



labour

14-2013
December, 2013

**LEGISLATIVE ROYAL DECREE 1/2013, OF NOVEMBER 29, 2013
APPROVING THE REVISED GENERAL LAW ON RIGHTS OF PERSONS
WITH DISABILITIES AND THEIR SOCIAL INCLUSION**

This newsletter sets out a summary of the key elements to be considered from a labor and employment law standpoint of **Legislative Royal Decree 1/2013, of November 29, 2013** approving the Revised General Law on rights of persons with disabilities and their social inclusion, published in the Official State Gazette on December 3, 2013.

1. PURPOSE AND LEGISLATIVE REGIME

This recently published royal decree has revised and rolled into one piece of legislation Law 13/1982, of April 7, 1982, on social integration of people with disabilities, Law 51/2003, of December 2, 2003 on equal opportunities and Law 49/2007, of December 26, 2007 establishing the infringements and penalties regime regarding equal opportunities, non discrimination and accessibility for people with disabilities, and all of those laws have been repealed. Any provisions in legislation at the same or a lower level that are at variance with the provisions in this new legislation have also been repealed.

This law has two basic purposes:

- Guarantee the right to equal opportunities and treatment, and the actual and effective ability to exercise their rights for people with disabilities in the same conditions as other citizens, by promoting personal independence, universal accessibility, access to employment, inclusion in the community and living independently and the elimination of all forms of discrimination, in accordance with articles 9.2, 10, 14 and 49 of the Spanish Constitution, with the International Convention on the Rights of Persons with Disabilities, and with the international treaties and agreements ratified by Spain.
- Establish an infringements and penalties regime that will guarantee the basic conditions concerning equal opportunities, non discrimination and universal accessibility for persons with disabilities.

2. HOLDERS OF THE RIGHTS

People with disabilities are people who have physical, physical, intellectual or sensorial impairment, which will predictably be permanent, and when they interact with a range of barriers, these can prevent them from participating fully and effectively in society in the same conditions as others.

Alongside those defined above, and for all purposes, people with disabilities also include anyone who has a recognized a degree of disability equal to or higher than 33 percent. Anyone who has been granted a pension for total, absolute or comprehensive permanent incapacity or economically inactive people who have been granted a retirement pension for permanent incapacity for work or unfitness will be regarded as having a disability equal to or higher than 33 percent.

3. TYPES OF DISCRIMINATION

The law includes definitions of various types of discrimination, to complete the legal framework for prohibiting discrimination in any of its forms. The main types are:

- Direct discrimination: where a person with a disability is treated less favorably than another by reason of their disability.
- Indirect discrimination: exists where an apparently neutral legal provision or contractual clause, can place a person at a disadvantage by reason of their disability.
- Discrimination by association: occurs where a person or group receives discriminatory treatment because of their relationship with another on the ground or by reason of disability.
- Harassment is any behavior having as its aim or effect to harm the dignity of a person with a disability or to create an intimidating, hostile degrading or humiliating environment.

The new legislation deals also with situations in which multiple discrimination may occur and therefore may warrant particularly intense protection. It thus provides that the public authorities must protect in a uniquely intense manner any people or group of people who are especially vulnerable to multiple discrimination such as children and women with disabilities, elderly people with disabilities, women with disabilities who are victims of gender violence, people with more than one disability or others with disabilities in minority groups.

4. RIGHTS OF PERSONS WITH DISABILITIES

The law sets out a protection regime for people with disabilities which has effects in all fields, by setting out the following: i) the right to a system of welfare and economic benefits; ii) the right to health protection; iii) the right to comprehensive attention; iv) the right to education; v) the right to live independently; vi) the right to social protection; vii) the right to participate in public matters and; additionally, viii) the right to equal opportunities and non discrimination.

Lastly, as far as this newsletter is concerned, we must draw your attention to the right to work, which is analyzed below.

5. REGIME FOR THE RIGHT TO WORK (ARTICLES 35 THROUGH 47)

5.1 General elements

People with disabilities have the right to work, in conditions that guarantee the application of the principles of equality and nondiscrimination.

- There will be **direct discrimination** where a person with a disability is treated less favorably than another in an equivalent situation by reason of their disability; and
- there will **indirect discrimination** where an apparently neutral provision of primary or secondary legislation, clause in a collective agreement or contract, individual covenant or unilateral decision by a business owner may create a particular disadvantage for people with disabilities with respect to other people, provided they cannot be determined objectively to have a legitimate aim and the means to achieve this aim are not appropriate and necessary, or unless the business owner is required to adopt the appropriate measures, according to the needs of each specific situation and in accordance with article 40, to eliminate the disadvantages that the provision, clause, covenant or decision entails.

Harassment or discrimination against people by reason of their disability will be regarded as a discriminatory act in all cases.

