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## **NEW SOCIAL SECURITY LEGISLATION INTRODUCED BY ROYAL DECREE-LAW 29/2012 AND ROYAL DECREE 1716/2012**

Two new pieces of legislation were published in the Official State Gazette on December 31, 2012, incorporating major new legislative developments in the social security area:

- **Royal Decree-Law 29/2012, of December 28, 2012, improving management and welfare protection in the Special System for Household Employees and other measures of an economic and social nature.**
- **Royal Decree 1716/2012, of December 28, 2012, implementing the provisions established, on benefits, by Law 27/2011, of August 1, 2011, on Updating, Adapting and Modernizing the Social Security System.**

This newsletter summarizes the most significant aspects introduced by these pieces of legislation.

### **1. ROYAL DECREE-LAW 29/2012, OF DECEMBER 28, 2012, IMPROVING MANAGEMENT AND WELFARE PROTECTION IN THE SPECIAL SYSTEM FOR HOUSEHOLD EMPLOYEES AND OTHER MEASURES OF AN ECONOMIC AND SOCIAL NATURE**

While, as its very name indicates, Royal Decree-Law 29/2012 introduces a number of changes to the regulations governing the Special System for Household Employees, it also includes major changes to social security arrangements affecting businesses.

#### **1.1 Suspension of the application of certain provisions of Law 27/2011, on August 1, 2011, relating to early retirement and partial retirement**

The most important consequence of Royal Decree-Law 29/2012 is the **three-month suspension of the application of certain provisions relating to early retirement and partial retirement** of Law 27/2011, of August 1, 2011, Updating, Adapting and Modernizing the Social Security System.

Specifically, the following provisions of Law 27/2011 are suspended:

- Subarticle 1 of article 5 (amending subarticle 2 of article 161 bis of the General Social Security Law, relating to early retirement).
- Subarticles 1 and 3 of article 6 (amending subarticle 2 of article 161 and Transitional Provision Twenty-Two of the General Social Security Law, relating to partial retirement).
- Final Provision One (amending subarticles 6 and 7 of article 12 of the Workers' Statute, relating to hand-over contracts).

Thus, until April 1, 2013, the forms of access to early retirement, as well as partial retirement, will be governed by the provisions of the legislation in force at December 31, 2012, although references to the ordinary retirement age will be deemed made to the provisions of article 161.1.a) and Transitional Provision Twenty of the General Social Security Law, as amended by subarticles 1 and 2, respectively, of article 4 of Law 27/2011.

## 1.2 Other social security measures

The Royal Decree-Law additionally regulates the following aspects:

- Social security pensions **will rise by 1% in 2013**, taking as a reference the amount established at December 31, 2012, **but the rise may not exceed a gross annual amount of more than €35,673.68**.

However, pensions that do not exceed €1,000 a month (or €14,000 when computed on an annualized basis) will rise by 2%.

Pensions of between €1,000.01 a month (€14,000.01 a year) and €1,009.90 a month (€14,138.60 a year) will rise by the sum required for the resulting pension to reach €1,020.00 a month (or €14,280.00 a year).

- Social security **minimum contributory pension top-up supplements** are established where **the amount received is less than or equal to €7,063.07 a year**.

Thus, when the sum, computed on an annualized basis, of (i) salary income, income from capital, from economic activities or capital gains, and (ii) pension income is less than the sum of €7,063.07 plus the amount, also computed on an annualized basis, of the minimum figure set for the type of pension in question, a supplement equal to the difference will be recognized, apportioned over the number of monthly payments in which the pension is payable.

With respect to new pensions vesting from January 1, 2013 onwards, in order to be eligible for the minimum pension top-up supplement, the pensioner must be resident in Spain.

- Lastly, the Schedule to Royal Decree-Law 29/2012 contains an **updated table of the amounts of certain pensions applicable in 2013**.

## 2. ROYAL DECREE 1716/2012, OF DECEMBER 28, 2012, IMPLEMENTING THE PROVISIONS ESTABLISHED, ON BENEFITS, BY LAW 27/2011, OF AUGUST 1, 2011, ON UPDATING, ADAPTING AND MODERNIZING THE SOCIAL SECURITY SYSTEM

Royal Decree 1716/2012, of December 28, 2012, has been made in order to implement certain aspects of Law 27/2011, of August 1, 2011, on Updating, Adapting and Modernizing the Social Security System, touching on the following:

- Law 27/2011 uses **not only the year but also the month as a relevant unit of time for different aspects of retirement**, meaning that it is deemed necessary to establish a single, objective formula to convert “day” time units into “month” time units, and the formula must guarantee the principle of equal treatment of all citizens:
  - In accordance with the provisions of article 1 of Royal Decree 1716/2012, for the purposes of determining the age for access to the retirement pension, the calculation of the number of months must be made from date to date as from the date of birth. When the month in which the pensionable age is reached does not have a date equivalent to the calculation start date, the pensionable age will be deemed to have been reached on the last day of that month.
  - Contribution periods evidenced by individuals applying for the retirement pension will be reflected in days and, once all of the computable days have been accumulated, without taking into account the portion corresponding to special payments, they will be converted into years and months, using the following equivalence rules:
    - ◆ A year acquires the fixed value of 365 days.
    - ◆ A month acquires the fixed value of 30.41666 days.

