

January 2022

Labour and Employment

INFORMATIVE NOTE REGARDING THE MODIFICATIONS TO ROYAL DECREE-LAW 32/2021 AND LAW 21/2021 OF DECEMBER 28, ON URGENT MEASURES FOR LABOUR AND PENSION REFORM

SUMMARY

Following months of negotiation, the government, employers, and unions reached an agreement on December 23 to reform the labour market. This agreement has been incorporated into Royal Decree-Law 32/2021, of December 28, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market, which was published on December 28 in BOE and that entered into force on December 31. The Government has given companies a period of three months to adapt to some of the precepts of the new regulation. Additionally, the pension reform (Law 21/2021) on the guarantee of the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system enters into force, which presents new developments in matters of revaluation, reduction coefficients and early retirement, among others.

The Official State Gazette (BOE) of December 30, 2021 has published the "Labour Reform" through [Royal Decree-Law 32/2021, of December 28, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market](#), while the BOE of December 29, 2021 has published the "Pension Reform" through [Law 21/2021, of December 28, on the guarantee of the purchasing power of pensions and of other measures to reinforce the financial and social sustainability of the public pension system](#).

I. **LABOUR REFORM (RDL 32/2021): ENTRY INTO FORCE ON 31/12/2021 BARRING THE EXCEPTIONS SPECIFIED BELOW.**

1. **MODIFICATION OF CURRENT TRAINING CONTRACTS (ART. 11 WORKERS' STATUTE).**

1.1. The current internship contracts and the training and apprenticeship contracts are abolished, and the new training contracts are created with the following types:

- **TRAINING CONTRACT IN ALTERNATION:** It will permit compatibility between paid work activity and training processes. The main characteristics of this contract are:

- It may be entered into by people who lack the professional qualifications to attain a training contract for the obtaining of professional experience (next section).

- No age limit except in certain cases¹ for people up to thirty years of age².
 - The activity performed must be directly related to the training activities.
 - The figure of the tutor is appointed both in the training entity and in the company.
 - The duration of the contract will be a minimum of 3 months and a maximum of 2 years³. If the degree associated with the training contract has not been obtained, it may be extended with the agreement of the involved parties, without ever exceeding the maximum duration of 2 years.

 - The effective working time may not exceed 65%⁴ during the first year or 85% during the second year of the maximum expected working period.
 - There is no trial period or entry into the contract if the employee has worked in the company with another type of contract during the previous 6 months.
 - The remuneration will be as established by the applicable collective agreement, although in no case may it be less than 60% during the first year or 75% during the second year of a comparable worker⁵.
- **TRAINING CONTRACT FOR OBTAINING PROFESSIONAL PRACTICE SUITABLE TO LEVEL OF STUDIES:** Aimed at people with a university degree, intermediate or higher degree, specialist degree, professional master's degree or certificate of the vocational training system that enables or provides training for the exercise of professional activity. It has the following characteristics:
- It must be entered into within 3 years - or 5 years⁶ if it is a person with a disability - following the completion of the corresponding studies.
 - It may not be less than 6 months or exceed 1 year⁷.
 - Maximum trial period of 1 month, except as set out in the Collective Agreement.
 - It must allow for adequate professional practice according to the level of studies or training that is subject of the contract.
 - It may not be entered into by anyone who has already obtained professional experience, or who has realised training actions in the same activity within the company for more than 3 months⁸.
 - Possibility of working overtime only in case of *force majeure*.
 - Remuneration will be as established in the Collective Agreement⁹.

¹ If the contract is signed within the framework of level 1 and 2 certificates of professionalism and public or private training programs in alternation of employment-training, which are part of the Catalogue of training specialities of the National Employment System.

² In the previous regulation, it was limited to 25 years in training and apprenticeship contracts.

³ The maximum duration is reduced. It was 3 years for the contract of training and apprenticeship.

⁴ This percentage is reduced. Previously it was a maximum of 75% for the first year in the training and apprenticeship contract.

⁵ In no case may it be less than the SMI in proportion to the effective working time.

⁶ The limits are reduced. Previously, the internship contract could be entered into within the 5 posterior years (7 for people with disabilities).

