

INFORMATION NOTE

OBJECTIVE DISMISSAL FOR ABSENTEEISM REPEALED

[Royal Decree-Law 4/2020 of 18 February](#) has been published in the [Official State Gazette \(BOE\) of 19 February 2020](#), repealing the objective dismissal for failure to attend work established in article 52.d) of the revised text of the [Workers' Statute Law](#). The aforementioned Royal Decree-Law enters into force the day after its publication in the BOE. That is, **on 20 February 2020**.

Thus, **the sole article of said Royal Decree-Law repeals paragraph d) of article 52 of the Workers' Statute**, which allowed the termination of the employment contract "for failure to attend work, even when justified but intermittent, reaching 20% of the working days in 2 consecutive months, provided that the total number of absences in the previous 12 months reaches 5% of the working days, or 25% in 4 discontinuous months within a 12-month period". Therefore, this type of objective dismissal, known as "**dismissal due to absenteeism**", which in practice was used in cases where workers accumulated Temporary Disability leave for common contingencies lasting less than 20 consecutive days, provided that they were not due to medical treatment for cancer or serious illness or linked to maternity/paternity, has been abolished.

It should be pointed out that this was not a disciplinary dismissal, but a ground for termination of the contract based on objective reasons. In other words, it was not a requirement that the worker's conduct was in breach of contract and at fault, **such as disciplinary dismissal for repeated and unjustified failure to attend work, as provided for in article 54.2 a) of the Workers' Statute, which remains in full force and effect**.

Finally, we must recall that **a worker's dismissal on Temporary Incapacity can be declared null and void when the illness is subsumable under the concept of "disability"** which the Court of Justice of the European Union has pointed out when interpreting Directive 2000/78 concerning the establishment of a general framework for equal treatment in employment and occupation. That is, when we are presented with "a limitation arising from physical, mental or psychological impairment and which hinders the participation of the person concerned in professional life", provided that such limitations are of a "long-lasting nature" (Supreme Court ruling of March 15, 2018). It will therefore be necessary to analyse the detail of each specific case in order to assess the risks and precautions to be taken into consideration.