

RocaJunyent Informs

Department of Labour Law
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Labour developments surrounding the work-life balance of parents and carers

The **Royal Decree-Law 5/2023**, of 28th June, which adopts and extends certain measures in response to the economic and social consequences of the war in the Ukraine, to support the reconstruction of the island La Palma and other situations of vulnerability; to transpose European Union Directives on structural modifications of commercial entities and work-life balance of parents and carers; and to implement and enforce European Union Law, was published in the Official State Bulletin (BOE) on 29th June 2023, and **entered into force on 30th June 2023**.

In the area of work-life balance of parents and carers¹, we highlight the **following labour developments**:

¹ Transposes Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20th June 2019, regarding the work-life balance of parents and carers.

- **Extension of the right to adjust working hours, including remote work.**

Amendment of article 34.8 of the Statute of Workers (ET).

The scope of the right to request adjustments is extended to employees that have caring needs with respect to **children older than twelve, a spouse or civil partner, family members up to the second degree of consanguinity and other dependents that live at the same address and are unable to look after themselves** because of their age, accident or illness. The circumstances that the request is based on must be justified.

In the absence of collective bargaining regulations, **the maximum negotiation period is reduced from 30 to 15 days**. It is expressly included that, **if there is no reasoned opposition from the employer within this period**, the employee's request **is presumed to be granted**.

The right to return to the previous situation once the agreed period is finalised or when the reasons for the request disappear is established. In the case of a change in circumstances that justified the return to the situation prior to adjustment, the company may only deny this return if there are objective and justified reasons to do so.

The working hour adjustments prior to 30/6/2023 will remain in force, but with the new regulation applying, specifically in relation to the return to the previous situation.

- **Extension of paid leave for caregivers and in case of death.** Amendment of article 37.3 of the ET.

The number of days and the subjective scope of this paid leave are extended to include the spouse, civil partner and the co-inhabitants over whom the effective care falls.

- **15 calendar days** of paid leave in the case of marriage or **registration of civil partnership**². The registration of civil partnership is expressly included in the ET, although this equalisation is already included, in general terms, in the collective bargaining agreements.
- **5 days**³ of paid leave **due to serious accident or illness, hospitalisation or surgical intervention without hospitalisation requiring home rest** of the **spouse, civil partner** or relatives up to the second degree of consanguinity or affinity, including blood relatives of the civil partner, as well as of **any other person not previously mentioned, who lives at the same address and who requires effective care from the working person**.
- **2 days of paid leave due to the death of the spouse, civil partner** or relatives up to the second degree of consanguinity or affinity. If the working person needs to travel for this purpose, the period will be extended by 2 days.

² The literal wording may lead to interpretative discrepancies as to whether the worker would be entitled to leave on the occasion of the registration of the civil partnership and subsequently on the occasion of the marriage to the same person. In our opinion, leave should be granted only once.

³ An annual limit is not established, but rather this leave should be granted as many times as the causal events occur.

- **Leave due to family emergency. Amendment of article 37.9 of the ET.**

A new leave of absence is established which allows workers to be absent due to force majeure when necessary for urgent familial reasons related to relatives or people they live with, in the case of illness or accident that makes their immediate presence essential.

The right to be paid for the hours of absence for any reason is established equivalent to a maximum of 4 paid days per year⁴, conforming to what is set out in the collective bargaining agreement or, failing this, in agreement between the company and the legal representation of the employees, where the reason for absence must be proven.

- **The subjective scope of the rights of care of dependents is extended.** Articles 37.6 (reduction of working hours due to legal guardianship of minors under 12 or dependents)⁵, and 46.3 (leave of absence due to the care of children or relatives)⁶ of the ET are modified **to include, within the protected cases, the direct care of the spouse or civil partner, as well as blood relatives of the civil partner** (up to the second degree).
- **Specific parental leave.** A new article 48 bis in the ET is introduced which regulates **parental leave** for the care of children, or minors fostered for more than one year, until the minor reaches 8 years old.

Despite calling this “leave”, **it constitutes a case of the suspension of the employment contract⁷ (hence, without remuneration).** It will have a **duration of no more than 8 weeks**, continuous or not, which may be taken on a full-time basis, or part-time basis, as established by regulation. Therefore, **this new right is awaiting regulatory development.** It is expected that it will be linked to some type of public benefit.

