

INFORMATION NOTE / February 2019

Developments in relation to employment and Social Security matters for 2019

SUMMARY:

The present note seeks to abridge the main novelties in relation to Labour and Social Security matters which have been released in recent months, as well as to provide a brief note in regards of other relevant measures on Labour matters which are under the Government and social agents' consideration.

ANALYSED REGULATION:

- **Royal Decree 1462/2018**, of December 21, which establishes the **Minimum Inter-professional Salary for 2019**, which came into force on January 1, 2019 (BOE 27-12-2018).
- **Royal Decree-Law 28/2018**, of December 28 for **the pensions' revaluation and other urgent measures in regards of social, labour and employment matters** (BOE 29-12-2018), validated by the Congress of Deputies on January 22, 2019 (BOE 29-1-2019) which came into force on January 1, 2019.
- **Ordinance TMS/83/2019** January 31, which develops the **legal regulations on Social Security contributions**, unemployment, protection for cessation of activities, Wage Guarantee Fund and professional training for financial year 2019 which came into force on February 3, 2019 with effect from 1-1-2019 (BOE 2-2-2019).
- **Organic Law 3/2018**, December 5, on **Data Protection and Guarantee of Digital Rights**, which came into force on December 7, 2018 (BOE 6-12-2018).

1. MEASURES REGARDING SOCIAL SECURITY MATTERS

- ***Update of the maximum and minimum base for Social Security Contributions in the General Social Security Plan***

For 2019, the **maximum contribution base** is set on **4,070.10 € per month (135.67 €/day, for the Contribution Groups 8 to 11)**.

On the other hand, the **minimum base** is set on the following amounts per Professional Group:

- 1,466.40 € per month: Contribution Group 1.
- 1,215.90 € per month: Contribution Group 2
- 1,057.80 € per month: Contribution Group 3.
- 1,050 € per month: Contribution Groups 4 to 7.
- 35 € per day: Contribution Groups 8 to 11.

The minimum base for each working hour applicable to part-time contracts in each Contribution Groups is as follows:

- 8,33 € per hour: Contribution Group 1.
- 7,32 € per hour: Contribution Group 2.
- 6,37 € per hour: Contribution Group 3.
- 6,33 € per hour: Contribution Groups 4 to 11.

■ ***New premium rates for work accidents and occupational disease.***

Regarding the contributions for work accidents and occupational diseases, **a new rate chart is approved** that revises upwards (mainly) or downwards the type of contribution of some of the epigraphs. A summary of the introduced changes is provided as [Annex I](#).

■ ***Contributions for contracts of five days of duration or less.***

Regarding the **contracts of five-day duration or less**, it is established a 40% increase of Social Security contributions for ordinary contingencies (except for those included in the Special System for Employed Farm Workers).

Meanwhile, regarding the afore-mentioned contracts, every worked day will be considered as 1.4 days of contribution (the cap being the number of real days per month) for the purpose of calculating the periods required to be eligible for the right to retirement benefits, permanent disability, death and survival, temporary disability, maternity and paternity and child's, affected by cancer or other serious illnesses, care. This provision does not apply to part-time contracts, part-time substitution contracts (so called "contrato de relevo") and permanent seasonal discontinuous contracts.

■ ***The obligation for all trainees to pay Social Security contributions, regardless of internships being or not remunerated.***

The main novelty is the alignment of curricular internships and extracurricular, for the purpose of Social Security contribution, and of those remunerated and non- remunerated. Therefore, payment of social security contributions applies to both curricular internship and non-remunerated internships.

This contribution will be made applying the contribution rules corresponding to apprenticeship and training contracts, without the obligation to pay contribution for unemployment contingencies, nor for Wages Guarantee Fund or professional training. In 2019, the contribution will consist of a single monthly instalment of 51,05 euros for common contingencies and 5,85 euros for professional contingencies.

In the case of internships or non-remunerated training programmes, the company, institution or entity where those are held, shall be responsible for the obligation of paying contribution, unless the cooperation agreement entered into for its execution, as the case may be, specifies that such obligations shall be attributed to the educational centre where the students conduct their studies.

However, the new contribution regulation regarding non-remunerated internships, - whether curricular or extracurricular- will only be applicable to the people whose participation on the training programmes or no-labour and academic practices **commence on the first day of the subsequent month of the entry into force of a new regulation** which develops the above-mentioned in detail, with a period of three months being established to its development as from the entry into force of Royal Decree 1462/2018 (which ends on the next March 31, 2019).

Given the controversy generated by this measure, it is likely that a 100% discount on the afore-mentioned contribution ends up being established or that it is left with any effect.

- ***The suspension of the professional contingency contribution's reducing system, due to work accident indicators' decrease, with effect from 01.01.2019.***
- ***Unemployment contingency coverage is included in certain training and apprenticeship contracts from 01.01.2019.***
- ***Derogation of employment contracts linked to unemployed rate of 15%***

Employment contracts and incentives link to unemployment rate of 15% are derogated, Taking into account that according to the 2018 third trimester Active Population's Survey, such rate is now at 14.55%.

