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ROYAL DECREE 908/2013, OF NOVEMBER 22, 2013 ESTABLISHING SPECIAL RULES ON THE GRANT OF EXTRAORDINARY AID TO WORKERS AFFECTED BY COMPANY RESTRUCTURING PROCESSES

Royal Decree 908/2013, of November 22, 2013 establishing special rules on the grant of extraordinary aid to workers affected by company restructuring processes was published in the Official State Gazette on November 23, 2013.

This Newsletter contains a brief description of the most important new legislation brought in by this new royal decree.

1. PURPOSE AND SYSTEM FOR GRANTING THE AID

The goal of this new legislation is to set out the special rules and requirements for the direct grant of the subsidies referred to as extraordinary aid to workers affected by company restructuring processes, aimed at providing financial cover to those workers.

These subsidies will be governed by the provisions in the royal decree, by the General Subsidies Law (Law 38/2003, of November 17, 2003) and its companion regulations approved by Royal Decree 887/2006, of July 21, 2006, by General Budget Law 47/2003, of November 26, 2003 and any other applicable pieces of legislation.

2. BENEFICIARIES AND REQUIREMENTS

The eligible beneficiaries are workers dismissed under article 51 and article 52.c) of the Workers' Statute (collective layoffs and layoffs on objective economic, technical, organizational and production-related grounds), or workers whose employment contracts are terminated in accordance with article 64 of the Spanish Insolvency Law (Law 22/2003, of July 9, 2003), and they must meet the following requirements and conditions:

- Their length of service at the company or single integrated enterprise must be at least two years. The lengths of service of employees under part-time contracts or permanent contracts for intermittent work will be computed date to date from their hiring date to their dismissal date.
- They must be legally unemployed when the aid is granted. Despite this requirement, any workers who are included in an income plan under a collective layoff (scenarios under article 4.1 of the royal decree, as described below) and are carrying on remunerated activity when the aid is granted may be accepted as entitled to the aid, but

they will not receive the aid until they are legally unemployed, which is when they will start to receive payment but only for the remainder of the period in which it can be received.

3. TYPES, CONTENT AND AMOUNT

The Ministry of Employment and Social Security can grant subsidies in the following scenarios and conditions:

- Scenario under article 4.1 of the royal decree: in cases where the agreement reached in the consultation period in the collective layoff procedure includes the creation of an income plan in the form of group insurance plans funding the income obligations, with an insurer authorized to operate in Spain. The Ministry of Employment and Social Security can make a contribution to it.

The contribution to the income plan will be made through an insurer formed in accordance with the revised Private Insurance (Regulation and Supervision) Law.

The income plan may consist in the payment of a subsidy or in a sum to be used for the employee's payment into a special social security agreement, on a combined basis or as one of the types.

Funding will only be available for plans with the following characteristics:

- a) The plan will include the sum that the Ministry of Employment and Social Security undertakes to pay, all of the statutory severance payment or the severance payment stipulated in the agreement reached in consultation period for the collective layoff procedure, if higher, for the workers included in the income plan, and any contribution that the company may have undertaken to make in that agreement.
- b) The monthly subsidy payment established in the income plan for each employee cannot be higher than 75% of the average amount of the contribution bases for occupational accidents and diseases, not including overtime, relating to the six months before the layoff, or the amount of the maximum social security pension for the year in which that pension takes effect. The computation for workers under part-time contracts or under permanent contracts for intermittent work will be made on the average amount for the previous twelve months.
- c) The contribution by the Ministry of Employment and Social Security to the income plan cannot be higher in aggregate than 40% of the total amount of the plan.
- d) The aid can only be granted for workers whose contracts are terminated within two years from when the collective layoff agreement is notified to the labor authority.

- e) The period in which the subsidy and the amount to be used for the employee's payment into the special agreement can be received is six months, at the longest, from the dismissal date.

Nevertheless, any workers who are expected to have reached the eligible age to receive an early retirement pension after the end of the above period, but have not covered the minimum effective contribution period, can receive the sum to be used for the employee's payment into the special agreement until they are entitled to receive an early retirement pension, for up to eight years from their dismissal.

- f) There cannot be any subsidies for the obligation to fund the special agreement for workers aged 55 or over, determined article 51.9 of the Workers' Statute.
- g) Nor can there be subsidies for any annual revaluation clauses that may be included in the income plan.
- Scenario under article 4.2 of the royal decree: where the workers' employment contracts have been terminated under article 64 of the Insolvency Law, or there has been an order for a full or partial insolvency proceeding on the company under article 276 of the Law on the Labor Jurisdiction (LRJS) and it has been evidenced that the company has not paid the statutory severance, aid can be granted directly to the workers dismissed under article 51 or article 52.c) of the Workers' Statute, on a combined basis or as one of the following types:
 - a) A lump-sum subsidy which cannot be higher than the employee's annual salary or the maximum annual pension under the social security system.
 - b) Aid conditional on the worker signing a special social security agreement and to be used for payment into that special agreement, in the period that may be established, which cannot be longer than four years, or six, for workers who are expected to have reached the eligible age for an early retirement pension by the end of that period, but have not covered the required minimum effective contribution period.

