



# labour

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## THE 2014 GENERAL STATE BUDGET LAW

As in previous years, the **2014 General State Budget Law (Law 22/2013, of December 23, 2013** or the “Budget Law”) contains new labor and employment and social security legislation.

The following pieces of legislation have also been published: **Royal Decree 1046/2013, of December 27, 2013, setting the National Minimum Wage for 2014, Royal Decree 1045/2013, of December 27, 2013, on the revaluation of pensions in the social security system and other public welfare benefits for 2014 and Royal Decree 1043/2013, of December 27, 2013, on the revaluation of pensions and pension supplements for economically inactive persons in 2014.**

This newsletter summarizes the key elements introduced in the above pieces of legislation.

### 1. NEW LEGISLATION ON SOCIAL SECURITY CONTRIBUTIONS IN THE BUDGET LAW

Below is a description of the main new legislation in the Budget Law on welfare contributions for 2014.

#### 1.1 Maximum and minimum contribution base limits

The maximum and minimum contribution base limits for all contingencies under the various social security regimes will be as follows:

- Maximum limit: €3,597.00 a month.
- Minimum limit: the amount of the National Minimum Wage in force from time to time, plus a sixth.

For all contingencies under the general social security regime, with the exception of occupational accidents and professional diseases, the following maximum and minimum bases will apply:

- Minimum bases: in each professional category and contribution group, they will be increased, from January 1, 2014 with respect to the base in force on December 31, 2014, by the same percentage as the percentage increase to the national minimum wage.

The minimum contribution bases applicable to workers under part-time contracts will be adapted to ensure that the contributions under this type of contract are equal to the contributions by workers on a full-time basis for the same unit of time and with similar pay.

- Maximum bases: regardless of the professional category and contribution group, €3,597.00 a month or €119.90 a day.

### 1.2 Contribution rates for nonoccupational contingencies and overtime under the general regime

The 2013 contribution rates for nonoccupational contingencies have been retained, at 28.3% (the employer's share is 23.6% and the employee's share is 4.7%).

The contribution rate for overtime has also been retained at 14% on overtime for force majeure reasons (the employer's share is 12% and the employee's share is 2%) and 28.3% for the remaining cases (the employer's share is 23.6% and the employee's share is 4.7%).

### 1.3 Contribution rates for occupational accident and professional disease contingencies

Final provision number 19 of the Budget Law sets out the contribution rates in respect of occupational accidents and professional diseases, amending additional provision number 4 of 2007 General State Budget Law 42/2006, of December 28, 2006.

An important new change is that the rates for certain classes in the national classification of economic activities (CNAE) have been reduced, as follows

| CNAE/Description   | Total 2013 rate | Total 2014 rate |
|--|-----------------|-----------------|
| 19 Manufacture of coke and refined petroleum products            | 4.45            | 3.35            |
| 62 Computer programming, consultancy and related activities      | 1.65            | 1.35            |
| 69 Legal and accounting activities                               | 1.65            | 1.35            |
| 70 Activities of head offices; management consultancy activities | 1.80            | 1.35            |
| 99 Activities of organizations and bodies outside the country    | 3.10            | 2.35            |

### 1.4 Contributions by self-employed workers or independent contractors (RETA)

The maximum and minimum bases under the Special Regime for Self-Employed Workers or Independent Contractors (RETA) for 2014 are as follows:

- Maximum Base: €3,597.00 a month.
- Minimum Base: €875.70 a month.

- The contribution base for self-employed workers under the age of 47 as of January 1, 2014, will be that elected by them within the maximum and minimum bases referred to above. The same election may be made by workers aged 47 on the above date whose contribution base in December 2013 was equal to or greater than €1,888.80 a month or who register under this special regime after the above date.

Self-employed workers aged 47 as of January 1, 2014 whose contribution base is lower than €1,888.80 a month may not elect a base above €1,926.60 a month, unless they exercise their right to elect their base before June 30, 2014, to come into effect on July 1 of the same year, or they are the surviving spouse of a business owner who, following the business owner's death, has had to take charge of the business and register on the RETA at the age of 47, in which case this restriction will not apply.

- The contribution base for self-employed workers aged 48 or over on January 1, 2014 will range between €994.40 and €1,926.60 a month, unless they are the surviving spouse of a business owner who, following the business owner's death, has had to take charge of the business and register on the RETA aged 45 or over, in which case the bases they can elect will range between €875.70 and €1,926.60 a month.