Notwithstanding the above, the contracts entered into before 01.01.19 will continue being regulated by regulations in force at the time of their signature and therefore, they will continue benefitting of the incentives related to such contracts.

- ***End of company voluntary cooperation with Social Security in allowances for temporary disability due to common illnesses allowances.***

Companies that on December 31, 2018 were under the cooperation regime with the Social Security, directly assuming the payment at their own expense (the so called "self-insured companies") of the economic allowances for temporary disabilities derived from common illnesses or non-labour accident will have to cease with such cooperation, effective March 31, 2019.

2. EXTRAORDINARY INCREASE OF THE LABOUR MINIMUM SALARY (LMS) FOR 2019

- The LMS for any activity within agriculture, industry and services, without employees' age or gender distinction, is set at **30 euros/per day or 900 euros/per month** (14 instalments), depending on whether the salary is agreed per days or months. Therefore, **the LMS for 2019 is set at 12,600 euros**
- For LMS calculation's purpose, only cash remuneration will be considered, not being possible that fringe benefits might decrease such amount.
- It is understood such salary refers to the legal working Schedule for each business activity,

excluding bank holidays and Sundays' proportional part from the daily salary. If the working schedule is below such parameter, related salary payment will be prorated.

- Salary complements established in article 26.3 of Workers Statute will be added to LMS, as well as the corresponding guaranteed increment on the amount of salary for time worked with incentives subject to production.
- **A specific compensation and absorption rule is explicitly foreseen in article 3 of Royal Decree 1462/2018:**

- (i) The LMS increase will not affect the structure nor the amount of the professional salary that employees have been receiving, when such salary in its entirety, and at a yearly calculation, is higher than the afore-mentioned minimum salary.

To such effects, the LMS that will be considered for comparison purposes will result from adding to the LMS provided in the law, any accrued payment which could be considered as salary complements under article 26.3 of Spanish Workers' Act, as well as the corresponding amount guaranteed on the salary upon time on incentives for production. In any event, one can not consider an amount lower than 12,600 euro.

- (ii) It is foreseen the compensation with income received by the employee for any salary items, to the effects of achieving such LSM referred to above.

Notwithstanding the above, and despite the literal wording of the rule, it is worth noting to analyse in each case the salary items that can be compensated or absorbed, facing dilemma, in our view, those salary items that compensates any specific job occupied, quality or amount of work, swift working or drudgery, amongst others.

- The increase on LMS established for 2019 **will not apply to those collective bargaining agreement in force on 28.12.2018** using LMS as an indicator to determine the amount or the increase on basic salary or salary complements, even though the salaries established under any given collective bargaining agreements below LMS for 2019 in its entirety and on a yearly basis must be modified, being possible to apply related rules for compensation and absorption established under Royal Decree 1462/2018.

3. RECOVERY OF RELATED CLAUSES UNDER COLLECTIVE BARGAINING AGREEMENTS ALLOWING COMPULSORY RETIREMENT AT THE LEGAL AGE FOR RETIREMENT

Additional Rule 10th of Spanish Workers' Statute is modified, establishing that collective bargaining agreement can provide, again, clauses allowing the termination of employment agreement if the employee achieves the legal age for retirement set under Social Security regulations, if the following additional requirements are met:

- The employee affected by the compulsory retirement will have to comply with the requirements of the social security regulations in order to have access 100% of retirement

allowance under the contribution regime.

- The measure will have to be linked to coherent goals of employment policy conveyed in the collective labour agreement, such as the improvement on employment stability by transforming temporary contracts into permanent, the employment of new workers, the generational replacement or any other improvements aimed to encourage employment quality.

4. FIGHT AGAINST THE “FALSE SELF-EMPLOYED WORKERS”

Sanctions to those companies who employ “false self-employed workers” are reinforced. Specifically, a new sanction regarding “*Communicating the cease of any Social Security regime for employed workers, despite of continuing to perform the same labour activity or to keep identical service rendering, using an illegal registration to a self-employed workers’ regime*”.

To these effects, to each affected employee a breach will be considered, and the sanction may range between a minimum of 3,126 euros up to a maximum of 10,000 euros.

5. ACKNOWLEDGEMENT OF RIGHTS LINKED TO DATA PROTECTION AND DIGITAL RIGHTS WITHIN THE LABOUR FRAMEWORK

From the last December 7, 2018, article 20 bis of Worker’s Statute (article 20bis) is in force, under the reference “***Employees’ rights to privacy in relation to the digital environment and to disconnection***” establishes that those have the right to:

- (i) to privacy on the use of digital devices provided by the employer,
- (ii) to digital disconnection and
- (iii) privacy against the use of video surveillance and geolocation devices.

All these “*in compliance with the terms established in the current legislation regarding personal data protection and digital rights guarantee matters*”.

