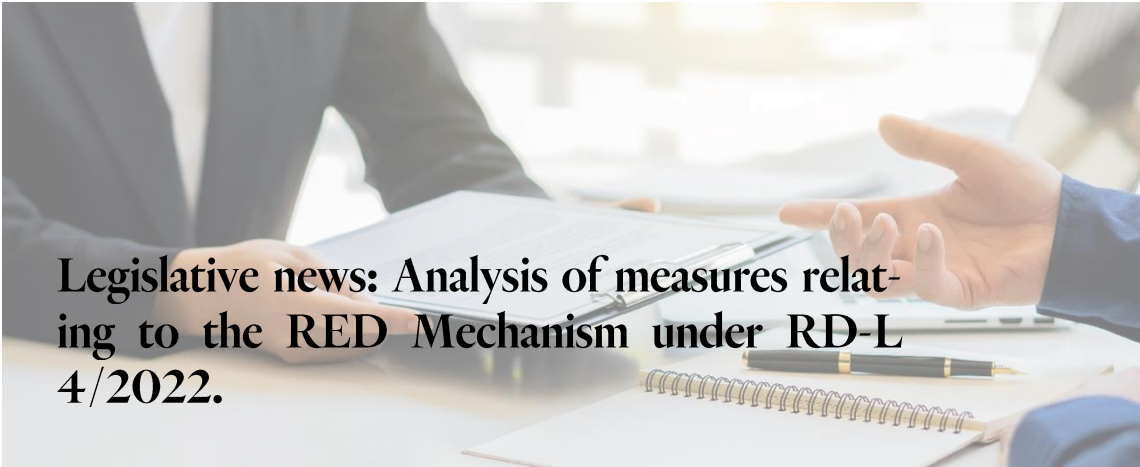


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Informs

Labour Law Department
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Legislative news: Analysis of measures relating to the RED Mechanism under RD-L 4/2022.

On 16 March 2022, a Royal Decree was published in Official Gazette No 64, due to come into force on 17 March 2022. While there has been no relevant regulatory development, certain matters relating to the Network Mechanism are presented:

1. Royal Decree-Law 4/2022, dated 15 March, which adopts urgent measures to support the agrarian sector owing to the drought (RD-L 4/2022).

The purpose of this Royal Decree is specifically to compile a set of **urgent measures to support the agrarian sector**, in order to alleviate the consequences suffered by said sector due to drought-related climate conditions, alongside the sharp increase in input prices owing to the supply crisis currently affecting the world economy due the situation in Ukraine, which in turn is threatening the food production sector. Likewise, the aforementioned RD includes measures relating to tax and Social Security matters.

Among the measures included therein which relate to Social Security, the following are worthy of note:

- *The constitution of the RED fund: Transitional standards established for its financing.*

- *The procedure applicable to the RED Mechanism: A request for measures to reduce working hours and suspend Employment Contracts.*

1. The constitution of the RED fund.

The Constitution of the RED Fund for Employment Flexibility and Stabilisation, according to the terms of section 6, Article 47 bis of the Workers' Statutes.

Some key features:

- No legal entity, attached to the Ministry of Labour and Social Economy.
- This will address the financing needs of the RED Mechanism as regards services and company exemptions from paying Social Security contributions, including training-related costs.
- This Fund's resources will consist of surpluses from revenues financing unemployment benefits at the tax and welfare levels, as well as contributions allocated to general State budgets, contributions from European Union financing instruments aimed at fulfilling the purpose and goals of the Fund, and yields of any nature which are generated by the Fund.
- Temporarily, while the RED Fund for Employment Flexibility and Stabilisation does not hold sufficient amounts to meet its financial needs, the expenses and low revenues listed below will be paid using financial resources belonging to the entities tasked with implementing the RED Mechanism.

2. The procedure applicable to the RED Mechanism

The RED Mechanism is an instrument for employment flexibility and stability. It will allow companies to request temporary measures to reduce working hours and suspend employment contracts, as already referred to in previous entries. Below are some prior considerations in this regard, contained in the Second Transitory Provision of [RD-L 4/2022](#):

- The company is required to choose between one of the two temporary measures:
 - o The measure entailing reduced working hours and the measure to suspend an employment contract cannot be combined for one individual worker.
 - o There will be a possibility to assign, un-assign or make changes to the percentage of reduced working hours, arising when the circumstances alleged as a justification for the measures are altered.
- Reliable communication with the RLT, or, failing this, with the working persons, as to the intention to start the RED Mechanism process, so as to form the relevant representative committee as set out in Article 41.4 of the Workers' Statutes.

