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ROYAL DECREE-LAW 20/2012, OF JULY 13, 2012, ON MEASURES TO ENSURE BUDGET STABILITY AND ON ENCOURAGING COMPETITIVENESS

This update summarizes the most important employment law and social security provisions of Royal Decree-law 20/2012, of July 13, 2012, on measures to ensure budget stability and encourage competitiveness, which entered into force on July 14, 2012 (except for certain specific matters).

1. MEASURES ON SOCIAL SECURITY AND EMPLOYMENT

1.1 Amendments to Legislative Royal Decree 1/1994, of June 20, 1994, approving the Revised General Social Security Law

The Royal Decree-law introduces a series of important amendments to the social security system, the most significant of which are outlined below:

- Establishment of a single surcharge of 20% if social security contributions are paid after the expiry of the established deadline (thereby eliminating the progressive system of 3%, 5%, 10% and 20% surcharges previously in force, depending on whether payment was made one, two, three or more than three months after expiry of the deadline).
- With respect to the items not included to calculate the contribution base in the standard system:
 - Severance for dismissal or termination is not included in the contribution base.
 - Indemnification for death, relocation and temporary interruptions in employment will be exempt up to the maximum threshold provided in the applicable industry rules or collective labor agreement.
 - The following items excluded from the contribution base (which were previously in force) have been eliminated: (i) supplements to avoid cash shortfalls, wear and tear of implements or tools, and purchases of work clothing; (ii) products in kind supplied by companies voluntarily; and (iii) marriage bonuses.

- The maximum contribution-exempt amount in respect of items that are not computable in the contribution base cannot go above the limit that will be determined in the regulations.
- In the area of contributory unemployment benefit:
 - With respect to the minimum contribution period, if the benefit recipient, upon becoming legally unemployed, has several part-time contracts, fulfillment of the requirement for access to the benefit will be determined by reference to the contribution periods for the jobs in which the employee has been laid off, either temporarily or permanently, or put on short-time working.
 - The amount of unemployment benefit has been reduced due to the fact of 50% of the computation base applying as from day one hundred and eighty-one (previously 60%).
 - The reduction will only apply to unemployment benefit arising from cases of legal unemployment arising on or after July 15, 2012 (final provision thirteen, paragraph one).
 - The method of determining the maximum and minimum amounts of unemployment benefit has been modified. The loss of full-time employment has been included and the calculation mechanism has been extended, consisting of the public multi-purpose income indicator by reference to the average number of hours worked during the preceding 180 days, adjusted in line with the number of part-time or full-time days of work on each job during that period.
 - Workers whose unemployment benefit payments have been suspended in a minor or serious penalty period under the revised labor and social security infringements and penalties law are required to appear before the national employment institute to evidence that they are a “registered jobseeker”.
 - With respect to resuming unemployment benefit payments, a new sub-article has been introduced giving the national employment institute the power to provisionally suspend payment of the benefit until the recipients have evidenced that they meet the requirements for resuming the benefit payment, in circumstances where they previously failed to meet the deadline for filing the documents necessary to retain the benefit.
 - With respect to unemployment benefits arising from cases of unemployment after the entry into force of the legislation (transitional provision three), article 214.4 has been abolished. That article provided that employees’ social security contributions would be reduced by 35% while they received unemployment benefit, as that amount would be paid by the national employment institute (the reduction was 72% in the case of permanent workers under the special agricultural scheme).

- In the area of unemployment protection:
 - With respect to the beneficiaries of unemployment protection, the qualifying age for workers who do not have family responsibilities, who have contributed for at least six months and who have shown that they meet the requirements, except as regards age, for access to any other type of contributory retirement benefit under the system, has been raised from 52 to 55.

The rules provide that the eligible age requirement of 55 or over must be met on the date on which the unemployment benefit or protection expires, or on the date on which the requirements for access to the protection were met or while it was being received.