It is an individual right, the exercise of which cannot be transferred. **It will be up to the worker to specify the start and end dates of the absence or**, where applicable, the periods of absence, **which must be communicated to the company 10 days in advance**, or whatever is specified by the collective bargaining agreements, except in the case of force majeure, taking into account the situation of the former and the organisational needs of the company.

It is anticipated that, if several employees have the right to this leave due to the same circumstance or situations defined by the collective bargaining agreements,

⁴ As set out in the collective bargaining agreement or, failing this, agreement between the company and legal representation of the employees.

⁵ The same right to a reduction in working hours (with a proportional reduction in salary) shall apply to those who need to take direct care of a **spouse or civil partner**, or a family member up to the second degree of consanguinity or affinity, including the **blood relative of the civil partner**, who for reasons of age, accident or illness is unable to look after themselves, and who is not gainfully employed.

⁶ They shall be entitled to a leave of absence of no more than 2 years, unless a longer duration is established by collective bargaining, to care for a **spouse or civil partner**, or a relative up to the second degree of consanguinity or affinity, including the **blood relative of the civil partner**, who for reasons of age, accident or illness is unable to look after themselves, and who is not gainfully employed.

⁷ It is included as a cause for the suspension of the employment contract in article 45.1 of the ET.

and if the leave of absence in the requested period seriously affects the effective operation of the company, the company may postpone the granting of leave for a reasonable time, justifying it in writing and after having offered an equally beneficial and flexible alternative.

- **Justification for deferral of parental leave.** Articles 37.4, 37.6 and 46.3 of the ET are modified (“lactation”, reduction of working hours and leave of absence for the care of children or relatives) so that, in the case of a coincidence in the same company of family-related leave of absence by both parents, the company must present an alternative benefit plan, if substantial and objective reasons which would prevent the simultaneous leave of both parents exist.
- **Discrimination for exercising the right to work-life balance.** Article 4.2 of the ET is amended to establish that unfavourable treatment towards women or men for exercising their right to work-life balance or joint responsibility will be considered discrimination on the basis of sex, and so, amongst other consequences, it will be considered as a very serious violation of the article 8.12 of the Legislation on Infractions and Fines in the Social Order.⁸
- **Concept of joint responsibility⁹ between women and men.** It makes reference to the promotion of joint responsibility between women and men and the avoidance of perpetuating gender roles and stereotypes when exercising the right to the reduction of working hours or leave of absence due to legal guardianship or care of relatives (arts. 37.6 and 46.3 of the ET).
- **Suspension of the employment contract due to birth and care of a minor in single-parent families.** Art. 48.6 of the ET is amended, establishing that in the case of a single parent, the additional two full weeks of leave due to the birth and care of a minor may be taken, in the case of the child’s disability or in the cases of birth, adoption, foster care for adoption or foster care for each child other than the first.
- **Protection against dismissal.** Articles 53.4 and 55.5 of the ET and articles 108.2 and 122.2 of the Regulatory Law on Social Jurisdiction are amended, to ensure protection against dismissal due to taking work-life balance leave, with the enjoyment of all work-life balance rights, including the new ones, being among the **reasons for the objective nullity of dismissal. Expressly included within the reasons for objective nullity are those that have requested or are benefitting from adjusted working hours¹⁰ from article 34.8 of the Statute of Workers.**

⁸ With a fine of the minimum amount of 7,501 € up to a maximum amount of 225,018 €.

⁹ According to some Courts, in application of the concept of joint responsibility, if the worker that requests recognition of the right to adjust working hours has not accredited that their partner has requested a similar right, so that familial responsibilities are shared and made compatible, they cannot claim that the entirety of the loss derived from the adjustment of working hours falls exclusively on the employer.

¹⁰ There is no direct reference to remote work requests in article 34.8 of the ET, but in our opinion, the interpretation most in keeping with the aim of the regulation is to consider that they are included within the general concept of “adjustments to working hours”.

Therefore, in these cases, the dismissal of an employee can only be considered as justified or null and void.

- **Calculation of redundancy compensation in the event of contract suspension in virtue of the new parental “leave”.** Just as in the case for reducing working hours due to legal guardianship or the care of relatives and the suspension of the employment contract due to the birth or care of a minor, the regulatory salary in the event of possible redundancy compensation will not be affected by this new case of the suspension of the employment contract (that is, the total salary will be taken into account).