



labour

3-2014
January, 2014

2014 CONTRIBUTION ORDER AND SPECIAL RULES ON THE GRANT OF PRE ORDINARY RETIREMENT AID TO WORKERS AFFECTED BY CORPORATE RESTRUCTURING PROCESSES

This Newsletter offers a brief overview of the most notable elements introduced by some of the labor and employment legislation published recently:

- Order ESS/106/2014, of January 31, 2014, implementing the statutory provisions on contributions for Social Security, unemployment, and business income protection, to the wage guarantee fund, and for vocational training, set forth in the 2014 General State Budget Law.
- Royal Decree 3/2014, of January 10, 2014, establishing the special rules on the grant of pre ordinary retirement aid to workers affected by restructuring processes.

1. ORDER ESS/106/2014, OF JANUARY 31, 2014, IMPLEMENTING THE STATUTORY PROVISIONS ON SOCIAL SECURITY CONTRIBUTIONS FOR 2014

As in previous years, following the publication of the 2014 General State Budget Law, the Ministry of Employment and Social Security has issued the Order implementing the statutory provisions on contributions for Social Security, unemployment and business income protection, to the wage guarantee fund (FOGASA), and for professional training, as set out in the above Law (Order ESS/106/2014, of January 31, 2014).

Under Order ESS/106/2014 the maximum and minimum contribution bases for 2014 have been set as follows:

- Maximum: €3,597 per month.
- Minimum: €753 per month.

This implies a 5% increase in the maximum contribution base from the amount set in 2013, while the minimum amount remains unchanged.

Contributions to the general regime for common contingencies have been restricted for each group of professional categories by the following minimum and maximum amounts:

Contribution group	Professional categories	Minimum bases €/month	Maximum bases €/month
1	Engineers and graduates. Senior management personnel not included under Article 1.3 c) of the Workers' Statute	1,051.50	3,597
2	First level engineers, experts and qualified assistants	872.10	3,597
3	Administrative and shop floor managers	758.70	3,597
4	Unqualified Assistants	753.00	3,597
5	Skilled administrative workers	753.00	3,597
6	Service personnel	753.00	3,597
7	Administrative assistants	753.00	3,597
8	First and second level skilled workers	25.10	119.90
9	Third level skilled workers and Specialists	25.10	119.90
10	Laborers	25.10	119.90
11	Workers under the age of 18, regardless of their professional category	25.10	119.90

The Order also sets the minimum and maximum contribution bases for groups included in the General Regime albeit with specific characteristics (artistes, bullfighting professionals, etc.) and for the special social security regimes (self-employed workers or independent contractors, salaried agricultural workers, maritime workers, domestic staff, etc.).

As far as contribution rates are concerned, the rates for common contingencies set for 2013 have been maintained, save for the rate for contributions for unemployment protection under fixed-term, part-time contracts, which has fallen by 1% on 2013 and is now established at 8.3%, of which the employer's share is 6.7% and the employee's share is 1.6%.

The complete content of the Order can be seen at:

<http://www.boe.es/boe/dias/2014/02/01/pdfs/BOE-A-2014-1051.pdf>

2. ROYAL DECREE 3/2014, OF JANUARY 10, 2014, ESTABLISHING THE SPECIAL RULES ON THE GRANT OF PRE ORDINARY RETIREMENT AID UNDER THE SOCIAL SECURITY SYSTEM FOR WORKERS AFFECTED BY CORPORATE RESTRUCTURING PROCESSES

2.1 Subject matter of the legislation

The Royal Decree sets out the special rules on the direct grant of pre ordinary retirement aid for workers affected by corporate restructuring processes who meet the requirements it provides.

The aim of this aid is to provide financial support for workers nearing retirement age to cover situations of emergency and need in social and employment terms, in a bid to alleviate the social fallout of restructuring processes that might lead to the cessation of all or part of the companies' activities or to help maintain employment.

2.2 Beneficiaries

The beneficiaries of the aid will be workers whose employment contracts are terminated under a collective or objective individual layoff (on economic, technical, organizational or production-related grounds) and who meet the following requirements:

- (a) They must have reached an age, whether real or theoretical by applying age reduction multipliers, that is up to four years below the applicable age from time to time under article 161.1.a) and transitional provision number 20 of the General Social Security Law (“LGSS”).
- (b) They must have made contributions for the period required to qualify for a contributory retirement pension.
- (c) They must be able to evidence a length of service at the company or group of companies of at least two years on the date of application for recognition. In the case of workers with part-time contracts or indefinite-term contracts for seasonal work, their lengths of service will be calculated on a date-to-date basis from the date the worker joined the company until the layoff date.
- (d) In the case of workers affected by a collective layoff, not more than four years may elapse between the date of notification to the labor authorities of the agreement reached in the consultation period and the date on which the workers have access to the aid system.
- (e) The workers must be registered at job offices as job seekers on the date the aid is granted (unless they perform salaried work on a part-time basis and their earnings, computed over the year, do not exceed the Spanish minimum wage), have used up

any contributory unemployment benefit entitlement, and not have had any penalties imposed on them during the payment period leading to a loss of the right to unemployment benefit.