- In order to determine the no-income requirement, the statutory interest rate will be applied to 100% as opposed to the previous 50% of the capital gains and income that can be deducted from the amount of the person's financial assets.
- 80% of the public multi-purpose income indicator will be received in respect of the loss of a part-time job. In certain specific circumstances, that amount will be received in proportion to the hours the beneficiary worked previously.
- The measures set forth in the above three points will apply to unemployment benefits arising from cases occurred after July 15, 2012 (final provision thirteen, paragraph two).
- The special protection (sole repealing provision) has been abolished. That protection was paid to unemployed persons who were aged over 45 on the date on which their entitlement to the unemployment benefit lasting 720 days had expired, and who met all of the requirements except for the waiting period. Despite the repeal, the protection will remain in force for unemployed individuals aged over 45 whose entitlement to the contributory unemployment benefit lasting 720 days expires prior to the entry into force of the royal decree-law (transitional provision four).
- The general rule concerning the payment of contributions while receiving the protection, is that, in all cases, the minimum contribution level must be used as the contribution base (before this was 125% for those over the age of 52, now over the age of 55).

The amendment described above will apply from August 1, 2012 onwards (final provision thirteen, paragraph three). Transitional provision five provides that the beneficiaries that qualified for 125% will move to 100% from August 1, 2012.

- As regards the incompatibility of unemployment benefit and protection, it has been added that the benefit or protection will be reduced if the worker (i) is receiving the payment as a result of losing a full-time or part-time job and secures a new part-time

job, or (ii) has two part-time jobs and loses one of them (however in this case, the computation base will be the average of the bases on which the employee's contributions were made in both jobs over 180 days, and the maximum and minimum amounts are established in accordance with the determination made via the public multi-purpose income indicator by reference to the number of hours worked in both jobs).

- The National Employment Institute has been authorized to suspend unemployment benefit payments where sufficient prima facie evidence of fraud is found in the course of investigations conducted to combat such practices.
- The following obligations are imposed on jobseekers and benefit recipients:
 - The requirement to supply an address for notification purposes and to notify any changes thereto, as well as to supply the information necessary for electronic notification if communication by ordinary means cannot be guaranteed.

In keeping with that obligation, a new minor infringement has been added to article 24.3(d) of the Revised Labor and Social Security Penalties Law consisting of the failure to observe the obligation to supply information to ensure that notifications and communications are received, and it has been stipulated that notices or communications issued electronically are valid where the applicants or recipients of benefits have given their consent.

- The requirement to evidence to the central government or autonomous community Public Employment Services, upon request, that actions have been taken to actively look for work, re-enter the labor market or improve employability. If such actions cannot be evidenced, the unemployed person will be deemed to have breached their jobseeking activity obligations.

1.2 New legislation in the Workers' Statute

The Royal Decree-law has amended the workers' statute on the subject of the liability of the wage guarantee fund, as described below:

- The cap on payment of salaries has been reduced from three times to twice the national minimum wage, and the limit has gone down from 150 to 120 days.
- In the same vein, for the purposes of payment of severance, the limit on daily salary (forming the calculation base) has been reduced from three times to twice the national minimum wage.
- The same rule has been set for severance in the context of insolvency proceedings.

1.3 Amendments to Royal Decree 1369/2006, regulating the active insertion income program for the unemployed with special economic needs who are experiencing difficulties in finding employment

A new requirement to receive the active insertion income has been added: applicants must prove that they are actively looking for work and have not rejected any reasonable offer of employment or refused, without good reason, to participate in employment-related promotion, training or retraining initiatives or other activities to enhance employability.

A new provision has been added stating that if jobseekers go abroad, they will cease to be registered as a jobseeker for the purposes described above. In these cases, where they have ceased to be registered as a jobseeker, they will have to be registered for an uninterrupted period of 12 months from the date of the new registration.