Nonetheless, self-employed workers who, before the age of 50, have contributed to any of the social security regimes for a period of five or more years will be governed by the following rules:

- Where the last contribution base evidenced was equal to or below €1,888.80 a month, they must make contributions on a base ranging between €875.70 a month and €1,926.60 a month.
  - Where the last contribution base evidenced was greater than €1,888.80 a month, they must make contributions on a base ranging between €875.50 a month and the amount of the last contribution base, increased by 5 percent, with the option to elect, if the relevant amount falls short, a base of up to €1,926.60 a month.
- The contribution rate under the RETA will be 29.80% or 29.30% where the party concerned qualifies for business income protection. Where the party concerned is not eligible for temporary incapacity protection, this contribution rate will be 26.50%.

The premium rate percentages included in additional provision number 4 of 2007 Budget Law (Law 42/2006, of December 28, 2006), as amended by Final provision number 19 of the 2014 Budget Law, will apply to occupational accident and professional disease contingencies.

Any self-employed workers who are not eligible for the protection envisaged for occupational accident and professional disease contingencies must make an additional contribution equal to 0.1%, applied to the elected contribution base, to fund the benefits for risk during pregnancy or breastfeeding.

- Any self-employed workers who, by reason of salaried work performed simultaneously, make contributions in respect of nonoccupational contingencies under a "multiactivity" regime and do so in 2014, in an amount equal to or greater than €12,215.41, by reference to both the employer's and the employee's

contributions under the general regime, as well as those made under the special regime, will be entitled to a refund of between 50% and 100% of the amount by which their contributions exceed the above amount, subject to a cap of 50% of the contributions paid in to the above special regime, by reason of their contributions in respect of mandatory protection for nonoccupational contingencies.

The refund must be requested by the interested party, who must apply within the first four months of the following year.

- For self-employed workers who at some stage of 2013 have simultaneously had to hire the services of fifty or more salaried employees, the minimum contribution base will be equal to the minimum base envisaged for the workers falling in contribution group 1 under the general regime.

**1.5 Contributions for unemployment protection, the wage guarantee fund (FOGASA), vocational training and business income protection**

The contribution base for unemployment protection, the wage guarantee fund and vocational training under all the social security regimes affording protection of these types will be the minimum base for occupational accident and professional disease contingencies.

The contribution base for unemployment protection under training and apprenticeship contracts will be the relevant minimum base for occupational accident and professional disease contingencies.

| UNEMPLOYMENT PROTECTION   |   |
|---|---|
| Rates (%)   | Cases   |
| <p><b>Total: 7.05</b></p> <ul style="list-style-type: none"> <li>Employer: 5.5</li> <li>Worker: 1.55</li> </ul> | <p>Indefinite-term contracts, including indefinite-term part-time and seasonal contracts.</p> <p>Fixed-term contracts in the categories of training contracts for work experience and vocational training, apprenticeship contracts, handover contracts and relief contracts.</p> <p>Contracts with disabled workers, regardless of their category.</p> |
| <p><b>Total: 8.3</b></p> <ul style="list-style-type: none"> <li>Employer: 6.7</li> <li>Worker: 1.6</li> </ul>   | <p>Fixed-term full-time contracts (not including the above contract types).</p>   |
| <p><b>Total: 9.3</b></p> <ul style="list-style-type: none"> <li>Employer: 7.7</li> <li>Worker: 1.6</li> </ul>   | <p>Fixed-term part-time contracts.</p>  |

In 2014, the wage guarantee fund contribution rate will be 0.2%, payable only by the employer.

The vocational training contribution rate will be 0.7%, of which the employee’s share is 0.1% and the employer’s share is 0.6%.

The contribution base for business income protection for workers under the RETA will be that elected by the workers under that regime. The contribution rate for business income protection for self-employed workers will be 2.2%.

## **2. OTHER BUDGET LAW PROVISIONS CALLING FOR COMMENT**

### **2.1 Revaluation of pensions**

Article 37 of the Budget Law provides that the pensions paid by the social security system, and those paid to economically inactive persons, will be subject to a 0.25% increase across the board in 2014, on the terms set out in the legislation.

The above revaluation under the Budget Law has been reiterated and implemented by Royal Decree 1045/2013, of December 27, 2013, on the revaluation of pensions in the social security system and other public welfare benefits for 2014, and Royal Decree 1043/2013, of December 27, 2013, on the revaluation of pensions and pension supplements for economically inactive persons in 2014.