In the field of employment, people with disabilities can exercise their right to work in different types of employment: i) **ordinary employment**, at enterprises and public authorities, including supported employment services; ii) **protected employment**: at special employment centers and employment enclaves and; iii) **independent employment**.

For the purposes of implementing the benefits that the law and its implementing legislation provide for both workers with disabilities and the enterprises that employ them, the public employment services will prepare, with the prior consent of those workers, a register of workers with disabilities seeking employment, who are included on the register of unemployed workers, and the employment of people with disabilities will be encouraged by setting up types of aid that will help them back into work.

5.2 Ordinary employment

To guarantee complete equality at work, the principle of equal treatment will not prevent any specific measures aimed at preventing or compensating for disadvantages caused on the ground or by reason of disability from being retained or adopted. Business owners are required to adopt the appropriate measures to adapt the working space and accessibility at the enterprise, according to the needs of each specific situation, with the aim to allow people with disabilities to have access to jobs, perform their work, advance in their careers and have access training, unless those measures place an excessive burden on the business owner.

The supported employment services will be determined in the regulations. These are the set of individualized guidance and companion actions at work aimed at facilitating the adaptation in social and employment terms of working people with disabilities with

special conditions so that they will be in a similar position to the other workers performing equivalent jobs.

Workers with disabilities must account for at least 2 percent of the employees of public or private enterprises employing 50 or more workers. This figure will be calculated on the total headcount of the enterprise concerned, regardless of the number of workplaces it has and of the types of employment contracts between the workers and the enterprise. Any workers with disabilities who are working at any given time at the public or private enterprises concerned under manpower supply contracts with temporary employment agencies will also be computed for these purposes.

Exceptionally, public or private enterprises can be exempt from the obligation for 2 percent of their workforce to be workers with disabilities, on a part or full time basis, either through covenants in statewide industry collective bargaining agreements or, failing that, in collective bargaining agreements with a narrower scope, pursuant to article 83.2 and 83.3, of the Revised Workers' Statute, approved by Legislative Royal Decree 1/1995, of March 24, 1995 or by voluntary election by the business owner, duly notified to the labor authority, provided that in both cases the alternative measures that will be determined in regulations are applied.

In public sector job offers, a quota will be set aside to be filled by people with disabilities on the terms established in the legislation governing this subject.

5.3 Protected employment (special employment centers and employment enclaves)

- **Special employment centers:** their primary goal is to carry on an activity for the production of goods or services, by participating regularly in the transactions in the market, and they are aimed at ensuring paid work for people with disabilities. They are also a means for the highest number of these people to enter ordinary employment.

The special employment centers must also provide, through support units, the personal and social adjustment services required by the working people with disabilities, according to their circumstances and subject to the terms that will be determined in regulations.

- Personal and social adjustment services will mean those that help surmount the barriers, obstacles or difficulties that working people with disabilities at special employment centers have in the process of starting a job, and in remaining and advancing in their jobs. They also include any targeted at inclusion in social, cultural or sports activities.
- The workforce of special employment centers will have as many working people with disabilities as the type of production process will allow and, in all cases, they will account for 70 percent of their workers. Staff without disabilities engaged in providing personal and social adjustment services will not be computed for these purposes.

- The employment relationship of workers with disabilities who work at special employment centers is a special relationship, as defined article 2.1.g) of the Workers' Statute, and is governed by its own specific legislation.
- Public authorities can, as will be determined in regulations, put in place financial compensation for the centers, to help them stay viable, and also establish the control mechanisms they see fit for these purposes. Eligibility for any such financial compensation must be determined by meeting the requirements of public benefit and necessity and that they are non profit making entities.
- The special employment centers may be created by both public and private organizations and by enterprises, subject in all cases to the provisions of primary and secondary legislation and in collective agreements that govern working conditions.
- To facilitate the transition to ordinary employment for working people with disabilities with special difficulties to access employment, **employment enclaves** may be set up with the characteristics and conditions that will be determined in regulations.

5.4 Independent employment

The public powers, within the scope of their respective powers, will adopt policies to further independent work for people with disabilities targeted at the establishment and development of economic and professional initiatives for self-employed work, or through social-economy enterprises, subject to the legislation on this subject.

5.5 Labor and social security infringements and penalties (additional provision number seven)

The labor and social security infringements and penalties concerning equal opportunities, non discrimination and universal accessibility for people with disabilities will continue to be governed by the Revised Labor and Social Security Infringements and Penalties Law, approved by Legislative Royal Decree 5/2000, of August 4, 2000 (LISOS).

Alongside the applicable infringements and penalties regime for labor and employment law purposes, the law provides specific provisions in administrative infringements and their related penalties.

This publication contains information of a general nature and therefore does not constitute a professional opinion or legal advice.

© December 2013. J&A Garrigues, S.L.P. All rights reserved. The exploitation, reproduction, distribution, public communication or transformation, in whole or in part, of this document is prohibited without the written consent of J&A Garrigues, S.L.P.