Furthermore, the requirement for there to be no entitlement to unemployment benefit or protection has been recast to the effect that the benefit or protection must have expired, unless this is due to the imposition of a penalty. Nevertheless, these requirements will not apply to recipients of the active insertion income with disabilities exceeding 33%, returnee migrant workers and victims of gender-based violence.

1.4 Amendments to Employment Law 56/2003, of December 16, 2003

Under the new provisions the notification to the State Public Employment Service of breach of jobseeking activity obligations will be sufficient to initiate the appropriate infringement proceeding.

2. REORGANIZATIONAL AND RATIONALIZATION MEASURES IN RELATION TO THE PUBLIC AUTHORITIES

2.1 Rules on the incompatibility of compensatory pensions, compensatory benefits and similar payments

The new legislation makes the following payments incompatible with each other: compensatory pensions, compensatory benefits and any other payment received as a result of departure from a position, job or activity in the public sector, with any compensation out of the Government Budget, or payable by entities, agencies and companies attached to Public Authorities, or payable by constitutional bodies, or which results from the application of a tariff. These payments are also incompatible with any compensation in connection with a private activity (with the exceptions set out in Law 5/2006, on the conflicts of interest of members of government and senior public officials) and with the receipt of a retirement pension as a result of passive rights or under any social security program.

For these purposes, public sector activity will also include the activities carried on by elected members of the autonomous community and local authority General Legislative Assemblies, by the senior officials and other personnel of constitutional bodies and of all Public Authorities, including the Spanish courts and tribunals' service.

A new obligation has been placed (in transitional provision two) on the recipients of compensatory pensions, contributory benefits and any other financial payment at the time Royal Decree-law 20/2012 comes into force, who will now have to inform the competent authorities within fifteen business days following the publication of that Royal Decree-law of their election to receive that payment or the compensation for the public or private activities they are carrying out or, where applicable, the retirement pension payment.

After the Royal Decree-law has come into force, anyone receiving compensatory pensions, compensatory benefits and any other payments must inform of their election in relation to the payments mentioned above within fifteen days from when the incompatible cases arise.

If within that period, the interested party fails to notify of their election it will be automatically assumed that the interested party has chosen not to receive compensatory pension payments, compensatory benefits and any other payment, and elected instead to receive the compensation in respect of the position or activity they currently have, or, where applicable, their retirement pension.

2.2 Elimination of nonregular salary payments in December 2012 and additional or equivalent payments of public sector personnel, personnel in the central government public sector and senior officials.

The Royal Decree has done away with the nonregular salary payment payable in December (the fourteenth of their fourteen annual salary payments) to public sector personnel (within the meaning defined in article 22. One of General State Budget Law 2/2012) to the personnel of foundations in the public sector and of consortia that are majority owned by authorities in the public sector, to Bank of Spain personnel and to the executive and other personnel of mutual insurance companies in the social security system and their joint entities and centers.

Similarly, it stipulates that when the employee's salary is not divided into more than twelve monthly payments, or when the employee receives more than two nonregular payments a year, their total annual salary, excluding performance incentives, will be reduced by a fourteenth part.

These measures have also been laid down for the senior officials of authorities attached to the central government, their consultative bodies, members of the General Council of the Spanish Judiciary, of the Constitutional Court and the Court of Auditors, secretaries and sub-secretaries of state, directors-general and equivalent positions, standing committee members and the secretary-general of the Council of State and the Ombudsman.

The method that will be used to make the elimination has been stipulated by determining that the measure will not apply to public employees whose compensation for full-time work, not including performance incentives, is under 1.5 times the minimum wage computed on an annual basis.

2.3 Overriding of article 31 of the Workers' Statute in relation to public sector employees

The Royal Decree expressly states, in keeping with the above, that the provisions in article 31 of the Workers' Statute on extraordinary payments, and specifically in relation to the nonregular salary payment to be made at Christmas will not apply to civil servants.