⁷ The maximum duration is reduced. In the internship contract, it could be up to 2 years.

⁸ It does not count the period that is part of the curriculum necessary to obtain said degree.

⁹ In no case may it be less than that established for the training contract in alternation or the SMI in proportion to the time worked.

1.2. Other relevant changes applicable to both types of contracts:

- Obligation to include the individual training plan in the written employment contract.
- Possibility of part-time hiring.
- Companies that apply ERTes may enter into these contracts as long as they do not substitute functions normally performed by workers affected by suspension or reduction of working hours.
- Increase in the right to information of the RLT on this type of contracts and on collective bargaining (knowledge of educational or training cooperation agreements and determination during the negotiation of criteria and procedures to achieve a balance between the presence of men and women in these types of contracts).
- Contracts entered into in evasion of law or in breach of training obligations will be considered as fixed-term.

1.3. What happens to the contracts in force? These modifications will not enter into force until March 30, 2022, therefore the contracts in force and those signed between December 31, 2021 and March 29, 2022 will remain in force until their termination date.

2. MODIFICATION AND LIMITATION OF TEMPORARY CONTRACTS (ARTICLE 15 WORKERS' STATUTE).

2.1. The primacy of a fixed-term employment contract¹⁰ is established and the contractual types, work and service¹¹, temporary and interim, are eliminated, leaving the following types of temporary contracts:

▪ PRODUCTION CIRCUMSTANCES:

- To justify the temporality, the enabling cause of the temporary hiring, the specific circumstances that justify it, and its connection with the expected duration must be specified with precision.
- It will serve to cover occasional and unpredictable increases and fluctuations¹² that, even in the case of the normal activity of the company, generate a temporary mismatch between the stable employment available and that needed.
- As a new development, annual vacations are included within the conditions provided to justify the temporality.
- The maximum duration will be 6 months and can be extended up to 1 year if established by the applicable collective agreement¹³.
- Moreover, contracts may be formalised to respond to occasional and foreseeable situations, for example, the Christmas season, subject to the following conditions:
- This type of contract may be used for a maximum of 90 days in the calendar year regardless of the workers necessary to meet the circumstances, without the possibility of continuing the 90 days¹⁴.
- Obligation to inform the RLT of the annual forecast of the use of these contracts in the last quarter of the previous year.

¹⁰ The employment contract is presumed to be fixed-term.

¹¹ Work and service contracts with a duration of up to 3 years, extendable to 4 by Collective Agreement, with the exception of the construction sector in which a new type of work contract is created, disappear.

¹² These indeterminate concepts must be clarified through regulations or through judicial pronouncements. It must be determined whether the oscillations cause unpredictability or not.

¹³ Previously, the maximum duration could reach 12 months within an 18-month period.

¹⁴ The 90-day calculation method must be specified, since the norm does not specify discern whether they are for the entire company or for each worker using this type of contract. Nor does it establish a maximum number of contracts for those 90 days.

- It is not valid for the performance of work within the framework of contracts that constitute the usual or ordinary activity of the company.

▪ EMPLOYEE SUBSTITUTION CONTRACTS (PREVIOUSLY INTERIM):

- Substitution of a worker with the right to reserve the job position, provided that the name of the person substituted and the cause of the substitution are specified.
- Possibility of initiating the contract up to 15 days before the date of absence of the person to be replaced.
- It can be used to complete the workday of workers with reduced hours¹⁵ or to temporarily cover a position in a selection process for up to 3 months.

2.2. OTHER NEW DEVELOPMENTS:

- The concatenation period of temporary contracts is reduced to 18 months in a reference period of 24 months¹⁶, acquiring the status of fixed-term if this limit is exceeded¹⁷ both for the worker who exceeds said limit and for the worker who occupies a position held by several workers with temporary contracts and that exceed this limit. This prognosis is also maintained for cases of company succession and Temporary Employment Agency (ETT in Spanish) workers.
- Increase in the sanctions established in the LISOS for cases of fraudulent hiring, sanctioning individually for each worker and not for the company as a whole¹⁸.
- Obligation to deliver, within a maximum period of 10 days, certificates to workers who acquire the status of fixed-term and to inform the RLT.
- Additional contribution for temporary contracts for less than 30 days.