The RED Mechanism is provisionally developed in the Regulations on the procedures for collective dismissal and suspension of contracts and reduced working hours (RD 1483/2012), insofar as they do not imply a contradiction with Article 47 bis of the Workers' Statutes itself. In this regard, the following shall not apply:

- Provisions relating to the starting of the procedure as established in Art. 17 RD 1483/2012).
- The supporting documentation to be attached to the notification on the start of the consultation period to prove that the cause exists (Art. 18 of RD 1483/2012).
- Notification to the Labour Authority according to the terms set out in Art. 19 of RD 1483/2012.
- The Labour and Social Security Inspectorate report established under Art. 22 of RD 1483/2012).
- The working hours reduction percentages as set out in Art. 16.2 of RD 1483/2012).

While the content of this provision has not been specifically developed, certain considerations regarding applicable procedure are introduced in RD-L 4/2022:

 **Documentation to be provided alongside the notification on the starting of the consultation period once the employer has stated its intention to start the RED Mechanism procedure and once the representative committee has been constituted:** *(Second transitional provision)*

Once the representative committee of working persons has been constituted or the period for the committee to be constituted has elapsed, the company shall send the notification to the effect that the consultation period has started. This must be submitted alongside the following documentation:

- Documentation attesting to the fact that the temporary, cyclical or sector-based situation described in the relevant agreement to enable the RED Mechanism is present in the company.
- Period within which measures to reduce working hours or suspend employment contracts are going to be applied.
- Identification of workers involved in the procedure who will be affected by the temporary employment regulation measures.
- Type of measure to be applied with respect to each worker and the maximum reduced working hours percentage or the maximum number contract suspension days to be applied.

- In the case of the sector-based modality, this notification must also be supported with a plan to requalify the affected persons.

 Request submitted to the Labour Authority: *(Second transitional provision)*

The request to apply reduced hours or contract suspension measures in the context of the enabled RED Mechanism shall be submitted by the company to the competent labour authority along with the notification on the opening of the consultation period, and must include:

- A copy of the notification from the employer as to its intention to start the RED Mechanism procedure, in order for the representative committee to be constituted.
- A copy of the notification on the starting of the consultation period along with the documentation issued to the representative committee, as referred to in the preceding section.
- Identification of persons who will be on the negotiating committee and the representative committee of working persons or, where appropriate, a statement that said committee was not constituted within the legally-established deadlines.

 Company's final notification to the Labour Authority: *(Second transitional provision)*

The company's final notification to the Labour Authority, whether the consultation period has been finalised with or without approval, must include the following:

- Persons, professional groups, positions and salary levels affected. It shall be established in each case whether the measure is a reduction in daily, weekly, monthly or annual working hours or whether it is a contract suspension.
- Date on which the RED Mechanism shall become effective. This may be prior to the date of the final notification to the labour authority, but may in no event be prior to the enabling date thereof.
- Period within which the measures to reduce working hours or suspend contracts will be applied, within the limit established under the enabling agreement.
- Maximum reduction percentage in daily, weekly or monthly work hours agreed upon for each affected person, professional group, position or salary level, as well as the maximum number of contract suspension days to be applied in each case.
- In the case of the sector-based modality of the RED Mechanism, a definitive requalification plan will be provided. The contents of the requalification plan may include the training actions referred to in additional provision number twenty-five of the Workers' Statutes.

 Access to social services: (third transitory provision)

Until the relevant development of the regulations takes place, access to social protection will occur under the terms of the forty-first additional provision of the consolidated text of the General Social Security Law, which will be applicable with the following particularities:

- The managing entity shall acknowledge benefits effective from the first day on which the measures may be applicable, or effective from the date on which the request is submitted, if submitted past the deadline.
- For the purpose of benefits being paid, the company must, in any event, issue a monthly notification in arrears to the managing entity, providing information on the periods of activity and inactivity of the workers during the immediately preceding calendar month.
- For days worked with reduced working hours, the hours worked will be converted into full days of activity.