Both of these royal decrees place a €2,554.49 cap on the ordinary monthly payments of the revalued pensions, notwithstanding any extraordinary payments that might be required to ensure that the total annual amount may not exceed or may reach, respectively, €35,762.86.

### **2.2 Legal interest rate for money**

Additional provision number 32 of the Budget Law sets the legal interest rate for money at 4% until December 31, 2014.

### **2.3 Late-payment interest**

Section two of additional provision number 32 of the Budget Law sets the late-payment interest rate at 5% until December 31, 2014.

### **2.4 The 2014 Public Multi-Purpose Income Indicator (IPREM)**

The IPREM will be set at the following amounts in 2014:

- Daily IPREM: €17.75
- Monthly IPREM: €532.51.
- Annual IPREM: €6,390.13.

Where the national minimum wage is replaced by a reference to the IPREM, the annual IPREM amount will be €7,455.15 where the relevant provisions refer to the national minimum wage calculated on a yearly basis, unless nonregular salary payments are specifically not included, in which case, it will be €6,390.13.

## **2.5 Expansion of additional provision number 58 of the General Social Security Law**

The expansion of cover for occupational accidents and professional diseases set out in additional provision number 58 of the General Social Security Law, whereby protection for the occupational accident and disease contingencies will form part of the mandatory protective action under all of the regimes in the social security system, has been extended by a year. Until then, i.e., until January 1, 2015, the legal regime existing as of December 31, 2012 will remain in force.

## **2.6 Reduction to social security contributions in cases of job changes by reason of risks during pregnancy or breastfeeding, and in the event of professional disease**

Additional provision number 78 of the Budget Law has retained the reduction to social security contributions for cases where, by reason of risks during pregnancy or breastfeeding, a worker is assigned to a different job or to activities compatible with her condition. For the period in which she remains in her new job or carries on her new activities, a 50% reduction will apply to the employer's social security contributions for nonoccupational contingencies.

This same reduction will apply, on the terms and conditions that will be determined in secondary legislation, to cases in which, in the event of a professional disease, there is a change of job at the same company or the worker performs, at a different company, a job compatible with the worker's condition.

## **2.7 Measures to support the extension of the working periods of workers with seasonal contracts in the tourism, tourism-related trade and hospitality sectors**

Under additional provision number 79 of the Budget Law, non public sector companies, engaged in activities within the tourism, tourism-related trade and hospitality sectors, which generate production activity in March and November each year and take on employees or keep employees in work under indefinite-term contracts for seasonal work in those months, will be entitled to a 50% reduction in those months to their employer social security contributions for nonoccupational contingencies, and in their contributions in respect of unemployment protection, the wage guarantee fund and vocational training for those workers.

The provisions in this additional provision will apply from the entry into force of the Law until December 31, 2014.

## **2.8 Association and membership of occupational accident and professional disease mutual insurance companies**

The association of companies and membership of self-employed workers of social security occupational accident and professional disease mutual insurance companies for those companies to handle the social security benefits and services assigned to them under article 68 of the General Social Security Law, will remain valid until the entry into force of the legislation updating the legal regime for those companies, as set out in additional provision number 14 of Law 27/2011, which will determine the period of validity and terms and conditions of the association and membership.

The provisions in the preceding paragraph will also apply to any association or membership perfected on or after January 1, 2014.

In the transitional period referred to above, the associated business owners and member workers may terminate their relationships with the mutual insurance companies early, in the following cases: irregularity in the supply of owed public benefits and services; insufficient funds at the entity on the terms of article 74.1 of the General Social Security Law; or the adoption of the injunctive remedies set out in that law, on the terms that will be determined by the Ministry of Employment and Social Security, which will also establish the rules on the administrative procedure for the approval thereof.

**2.9 Deferral of the entry into force of the lengthening of paternity leave**

The entry into force of the Law lengthening paternity leave in the event of birth, adoption and fostering to four weeks has been deferred until January 1, 2015.

**2.10 Elimination of cover out of the wage guarantee fund in the event of terminations on objective grounds at companies with fewer than 25 workers**

Article 33.8 of the Workers’ Statute has been eliminated for an indefinite term, effective from January 1, 2014, which has done away with cover out of the wage guarantee fund for a portion of the severance package equal to eight days’ pay per year of service, in cases of terminations of indefinite-term employment contracts on economic, technical, organizational or production-related grounds, or by reason of insolvency proceedings, at companies with fewer than 25 workers.