Full months and years will be used to calculate the years and months of contribution, and fractions thereof will not be rounded up to a year or a month.

- In order to apply the relevant percentages to determine the amount of the retirement pension according to the contribution periods evidenced by applicants and reflected in days, once all of the computable days have been accumulated, they will be converted into years and months, as indicated above.

- In order to apply the pension-reducing coefficients for early retirement as a result of the termination of employment on grounds not attributable to the free will of the worker, or in the event of voluntary early retirement, the calculation of the number of quarters by which the worker is shy, at the time of the triggering event, of the legal retirement age applicable in each case will be made from date to date, counting back from the date on which the applicant would reach the legal retirement age.

In order to determine the legal retirement age, contributions will be deemed to have been made for the years still to be completed by the applicant from the date of the triggering event until he/she reaches the relevant age.

When the month in which retirement age is reached does not have a date equivalent to the calculation start date, the retirement age will be deemed to have been reached on the last day of that month.

- Subprovision 2 of Final Provision Twelve of Law 27/2011 regulates **three cases in which the regulations for the different types of retirement pensions, access requirements and conditions and rules determining benefits that were in force prior to the entry into force of the Law will continue to apply**. Specifically:
  - Individuals whose employment was terminated before August 2, 2011.
  - Individuals whose employment has been held in abeyance or terminated as a result of decisions taken in collective layoff procedures or under collective labor agreements with any scope and/or company collective labor agreements, as well as decisions taken in insolvency proceedings approved or signed before August 2, 2011, regardless of whether the termination of employment occurs before or after January 1, 2013.
  - Individuals claiming a partial retirement pension before August 2, 2011 and individuals included before such date in partial retirement plans contained in collective labor agreements with any scope or company collective labor agreements, regardless of whether partial retirement is taken before or after January 1, 2013.

Royal Decree 1716/2012 grants the affected workers, directly-elected workers' representatives and labor union representatives or companies a **period of two months as from January 1, 2013, to notify and make available to the provincial directorates of the National Social Security Institute the supporting documentation for letters b) and c) above, which permits the application of the pre-Law 27/2011 regulations governing retirement pensions**.

By way of a Decision of the Directorate-General of the National Social Security Institute, a list will be drawn up of the collective layoff procedures, collective labor agreements with any scope or company collective labor agreements, or decisions taken in insolvency proceedings in which the provisions of Final Provision Twelve of Law 27/2011 apply.

In any event, if the obliged parties fail to give notice of and submit the documentation within the two-month period indicated above, and the social security authorities become aware by another means that the requirements imposed in Final Provision Twelve of Law 27/2011 have been met, the legislation pre-dating Law 27/2011 will be applied to the applicant for the retirement pension, whenever the pension vests.

- Chapter II of Royal Decree 1716/2012 **implements the provisions on and facilitates the applicability of the contribution-related reliefs for the care of minor biological, adopted or foster children** regulated in Additional Provision Sixty of the General Social Security Law and introduced by Law 27/2011 for situations in which **contributions are interrupted** as a result of the termination of employment or the expiry of contributory or noncontributory unemployment benefit where the Public Employment Service is obliged to pay contributions, occurring between the nine months prior to the birth, or the three months prior to the court decision ordering the adoption or the administrative or court decision approving the pre-adoption or permanent fostering, and the end of the sixth year subsequent to such situation.
- Law 27/2011 states that the right to receive the top-up supplements necessary to reach the minimum pension amount, the triggering event for which occurs on or after January 1, 2013, is subject to a **requirement of residence in Spain**, on such terms as are established by primary or secondary legislation.

In compliance with this measure, Royal Decree 1716/2012 deems that, as in the case of non-contributory economic family benefits, the habitual residence of the pensioner is in Spain when periods spent abroad do not exceed 90 days in any calendar year.

- Lastly, Royal Decree 1716/2012 also establishes the following transitional provisions:
  - The regulations concerning retirement in force prior to January 1, 2013 will apply in the cases regulated in subprovision 2 of Final Provision Twelve of Law 27/2011 and to those cases referred to above.
  - The regulations concerning retirement in force prior to January 1, 2013 will also continue to apply insofar as they do not conflict with the provisions of Royal Decree 1716/2012 for the recognition of retirement pensions vesting on or after January 1, 2013 by workers not included in subprovision 2 of Final Provision Twelve of Law 27/2011.
  - The rules on retirement pensions in force prior to the entry into force of Law 27/2011 will apply to individuals applying for normal retirement, even where it vests after January 1, 2013, and comes from a partial retirement taken prior to

August 2, 2011, and to individuals included before such date in partial retirement plans contained in collective labor agreements with any scope or company collective labor agreements, regardless of whether partial retirement is taken before or after January 1, 2013.

In such case, when the partial retiree becomes eligible for normal retirement after reaching 65 years of age, during the time elapsed from such time until the date of the triggering event for full retirement, there will be no obligation on the employer to maintain the hand-over contract with a third party.

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