2.3. WHAT HAPPENS TO THE TEMPORARY CONTRACTS IN FORCE?

- Contracts entered into before 31/12/2021: Both work and service contracts, as well as temporary and interim contracts, will be enforced in the terms preceding this Reform until their maximum duration.
- Contracts entered into between 31/12/2021 and 30/03/2022: They will be governed by the regulations preceding the Reform, although in no case will the duration be longer than 6 months.
- The entry into force of the new regulation in entirety will apply to contracts entered into as of 30/03/2022.

¹⁵ For legal reasons (not for a part-time contract).

¹⁶ Previously it was 24 months in a reference period of 30 months.

¹⁷ This regulation will apply to contracts signed from December 31, 2021 onwards. For contracts signed previously, only the contract in force as of December 31, 2021 will be taken into account.

¹⁸ This rule will also apply to fraud in staffing services contracts (Temporary Employment Agency).

3. MODIFICATION OF THE FIXED-DISCONTINUOUS CONTRACT (ARTICLE 16 OF THE WORKERS' STATUTE).

3.1. This type of contract is expected to be incentivised through the following measures:

- Use for the carrying out of work of a seasonal nature or related to seasonal productive activities or for the performance of those that are not of such a nature but that, being of an intermittent nature, have certain determined or undetermined execution periods¹⁹.
- Its length will be calculated taking into account the entire duration of the employment relationship and not the time of services actually provided.²⁰
- Possibility of entering into the execution of commercial contracts that, being foreseeable, form part of the ordinary activity of the company²¹ and Temporary Employment Agencies (ETTs).
- Flexibility of the requirement to predetermine the workday, being able to be specified on an estimated basis until its definitive specification at the time of the call.
- The obligation is introduced to provide the RLT, sufficiently before the beginning of each calendar year, with a calendar with the annual or semi-annual call forecasts, as well as the data of the current affiliations of the discontinued fixed-term people, once they are produced. Likewise, the information on ordinary fixed-term vacancies must also be provided to the workers and to the RLT.
- Possibility of establishing a sectoral employment exchange by collective agreement, the entering into part-time contracts and the obligation of companies to prepare an annual census of fixed-discontinuous personnel.

3.2. When does it enter into force, and what happens to current contracts? It will enter into force on 30/03/2022. Not having established a transient regime, the contracts signed prior to said date will be regulated by the previous regulations.

4. MODIFICATION OF SUBCONTRACTING (ARTICLE 42 OF THE WORKERS' STATUTE).

4.1. Inclusion of a new section for which:

- It is established that the collective agreement applicable to contractors and subcontractors will be that of the sector of the activity carried out in the contract or subcontract, unless there is another applicable sectoral agreement in accordance with the provisions of Title III²². However, when the contracting company has its own agreement, it will be the one applied.

¹⁹ Previously limited to not being repeated on certain dates.

²⁰ By means of the next judicial pronouncements, it must be determined whether, in effect, for compensation purposes the periods of inactivity are also calculated, which is deduced from the interpretation of the regulation.

²¹ In this case, periods of inactivity may only occur as waiting periods for relocations between subcontracts.

²² This modification is aimed mainly at multiservice contractor companies without a company collective agreement.

5. ERTES (ARTICLE 47 OF THE WORKERS' STATUTE).

5.1. Regarding ERTes for ETOP causes²³:

- The time limits for the constitution of the representative commission are reduced, being 5 days from the date of company notification if there is an RLT and 10 days if a workplace does not have an RLT.
- Reduction of the consultation period to 7 days in ERTes ETOP for companies with less than 50 workers.
- Possibility of extending an ERTE is included after a consultation period of a maximum of 5 days.

5.2. A new cause of ERTE due to *force majeure* is introduced: determined by impediments or limitations in the normalised activity of the company as a consequence of the decisions adopted by the competent public authority.