**2.11 Amendment of Law 27/2011, of August 1, 2011, on updating, adapting and modernizing the social security system**

Final provision no. 10 of Law 27/2011 making various amendments to Law 20/2007, of July 11, 2007, approving the Self-Employed Work Statute, to bring in specific provisions on the potential existence of part-time self-employed work, will enter into force on January 1, 2015.

**2.12 Funding for vocational training for employment**

Funding has been made available to companies for the pursuit of ongoing training initiatives in line with Chapter II of Royal Decree 395/2007. The funding will be calculated by applying the following percentages to the amount to be paid by the company in respect of vocational training:

| NO. OF EMPLOYEES    | AMOUNT/PERCENTAGE                      |
|---------------------|--|
| 1 to 5              | €420 in funding will be made available |
| 6 to 9              | 100%                                   |
| 10 to 49            | 75%                                    |
| 50 to 249           | 60%                                    |
| 250 workers or more | 50%                                    |

Furthermore, any companies opening new workplaces in 2014, or newly-created companies that take on new workers, may be entitled to bonus funding for training. In these cases, the companies will be offered bonus funding in the form of reduced social security contributions by €65 for each worker they have taken on.

Any companies granting individual leave for training purposes to their workers in 2014 will qualify for bonus funding for training in addition to the annual funding to which they would be entitled under the criteria established in an Order by the Ministry of Employment and Social Security. This additional funding allocated to all companies granting leave may not exceed 5% of the funding established in the Public State Employment Service Budget to finance reduced social security contributions for vocational training for employment.

### 2.13 Amendments to the Revised General Social Security Law

In final provision four, the Budget Law makes amendments to several articles of the Revised General Social Security Law, including the following:

- Article 77.2: specifies the definition of mandatory collaboration and the company's obligation to notify to the social security management entity, on the established electronic, computer or remote media, the information they are required to provide in the doctor's certificate for the start of medical leave, on the terms that will be determined in secondary legislation. It is also specified that the Ministry of Employment and Social Security may interrupt or render the mandatory collaboration invalid where the company breaches the established obligations.
- Art. 131. bis: new wording has been added to this article to specify the various scenarios and implications to be considered in the various cases of temporary and permanent incapacity (length, renewal, relapse, termination of subsidy). The main additions are:
  - The events in which entitlement to the subsidy will terminate have been clarified. These events are: where the maximum time period of five hundred and forty-five calendar days since the start of medical leave has run; a doctor's certificate ending medical leave because the employee is cured or has improved and can perform their regular work; a certificate ending medical leave with or without notification of permanent capacity; acknowledgement of entitlement to a retirement pension; unjustified failure by the worker to appear at any appointment for an examination or check-up set by a doctor who is a member of the National Social Security Institute or of the Social Security Mutual Insurance Company for Occupational Accidents and Professional Diseases; or death.
  - The meaning of "relapse" in the same process has been defined, meaning where a further period of medical leave is taken for the same or a similar condition within one hundred and eighty calendar days following the effective date of the doctor's certificate ending the previous medical leave.

Additionally, any relapse periods in the same process will be computed to determine the amount of time for which the subsidy can be paid.



- It has been specified that only the National Social Security Institute will have the authority to grant, within one hundred and eighty calendar days following the decision refusing entitlement to permanent incapacity benefit, a further period of medical leave for the same or a similar condition.
- A new paragraph 3 has been added in relation to termination of the entitlement to temporary incapacity benefit after the five hundred and forty-five calendar day time period has run with or without notification of permanent incapacity. This new paragraph sets out that entitlement to a temporary incapacity financial benefit for the same or a similar condition can only arise if more than one hundred and eighty calendar days have run since the decision on permanent incapacity.
  - ◆ This new entitlement can only arise if, on the date of the new medical leave, the worker meets the requirements laid down to receive the temporary incapacity subsidy for a nonoccupational or professional disease or an occupational or nonoccupational accident. To evidence the necessary contribution period to be eligible for the temporary incapacity subsidy for a nonoccupational disease, only the contributions made since the decision on permanent incapacity will be computed.
  - ◆ In cases involving the same or a similar condition, however, before one hundred and eighty days have run since the refusal of permanent incapacity, a new temporary incapacity process may be started, once only, where the National Social Security Institute considers that the worker may return to fitness for work. For this to happen, the Social Security Institute will decide to grant leave solely for the purpose of the temporary incapacity financial benefit.
- A new paragraph 4 has been added, providing that if a doctor's certificate with a proposal for permanent incapacity is issued less than three hundred and sixty days into the process, the worker's temporary incapacity status will terminate, with the following clarifications:
  - ◆ if, on completion of the three hundred and sixty day period, the National Social Security Institute has decided to start a permanent incapacity proceeding, the worker's temporary incapacity status will terminate on the completion date of that period; and
  - ◆ if the National Social Security Institute has decided to grant an express extension of the worker's temporary incapacity status, and in that extended period it starts a permanent incapacity proceeding, the worker's temporary incapacity status will terminate on the date of the decision to start that proceeding.
- Lastly, where the worker's temporary incapacity status terminates as a result of a doctor's certificate with a proposal for permanent incapacity, of a decision by the National Social Security Institute to start a permanent incapacity