2.4 Amendments to Law 7/2007, on the Basic Statute for Public Employees (EBEP)

The new provisions make a series of major changes to the wording of the Basic Statute for Public Employees (EBEP):

- A new paragraph has been added to article 32 EBEP, to the effect that *fulfillment of the collective labor agreements and covenants is guaranteed, except "where exceptionally and on a serious ground based on public interest derived from a serious alteration in economic circumstances"*, the government authorities are authorized to change or suspend fulfillment of those agreements or covenants, *"to the extent strictly necessary to safeguard public interest"* and with the obligation to inform the labor union organizations of the grounds for those activities.

According to additional provision two, that ground based on public interest will prevail where the Public Authorities *"have to adopt austerity measures or plans or measures to rebalance the public accounts or economic and financial measures to ensure budgetary stability or remedy the budget deficit."*

- Article 48 EBEP, on the leave of civil servants, has been amended. Before, their leave had to be determined by the public authority concerned and certain minimum levels were applied otherwise. Now specific rules have been provided on entitlement to leave.

The new provisions have: (i) reduced the number of days' leave for personal matters from 6 to 3 days; (ii) eliminated the 2 extra days (and one additional day for each three-year period in service after the eighth three-year period) that civil services are entitled to after completing the sixth three-year period, on top of their days off; and (iii) added 15 days' leave for marriage.

- The wording of article 50 EBEP has been changed in relation to the vacation of public officials. The specification of a minimum of 22 working days has been eliminated.

The new legislation has rendered null and void any covenants, agreements, or collective agreements executed by the Public Authorities and their agencies and related or attached entities for public officials and civil service personnel that do not comply with the provisions described above and, in particular, with the provisions on leave for personal matters, vacation and extra days' leave on top of their days off or similar provisions

In all cases, the measures in relation to vacation, days' leave for personal matters, extra days on top of days off or similar leave, will not prevent public officials, "statute-based" personnel and civil servants from taking the days relating to 2012 in accordance with the legislation prior to Royal Decree-law 20/2012.

2.5 Other measures

The Royal Decree-law sets out an array of particularly important measures, which are summarized below:

- It places a series of limits on the option to supplement the temporary incapacity benefit of personnel working for Public Authorities, attached agencies, and entities and constitutional bodies (the rules for public officials and civil servants belonging to the central government and attached agencies and entities under the standard social security program are provided in additional provision eighteen).
- It renders invalid, starting on October 1, 2012, the covenants for public officials and "statute-based" personnel and the provisions in collective labor agreements and agreements for civil servants that improve on the provisions in the Workers' Statute on the following matters: (i) paid hours to carry out representative duties, (ii) appointment of labor union delegates, and (iii) complete dispensation from the obligation to attend work and other labor union rights.
- The public officials under the standard social security program will be governed, in relation to their compulsory retirement age, by the rules in that program on access to a contributory retirement pension without applying a reduction rate for age.
- There are specific provisions, implementing the provisions in article 39.4 EBEP, on the electoral units within the central government authorities (there are also provisions on those working abroad which come into force on October 1, 2012), and special rules are provided on the election of the representatives of civil servants, and this legislation will come into force when the mandates currently in force expire (although the new electoral units come into force from March 1, 2015, all mandates will expire and new elections can be held in the following ten months).

A register of the workers' representative bodies of public authority personnel has been set up.

- The Royal Decree-law has introduced measures to ensure the efficient allocation and optimal use of human resources, by setting objective systems to evaluate the performance of public authority employees.

- All agreements, covenants and collective labor agreements for public sector personnel executed by the Public Authorities and their agencies and entities which contain clauses that clash with the provisions in the new legislation will be rendered null and void.