5.3. In both types of ERTE, workers are allowed to be put in ERTE and removed from it based on the alterations in the circumstances indicated as a justifying cause for the measures. Overtime, new outsourcing and new hires may not be realised unless the people in ERTE cannot, due to lack of qualifications, training, or other objective reasons, carry out the functions entrusted to them.

5.4. Possibility of applying voluntary exemptions in the Social Security business contribution for common contingencies and joint collection concepts applicable to:

- ETOP ERTes related to making training activities available to workers: 20% exemption.
- ERTes of *force majeure* and impediments or limitations in the activity: 90% exemption.
- Said exemptions will be conditional on the maintenance of the employment of the workers affected during the 6 months following the end of the period of validity of the ERTE and in case of non-compliance, the exemptions of the dismissed person must be returned exclusively.

5.5. Creation of a new type of ERTE (Red Mechanism for Employment Flexibility and Stabilization):

- It must be activated by the Council of Ministers.
- It will allow companies to voluntarily request measures to reduce working hours and suspension of employment contracts, subject to a period of consultations with the RLT and authorisation from the Labour Authority.
- It has two types:
 - Cyclical: when there is a general macroeconomic situation that advises its adoption, with a maximum duration of 1 year. Exemptions to Social Security contributions are anticipated, which will gradually decrease in percentage.

²³ Economic, technical, organisational or production causes.

- Sectoral: in a certain sector or sectors of activity there are permanent changes that create requalification needs with a maximum duration of 1 year and 2 possibilities of extensions of 6 months each. Exemptions from Social Security contributions are related to the performance of training activities.
- In both cases, the % of exemptions can be modified by the Council of Ministers and will be conditional on the maintenance of employment for 6 months following the expiration of the ERTE. In case of non-compliance, the exemptions of the dismissed person must be returned exclusively.

6. PRIORITY OF APPLICATION OF THE COMPANY COLLECTIVE AGREEMENT (ARTICLE 84.2 OF THE WORKERS' STATUTE).

6.1. Only the priority of application of the company collective agreement in terms of the amount of the base salary and the salary supplements is eliminated; therefore, all company collective agreements must respect the minimum salary set by the corresponding sectoral collective agreement.

6.2. The rest of the subject-matter in which the priority of application of the company agreement is permitted is maintained, being able to regulate conditions that are worse than those of the sector in terms of, for example, payment and compensation of overtime, or working hours and distribution of work time.

6.3. What happens to the collective agreements in force? It will be applicable to those collective agreements entered into and submitted for registration or published prior to December 31, 2021, once they lose their expressed validity, and, at most, within one year from that date. Once the term described in the previous section has been reached, the agreements must be adapted within six months.

7. ULTRA-ACTIVITY (ARTICLE 86.3 WORKERS' STATUTE).

7.1. Full ultra-activity is applied without a time limit²⁴ so that collective agreements will be extended until they are replaced by new ones.

7.2. What happens to the collective agreements denounced as of 31/12/2021? The new ultra-activity regime will be applied to them and will remain in force indefinitely until a new collective agreement is adopted.

8. LAW ON TEMPORARY EMPLOYMENT AGENCIES (LAW 14/1994).

8.1. The Temporary Employment Agencies (ETTs) may enter into an employment contract with a single worker to cover several successive staffing services contracts with different company users, provided that it is determined at the time the contract is signed and responds to creditable temporary needs.

²⁴ Previously, the limit was 1 year.

8.2. Fixed-discontinuous contracts may also be entered into to cover staffing services contracts linked to temporary needs of various company users, the periods of inactivity coinciding with the waiting period for said contracts.

8.3. New sanctions are added in the LISOS regarding the staffing services contracts of making.

II. PENSION REFORM (LAW 21/2021): ENTRY INTO FORCE ON 1/1/2022.

Among the most relevant changes, the following may be considered especially noteworthy:

1. **REVALUATION OF PENSIONS:** The annual revaluation of contributory pensions is established according to the average CPI (IPC in Spanish) of the month of November of the previous year²⁵, without a negative index affecting the amount of the pension.
2. **ACTIVE RETIREMENT:** It is delayed until one year after reaching the age to access ordinary retirement to qualify for the possibility of combining the retirement pension with self-employment or employment (active retirement).
3. **DELAYED RETIREMENT:** New incentives are put into place for those who take advantage of this type.
4. **MODIFICATION IN THE SUBJECT-MATTER OF CONTRIBUTIONS:** When the working person reaches their ordinary retirement age, an exemption from the Social Security contributions of companies and employees will be applied for common contingencies (also for unemployment, the Salary Guarantee Fund and professional training), except for temporary disability derived from such contingencies.²⁶ A 75% reduction in the contribution during temporary disability due to common contingencies is also established when the worker is at least 62 years old.
5. **EARLY RETIREMENT:**
 - o Involuntary retirement:
 - The conditions that give access to this type are broadened, including the termination of the contract at the will of the worker for the causes provided in articles 40.1, 41.3 and 50 of the Workers' Statute. Likewise, all causes for objective dismissal, previously limited to ETOPs, are included²⁷.

²⁵ It does not refer to the CPI (IPC) for the month of November but to the average value of the inter-annual variation rates expressed in % of the CPI for the 12 months prior to December of the previous year.

²⁶ Said periods will be calculated for the purposes of access to and determination of the amount of benefits.

²⁷ It includes objective dismissal due to unexpected ineptitude or lack of adaptation of the job.

- The reduction for retiring before the ordinary retirement age will no longer be by quarters or fractions of quarters, but by months or fractions of months that, at the time of the causal event, the worker is short of to meet the legal retirement age. The reduction will be different depending on the scale of years of contributions.
 - o Voluntary retirement:
 - Reduction coefficients different from those of involuntary retirement are applied progressively according to the time remaining to access the ordinary retirement age.
 - Regarding the reduction coefficients, the same rule is applied as in involuntary retirement, being by months or fractions of months.
 - In this case, to determine the amount of the pension, the reduction coefficients will be applied on the consequential pension whereas previously they were applied on the regulatory base; as such, there will be a progressive reduction in the amounts.
 - In cases where the calculated theoretical pension exceeds the maximum pension limit, the reduction coefficients will be applied gradually, within a period of ten years from 1/1/2024.
 - Those with a regulatory base higher than the maximum pension, whose employment relationship:
 - Has been terminated before January 1, 2022.
 - Or is terminated after January 1, 2022 as a result of employment regulation proceedings or by virtue of collective agreements, company agreements or bankruptcy procedures, approved prior to the entry into force of the new regulations.
 - However, these people may also opt for the regulations in force on the date of the causal event of the application of the pension.
6. **CLAUSES OF THE COLLECTIVE AGREEMENTS CONCERNING RETIREMENT:** In the collective agreements signed as of 1/1/2022, clauses may be established that make it possible to terminate the contract of workers over 68 years of age as long as they can access 100% of the ordinary retirement pension and the action taken is related to generational renewal through the permanent and full-time hiring of at least one new worker. Collective agreements that apply the previous regulation²⁸ may only apply it up to 3 years after the end of the initial agreed-upon term of the agreement.
7. The sustainability factor is repealed and a new intergenerational equity mechanism is opted for.

²⁸ It was not necessary to reach 68 years of age, but rather the legal retirement age.

III. OTHER PERTINENT NEW DEVELOPMENTS INTRODUCED BY LAW 22/2021, OF DECEMBER 28, ON GENERAL STATE BUDGETS FOR THE YEAR 2022:

- The contribution rates of the General Social Security Regime applicable in the year 2021 are maintained.
- The legal interest rate is set at 3% and the default interest at 3.75%.
- Section 6 of article 37 of the Workers' Statute is modified, increasing to 23 years of age the reduction of the working day in the case of the care of a minor affected by cancer or other serious illnesses. This right is extended to the spouse or common-law partner of the sick person.
- Only companies that are up-to-date in complying with their obligations with Social Security (including income from fees and joint collection concepts, as well as any other resource of Social Security that is subject to collection management) will be able to obtain reductions, bonuses or any other benefit in the bases, rates and contributions to Social Security.

DO YOU HAVE ANY QUESTIONS?

From our Labour and Employment Area, we work to be able to offer you a response to any doubts that may arise from this change. If you have any questions, do not hesitate to contact us.

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