The aid under this subarticle is compatible with any benefits out of the Wage Guarantee Fund to which the beneficiaries may be entitled.

- Scenario under article 4.3 of the royal decree: extraordinary aid can also be granted directly to the workers under the single payment regime, in the amount needed to recover the contributory unemployment benefit entitlement used up in periods of temporary interruption of contracts or short-time working under article 47 of the Workers' Statute, provided they are not entitled to similar aid under any other piece of legislation.

The Directorate-General for Employment will carry out all monitoring activities on these subsidies, for which, at least once a year, it will collect or examine the data at the Social Security General Treasury and, where applicable, at the Central Government Public Employment Service. It may also collect from the insurers and the beneficiaries any information it may need to confirm that the funds are used for their intended purposes.

4. AID APPLICATIONS AND HOW THEY ARE RESOLVED

The application must be filed jointly by the company and the workers' representatives, in the case of income plans (scenario under article 4.1), or by the workers' representative in the other two scenarios, with the Directorate-General for Employment at the Ministry of Employment and Social Security.

The time limit for filing applications is as follows:

- In the scenario under article 4.1 (income plan), applications may be filed within three months from the termination date of the employment contracts, provided they were terminated in the two years following the notification to the labor authority of the agreement reached in the collective layoff process.
- In the case set out in article 4.2 of the royal decree, within two months from the termination date of the employment contracts, for companies in insolvency proceedings, or, in applicable cases, from the insolvency order (art. 276 LRJS).
- In the scenario under article 4.3 of the royal decree (recovery of benefits), in the month in which the contributory unemployment benefit runs out, or in the following two months.

The application must include a report explaining the reasons for applying for the aid, the number of beneficiary workers, the requested cover and an itemized breakdown of the financial cost of the aid. The royal decree also sets out the documents needing to be attached to evidence the requirements it lays down.

In the case of the aid under article 4.1, where the dismissal of workers in a collective layoff procedure is staggered, a new application must be filed for every group insurance contract funding the income obligations that the company acquires.

The maximum period for issuing and notifying the decision to grant the aid will be three months, running from the receipt of the application. If no decision is notified in that period, the application will be deemed to have been rejected by administrative silence and appeals for judicial review may be lodged against that rejection.

The grant of aid will be subject to the availability of budgetary funds in each fiscal year.

5. INCOMPATIBILITY REGIME FOR THE AID

- The aid cannot be granted if at the time it is due to be granted the workers concerned are the beneficiaries of a pension for retirement, or for total or comprehensive disability.
- Workers cannot receive the aid if, under the same restructuring process, they are accepted for ordinary pre-retirement aid under the social security system.
- The extraordinary aid will be compatible with contributory unemployment benefit, but in the scenario under 4.1 associated with income plans, the contributory unemployment benefit and the subsidiary combined cannot be higher than the ceiling that article establishes.
- The aid is compatible with any similar types of aid that the autonomous community authorities or other public entities might have granted or planned to grant, unless the limits set out in the legislation are overstepped, or the total amount of public contributions is higher than 75% of the income plan total.

6. TERMINATION, INTERRUPTION AND RETURN OF AID

The aid in the scenario under article 4.1 (income plans) will terminate:

- On completion of the period for which it was granted.
- In the event of death of the beneficiary (although their spouse, unmarried partner or offspring under legal age can continue to receive it subject to certain scenarios and conditions).
- If the beneficiary becomes eligible to receive a retirement pension or is determined to have a long-term, total or comprehensive disability making them unfit for their regular job, after the aid has been granted.
- In the event of a penalty by the responsible body on the beneficiary of the aid as a result of an infringement, which implies forfeiture of the right to unemployment benefit.

Furthermore, any sums received by the insurers and not paid to the beneficiary as a result of the termination or interruption of aid will have to be returned.

If the beneficiaries commence remunerated activity for an employer or on self-employed basis after the aid has been granted, their aid will be interrupted while they engage in that activity and can be resumed after it has finished for the remainder of the period in which it can be received.

If the beneficiaries experience any of the events for termination or interruption of the aid, they themselves, or their heirs in the event of death, are under obligation, within one month, to notify that circumstance to the case examiner for the aid and to the insurance

company. A breach of this obligation will lead to termination of the granted aid and any sums that have already been paid will have to be returned.

This will also apply in the scenario under article 4.2 of the royal decree (insolvency) where it is conditional on the beneficiaries paying into the special social security agreement.

7. LIABILITY AND ENFORCEMENT REGIME

All aid beneficiaries will be subject to the liability rules and enforcement regime for administrative infringements and penalties for subsidies, determined in Title IV of the General Subsidies Law (Law 38/2003, of November 17, 2003).

8. TRANSITIONAL AND REPEALING PROVISIONS

The provisions in this royal decree will apply to aid granting processes for applications made before it came into force, except for those concerning the requirements and restrictions on the worker's length of service as set out for each of the scenarios under article 4 of the royal decree, which will not apply to processes for applications filed before its entry into force.

The royal decree has repealed the Order of April 5, 1995, determining the aid that the Ministry of Employment and Social Security can grant to workers affected by company turnaround or restructuring processes.

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