

Euroview

Employment



Spain: new employment legislation introduced in response to the economic crisis

New legislation in Spain (Royal Decree 8/2010) has introduced several measures aimed at alleviating the effects of the current economic crisis.

There are three significant changes which affect employers and employees:

1. Suspension of the majority of pension increases for the financial year 2011;
2. Removal of the one-off payment on the birth or adoption of a child; and
3. Abolition of the transitional regime relating to partial retirement, provided by Law 40/2007. This transitional regime temporarily lowered the access requirements to the partial retirement provisions established in the Social Security legislation. Consequently, the access requirements have reverted to the employee being 61 or over and having both contributed to the Social Security System for at least 30 years and a minimum of six years' service with the final employer.

Another important change is the five per cent reduction in the salaries of public sector employees. In order to minimise its impact on lower-paid employees, however, the reduction will be applied in stages.

Employers and Trade Unions are also currently seeking to negotiate a number of employment law reforms, which, if agreed, will also be formalised by Royal Decree. The key issues under negotiation are:

- a reduction in Social Security contributions;
- a increase in the retirement age;
- a reduction in pay rates for temporary workers;
- cash incentives for companies recruiting young people;
- the substitution of redundancy pay with a "severance pay fund". Under the proposed system, an employee would accumulate a severance pay fund during his working life;
- increased geographical mobility;
- reduced annual working hours (depending on the particular workload); and
- harmonisation of the reduction of working hours with rates of unemployment benefit.

France: changes to employers' redundancy obligations

A new Act dated 18 May 2010 has changed French employers' obligations in respect of redundancies.

Previously, employers were only able to consider making employees redundant after they had made every effort to reassign the affected employees to one of their other sites (including overseas sites) in a similar position (unless the employees expressly agreed to more junior positions). The level of salary, however, was not a criterion, which led to situations where employers were obliged to offer **any** available similar position to employees, even those in countries such as India where salaries are considerably lower.

Under the new Act, employers are now only obliged to offer an employee any alternative roles which are similar to the position he already holds and which have a similar level of salary.

The Act also introduces a procedure under which employers with sites or offices abroad or which are part of an international group of companies are required to ask their employees whether they agree that their employer can give them details of potential roles abroad, including information about location and salary. Previously, the French Courts had not permitted employers to make these enquiries of their employees.

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The Act does not stipulate when the request must be submitted to employees, although the Minister for Employment has indicated that it should be made after the first meeting of the Works Council relating to the redundancies. An employee has six days in which to respond to the request; if he does not respond, then this is taken to be a refusal by the employee to be sent information by his employer about potential roles abroad.

If employees are willing to be sent information about potential alternative employment abroad, they must then be sent detailed information about any such positions or informed that there are no positions which match their criteria.

The Act does not specify what sanctions apply should there be breaches of the procedure, nor offer any guidance as to why employees should refuse or what harm they would suffer from the employer doing so regardless.

Germany: age discrimination and redundancy

Earlier this year the German Federal Employment Court ruled on the issue of age discrimination in respect of redundancies (Case 6 AZR 911/08).

The starting position is that employees cannot be discriminated against on account of their age under the German Equal Treatment Act. The anti-discrimination principle generally applies without restrictions. However, exceptions to the principle in relation to age discrimination **are** possible if they are justified by a legitimate aim of employment policy, the employment market or occupational training.

In its decision the Federal Employment Court ruled that within the scope of redundancy measures, older employees are not being discriminated against under the German Equal Treatment Act where termination agreements were only offered to employees under the age of 55. The Court noted that the purpose of the ban on age discrimination under the European Equal Treatment Directive and the German Equal Treatment Act is to retain older employees in the workforce. Accordingly, limiting the offer of termination agreements to employees under the age of 55 was connected with "employment policy" and so not in breach of the Act. The case seems to assume that all older employees want to be in their current roles and therefore that there is no less favourable treatment in not offering them voluntary severance, and on that basis must be seen as questionable.

Europe-wide concern about workplace stress

The European Agency for Safety and Health at Work (EU-OSHA) has published a document entitled the 'European Survey of Enterprises on New and Emerging Risks' which reveals that although four out of five European managers are concerned about work-related stress issues, less than a third of employers have procedures in place to deal with stress.

The survey also found that 42% of European managers consider it more difficult to deal with psychological issues such as stress in the workplace than other safety and health issues. A number of factors contributed to the difficulty of dealing with workplace stress including lack of resources, time, staff and money.

The full survey is published on the EU-OSHA website at www.osha.europa.eu.

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