

The Spanish government has approved Royal Decree-law 32/2021, of 28 December, in line with an agreement reached between the government, trade unions and employers' organisations in order to structurally reform the Spanish labour market.

The new regulation will come into force on 31 December 2021, except for measures regarding employment contracts, which have a transitional period of three months. These are the most relevant changes:

1. Reduction of Temporary Employment

The fixed-term employment contract for specific work or services disappears in accordance with the following transitional measures:

- Fixed-term contracts for specific work or services, fixed-term contracts to satisfy peak market requirements and interim contracts concluded before 31 December 2021 will be applicable up to their maximum duration as established in the previous wording of the Workers' Statute
- Fixed-term contracts for specific work and services and fixed-term contracts to satisfy peak market requirements executed between 31 December 2021 and 30 March 2022 will be governed by the regulations in force on the date on which they were entered into and their duration will not exceed six months

From 30 March 2022, temporary hiring will be carried out only through the fixed-term employment contract for circumstances of production or for the substitution of another employee.

- **Fixed-term employment contract for circumstances of production** – Circumstances of production are understood to be occasional and unforeseeable increases and fluctuations that, even in the case of normal activity, generate a temporary mismatch between the stable employment available and that which is required. This includes fluctuations due to annual leave.

The duration of the contract may not exceed six months. By collective bargaining agreement, the maximum duration will be extended up to one year.

This type of fixed-term contract may also be used for occasional, foreseeable situations of a short duration, with a maximum limit of 90 days in each calendar year, which cannot be used continuously.

In the last quarter of the year prior to the implementation of these contracts, the workers' representatives must be informed of the annual forecast made by the employer to carry out these temporary recruitments.

- **Contract for the substitution of employees with reservation of their job position** – This may be initiated before the absence takes place, and for a maximum of 15 days beforehand. It can be arranged to complete the reduced working day of another employee, as well as for the temporary coverage of a job position during the selection or promotion process, in which case the maximum duration of the contract will be three months.

It should be noted that the general limit for successive temporary contracts has been reduced. From now on, employees who in a 24-month period (previously 30 months) have been employed for more than 18 months (previously 24 months) will acquire the status of permanent employees.

- **Strengthening of the permanent-discontinuous employment contract** – Situations in which this type of contract may be used are extended. Specifically, permanent-discontinuous contracts may be entered into for (i) the performance of work of a seasonal nature or linked to seasonal activities, (ii) the performance of work with certain, determined or undetermined periods of execution and (iii) the performance of work within the framework of the execution of outsourcing services, which, being foreseeable, form part of the ordinary activity of the company. They can also be entered into between a temporary employment agency and a person to be seconded.

The call of permanent-discontinuous employees must be made in writing or by any other means that grant proof of the call. Companies must also draw up an annual or half-yearly call schedule and send it to the workers' legal representatives.

The seniority of permanent-discontinuous employees will be calculated taking into account the entire duration of the employment relationship and not only the time of services actually rendered.

In the case of permanent-discontinuous employees, whose recruitment is justified by the conclusion of outsourcing contracts, the maximum period of inactivity will be three months, although it can be modified by collective bargaining agreement. Once this period has expired, companies must adopt the appropriate temporary or definitive measures.

In addition, other complementary measures have been approved to discourage temporary hiring:

- An increase in Social Security contributions for fixed-term contracts with a duration of less than 30 days
- An increase to €10,000 in the maximum amount (previously €7,500) of the fines for the fraudulent use of temporary contracts, which will be applied per affected employee, instead of per company

2. New Training Employment Contracts

Two new training employment contracts have been approved:

- **Alternance training contract** – For the hiring of employees with no age limit, except in the case of the Catalogue of training specialities of the National Employment System, in which the age limit will be 30 years old. The minimum duration of the contract will be three months, and the maximum two years. Working hours may not exceed 65% during the first year and 85% during the second year, and no overtime or additional hours or night work may be performed, nor may a probationary period be established. Remuneration may not be less than 60% in the first year and 70% in the second year, with respect to that established in the collective bargaining agreement for the corresponding professional group. In no case will the remuneration be less than the minimum wage.
- **Training contract for obtaining professional practice appropriate to the level of studies** – For the hiring of employees with an academic qualification that qualifies them for the exercise of the professional activity. It must be concluded within three years of obtaining the qualification. The duration may not be less than six months or exceed one year. A probationary period of one month may be established. They cannot carry out overtime. Remuneration shall be that established in the applicable collective bargaining agreement, and in no case will it be less than the remuneration of the alternance training contract or the minimum wage.

3. Collective Bargaining Agreement Applicable to Outsourcing Companies

Outsourcing companies will apply the collective bargaining agreement of the sector of the activity carried out in the contract, unless the outsourcing company has its own collective agreement.

4. Furlough Proceeding

The procedure for negotiating furlough schemes is simplified by reducing the period for setting up the representative committee to five days (previously seven days) in the event that there are workers' legal representatives, and to 10 days (previously 15 days) in the event that there are no workers' legal representatives. Likewise, the duration of the consultation period is reduced to seven days for companies with less than 50 employees.

During the period of application of the furlough scheme, no overtime can be worked, no new outsourcing of activity may be established and no new employment contracts may be arranged unless the employees under contractual suspension or reduction of working hours are unable, due to training, skills or other objective and justified reasons, to carry out the functions entrusted to the outsourcing companies.

The Social Security contribution benefits linked to furlough schemes, which are voluntary for the company, will also be conditional on the affected employees remaining employed.

5. Creation of the Employment Flexibility and Stabilisation Network Red Mechanism

This consists of an employment flexibility and stabilisation instruments that, once activated by the competent government bodies, will allow companies to request a temporary furlough scheme. It will have two modalities:

- **Cyclical** – When a general macroeconomic situation advises the adoption of additional stabilisation instruments, with a maximum duration of one year.
- **Sectoral** – When permanent changes are observed in a specific sector of activity that generate the need for retraining and professional transition processes for employees, with an initial maximum duration of one year and the possibility of two extensions of six months each.

6. Collective Bargaining

The ultra-activity of collective bargaining agreements is restored indefinitely. In other words, the working conditions established in a collective bargaining agreement will remain in force after the end of its validity.

The prevalence of the sectoral collective bargaining agreement over the company collective bargaining agreement in wage matters is restored.

7. Extension of the Minimum Wage

The minimum wage in force in 2021 is extended until the royal decree setting the minimum wage for 2022 is passed.

Contacts

Ignacio Regojo

Partner
T +34 91 426 4804
E ignacio.regojo@squirepb.com

Juan Nasarre

Director
T +34 91 426 4866
E juan.nasarre@squirepb.com