3. OTHER PROVISIONS OF INTEREST

The Royal Decree-law includes other additional, transitional and final provisions of interest, which are described below:

- **Reform of back pay (return by the government in the event of judgments handed down after expiry of the statutory deadlines)**

Final provision fourteen amends article 57 of the Workers' Statute and article 116.1 of Labor Jurisdiction Law 36/2011, increasing the number of working days that must lapse between the date on which the complaint was filed and the date of the judgment finding that the dismissal was unjustified from “more than 60” to “more than 90”, in order to be able to lodge a claim against the government for the return of back-pay exceeding those limits.

- **Abolition of the entitlement to tax reductions (transitional provision six)**

The Royal Decree-law has abolished companies' eligibility to claim reductions for hiring staff, maintaining employment or encouraging self-employment in relation to social security contributions and, as the case may be, joint employer/employee contributions, pursuant to any legal provision.

The abolition will apply to reductions in contributions falling due as from August 2012.

However, it will not affect the reductions allowed in the following provisions:

- Royal Decree-Law 3/2012, of February 10, 2012, and Law 3/2012, of July 6, 2012, both on urgent measures to reform the labor market.
- Sub-articles 2, 3, 4, 4 bis, 5 and 6 of article 2 of Law 43/2006, of December 29, 2006, to improve growth and employment (hiring disabled persons, disabled persons through special employment centers, victims of gender-based or domestic violence, or victims of social exclusion).
- The reduction allowed in relation to new workers included in the Special Social Security Program for Self-Employed or Independent Workers (additional provision thirty-five of the Revised General Social Security Law) and disabled persons who establish themselves as self-employed workers (additional provision eleven of Law 45/2002).

- Relief contracts entered into with unemployed individuals to replace workers during maternity leave, adoption leave, fostering leave and sick leave involving disabled workers and to replace workers who are victims of gender-based violence who have temporarily interrupted their employment contract or exercised their right to geographic mobility or to change their workplace (article 21.3 Organic Law 1/2004).
- Reductions allowed in relation to workers during maternity, adoption or fostering leave, leave due to risks during pregnancy or breastfeeding, or paternity leave (additional provision two of Law 12/2001).
- Hiring of carers for large families (article 9 of Law 40/2003).
- Contracts with disabled persons through ONCE, the Spanish Association for the Blind (Royal Decree-Law 18/2011).
- Reductions relating to the independent work and prison benefits body or the equivalent body at autonomous community level, and inmates who engage in employment activities in prison institutions as well as reductions relating to certain activities in the autonomous cities of Ceuta and Melilla (additional provision thirty of the Revised General Social Security Law).
- **Furthermore, the following tax reductions are abolished by way of repeal:**
 - The 50% reduction in employers' social security contributions for nonoccupational contingencies, in the case of temporary contracts, for a maximum of twelve months, due to compatibility of unemployment protection and employment (paragraph 3.3 transitional provision five of Law 45/2002).
 - The reduction in respect of indefinite-term employment contracts with workers aged sixty or over, with five or more years of service at the company (article 4.1 of Law 43/2006).
 - The reductions in respect of self-employed workers who return to work after maternity leave (additional provision sixty-five of Law 30/2005).
 - The reduction in contributions for research staff and trainee research staff (additional provision two of Royal Decree 63/2006, additional provision twenty of Law 35/2006, Royal Decree 278/2007 and references contained in Royal Decree 1432/2003).
- The option of semi-retirement for public officials has been abolished (sole repealing provision, paragraph 4, letter c)).

- Organizations, bodies and entities forming part of the public sector are ordered to issue instructions to avoid acts that could be regarded as determining factors for the recognition of an employment relationship in the context of contracts for the provision of external services.

It is provided that if, due to a final court decision, such workers become employees of the authorities, they will receive the salary in accord with their professional classification under the collective labor agreement applicable to the personnel of the authorities (a favorable report from the competent bodies is required in order to meet budget legislative requirements).

- **The Royal Decree-law also lays down a series of measure to rationalize the care system** (amendments to Law 39/2006, of December 14, 2006, on the promotion of personal independence and care for persons in situations of dependence).

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