proceeding, or of the five hundred and forty-five calendar day period coming to an end, the worker will have an extended period of entitlement to the temporary incapacity financial benefit until their permanent incapacity has been assessed.

- A new paragraph 3 has been added to article 132 of the revised General Social Security Law to provide that the failure by a beneficiary to appear at any appointment set by a doctor who is a member of the National Social Security Institute or of a Social Security Mutual Insurance Company for a medical examination or check-up will lead to the precautionary interruption of the worker's entitlement to confirm whether that failure to appear was justified or not.
- A new paragraph 4 has been added to article 222 of the Revised General Social Security Law, according to which, where a worker receiving the unemployment subsidy under article 215.1.3 (for workers aged over 55 among other requirements) reaches the age making them eligible for any type of contributory retirement pension, the financial effects of that pension will be backdated to the effective termination date of the subsidy as a result of reaching that age. For this to happen, the retirement pension application must take place within three months following the final termination decision. Otherwise, those financial effects may be backdated to up to three months earlier.
- A new additional provision 65 has been added to the General Social Security Law, determining the requirements to be considered for loss of residence to be able to occur for the purposes of social security benefits. It provides as follows:
  - In relation to the financial benefits for which residence in Spain is required, the beneficiary of those benefits will be considered to have their habitual residence in Spain even where they have spent periods of time outside Spain, provided they have not spent more than 90 days outside Spain in any calendar year, or where their absence from Spain is caused by illness which has been reasonably evidenced.
  - The provisions in their own specific legislation will apply to unemployment benefits and subsidies.
  - To retain entitlement to healthcare benefits for which residence in Spain is required, the beneficiary of those benefits will be considered to have their habitual residence in Spain even where they have spent periods of time outside Spain, if they have not spent more than 90 days outside Spain in any calendar year.

#### **2.14 Provisions on public sector staff**

The Budget Law contains various provisions on public sector staff, determining, among other measures, that there will be no increases in their pay in 2014 with respect to the pay in force on December 31, 2013 and that, in 2014, public commercial companies cannot hire any new staff, unless they are hired under selection processes started in previous years or they are required to be hired under multiyear programs or plans.

### 3. NATIONAL MINIMUM WAGE FOR 2014

Royal Decree 1046/2013, of December 27, 2013 has set the national minimum wage for 2014 by retaining those in force in 2013, after taking into consideration on a combined basis all of the factors set out in article 27.1 of the Workers' Statute.

Thus, for any activities in agriculture, in industry and in services, with no distinction by reason of the worker's gender or age, the national minimum wage has been set at 21.51 euros/day or 645.30 euros/month, according to whether the wage is set by day or by month. Only cash wages will be computed in the minimum wage, and payments in kind cannot bring down the gross cash minimum wage threshold.

The items that will be added to the national wage, using the national wage as a module, if applicable, as determined under collective labor agreements or employment contracts, are the pay supplements referred to in article 26.3 of the Workers' Statute, and the amount in respect of the guaranteed increase in wages by the hour in pay by premiums or with production incentives.

The minimum wage for domestic employees who work by the hour, will be 5.05 euros per hour actually worked.

Lastly, it is provided that any increase in respect of the national minimum wage may be offset against and absorbed into other payments provided the amount to be received annually by the worker does not go below 9,034.20 euros. It is set out in this respect that any provisions in the law or in collective agreements and arbitral awards will remain valid on their own terms, with no amendments other than any that may be needed to ensure the annual payment mentioned above.

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