- (f) They must not meet any of the grounds for disqualification for receiving the aid.

2.3 Content and amount of the aid

The aid will consist of financial assistance to be paid monthly to the worker and of contributions to the Social Security system while the aid is being received, through payments to the Social Security General Treasury (“TGSS”). It will only be paid for up to four years and, in all cases, until the recipient reaches the age set out in article 161.1.a) and transitional provision no. 20 of the LGSS.

Initially, the aid received by the beneficiaries will be 75% of the result of dividing the sum of the occupational accident and professional disease contribution bases (not including overtime) for the six months preceding the layoff by seven, which sum cannot exceed the maximum Social Security pension for the year the aid is in effect. For workers with part-time contracts or indefinite-term contracts for seasonal work, the aid will be calculated by dividing the contribution bases for the twelve months preceding the layoff by fourteen.

For the second and successive years, it will be increased cumulatively in line with the average among the Social Security contributory pension revaluation index established in the General State Budget Law for the year in which the aid first becomes payable, and the revaluation indices established in the General State Budget Law for the three preceding years.

While receiving the aid, the beneficiaries will be treated as being registered under the General Social Security Regime, with the obligation to make contributions on the terms set out in the law.

2.4 Procedure for the recognition of workers potentially qualifying for the aid

In the case of workers affected by a collective layoff, the company and the workers’ legal representatives can jointly file with the competent authority, in the fifteen days following the date of notification to the labor authorities of the agreement reached in the consultation period, an application for aid for those workers under the collective layoff procedure who meet the requirements established to be beneficiaries.

In the case of workers dismissed under an individual objective layoff, the application will be filed jointly by the company and the workers’ legal representatives (or by the company alone where there are no workers’ representatives) in the notice period provided for in article 53.1.c) of the Workers’ Statute, or in the fifteen days following the layoff if no notice is given.

Applications falling within the jurisdiction of the central government can be filed electronically via the website of the Ministry of Employment and Social Security or at the General Registry of the Ministry of Employment and Social Security. The application must be filed with a report setting out the reasons for the application for aid, the number of beneficiary workers and an itemized cost estimate alongside the documents required in the law.

Approval of this application is a prerequisite for the recognition of entitlement to payment and will always be subject to the existence of budgetary funds.

2.5 Procedure for granting the aid

If the application for aid is approved, the application for entitlement to be granted aid must be filed, accompanied by the documents expressly set out in the law.

Those documents include an undertaking by the company to make a contribution to funding the aid (as provided in the law) and, where appropriate, to pay the aid in advance, along with the workers' consent to applying for the aid.

2.6 Disqualification, termination and suspension

Workers receiving a pension for retirement, absolute permanent disability or comprehensive disability, or any unemployment benefit or subsidy, will not be entitled to receive any pre ordinary retirement aid.

Moreover, this aid cannot be granted to anyone receiving the aid under Royal Decree 908/2013 establishing special rules on the grant of extraordinary aid to workers affected by corporate restructuring processes, where they refer to the same restructuring process.

The aid will, however, be compatible with salaried part-time work, if the worker's annual earnings, computed over the year, do not exceed the Spanish minimum wage.

The aid and the contribution obligation will expire (i) on expiry of the time limit specified in the decision approving its grant, (ii) on the death of the beneficiary, or (iii) on becoming the recipient of a retirement pension before the regular retirement age, or on recognition of total permanent disability for the worker's habitual profession or comprehensive disability after the aid has been granted.

The aid will be stopped if the recipient engages in full-time paid activity with annual earnings, or in activities with annual revenues, in excess of the Spanish minimum wage when computed over the year.

2.7 Funding, contribution by employers and payment of the aid

A 60% portion of the aid (including Social Security contributions) will be funded by the applicant companies (the contribution may be greater where so agreed), with the remaining 40% coming out of the general budget of the central government or, where applicable, the autonomous community.

Employers must pay their share to the TGSS in a lump sum or divided into as many annual installments as years in which the workers are going to continue receiving the aid, up to a maximum of four (in this case, sufficient guarantees must be provided to secure payment of any outstanding obligations).

2.8 Applications filed before the entry into force of the royal decree

In cases of aid granted following applications filed before the entry into force of the Royal Decree, the requirements it lays down (sections 1, 2 and 4 of article 3) will not apply. Nonetheless, workers must be aged at least sixty on the date they have access to the aid and the aid payments may not last for more than five years.

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