It is relevant for the companies to revise their codes of conduct and policies regarding the use of ITC tools and applications, to adapt them to the established in the Organic Law 3/2018 of December 5, in regards of Personal Data Protection and digital rights guarantee, with the participation, as the case might be, of employees’ legal representatives.

Moreover, in 2019 we will see if the right to digital disconnection progresses satisfactorily (that is to be able to disconnect from work once the labour Schedule ends, without interferences of phone call or emails) and how this is implemented in our employment relations system.

6. POTENTIAL LABOUR NOVELTIES FOR 2019

Toughening in the access to contracts for specific job or service. Possible amendment of article 15 of Workers’ Statue, including the prohibition of using subcontracting of activities or services

as main grounding for using such category of contracts.

Daily recording of working time for all staff. Possible amendment of article 34.1 of Worker's Statute, establishing the obligation to record the daily working time, not only for those employees under part time contract but also for those under full time contracts, giving monthly notice to the employee and the employees' legal representatives.

In this subject, there are two open topics: the judicial one, referring to ongoing litigation which is pending to be ruled by the European Union Court of Justice, having made public his conclusions the General Advocate on the 31st of January 2019 supporting such daily recording, and the legislative, with a likely legal amendment which will have to be agreed with the main labour players, in the context of collective bargaining negotiations.

Toughening of subcontracting regime of main activity. Possible amendment of regulations for subcontracting the core business activities (article 42 of Workers' Statute) including, amongst others, the applicability to the subcontracted workers with the same terms of employment (including those referred to salary) of the collective bargaining agreements applicable to the principal one.

Toughening of the categories and requirements to apply internal flexibility measures (geographical mobility, substantial amendment of terms of employment, temporary suspension of employment, non-applicability of collective bargaining agreements and external flexibility (collective dismissal). Possible legal reform aimed at requiring a more detailed grounding of the company decision, going back to the parameters and criteria existing before the last legal reform of 2012. Furthermore, it is considered to recover the administrative supervision of the company decision, increasing the competencies that the Labour Inspection needs to conduct within the collective procedures.

Suppression of the preferred applicability of company's collective bargaining agreements in some aspects over the collective agreement at a business sector level, which was implemented by the labour Reform in 2012(article 84.2 of Worker's Statute)

Recovery of the unlimited so-called "ultraactividad" of Collective Bargaining agreements. Suppression of the limited duration of the "so-called ultraactividad" established by the 2012 labour reform (article 86.3 of Worker's Statute). It is proposed to establish that, during negotiations for the renovation of a collective agreement, in the absence of an agreement, enforceability of such collective agreement is extended with no maximum limitation on time.

Extension of paternity leave. Under the Bill of law for State General Budget for 2019, it is foreseen an extension of paternity leave from the current 5 weeks to 8.

ANNEX I

CODE CNAE	TABLE	ECONOMIC ACTIVITY TITLE	CONTRIBUTION RATES FOR WORK ACCIDENT AND PROFESSIONAL ILLNESS UNTIL 31.12.2018	TYPE OF CONTRIBUTION FOR WORK ACCIDENT AND PROFESSIONAL ILLNESS FROM 01.01.2019
0113	I	Cultivation of vegetables, roots and tubercles	2.25%	2.00%
0119	I	Other non-perennial cultivation	2.25%	2.00%
14	I	Garment production (Except 1411, 1420 y 143)	0.90%	1.50%
55	I	Accommodation Services	1.25%	1.50%
56	I	Food and Beverage Services	1.25%	1.50%
59	I	Filmmaking Activities, video and TV programs, sound recording and music publishing	1.25%	1.50%
60	I	Radio and television programming and broadcasting activities	1.25%	1.50%
61	I	Telecommunications	1.40%	1.50%
62	I	Programming, consulting and other IT related activities	1.35%	1.50%
6391	I	News agency Activities	1.25%	1.50%
64	I	Financial services, except for insurances and pension funds	1.00%	1.50%
65	I	Insurances, reinsurances and pension funds, except compulsory Social security	1.00%	1.50%
66	I	Ancillary activities to financial services and Insurances	1.00%	1.50%
69	I	Legal and accounting activities	1.35%	1.50%
70	I	Activities of headquarters; management consultancy activities	1.35%	1.50%
72	I	Investigation and Development	1.00%	1.50%
742	I	Photography activities	0.90%	1.50%
8220	I	Call centre activities	1.40%	1.50%
85	I	Education	1.00%	1.50%
90	I	Creative, arts and entertainment activities	1.25%	1.50%
91	I	Libraries, archives, museums and other cultural activities (except 9104)	1.25%	1.50%
92	I	Gambling and betting activities	1.25%	1.50%
9602	I	Hairdressing and other beauty treatment	1.10%	1.50%
97	I	Activities of households as employers of domestic personnel	1.10%	1.50%
a	II	Personnel in office exclusive work	1.00%	1.50%