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ROYAL DECREE 1483/2012, OF OCTOBER 29, 2012, APPROVING THE REGULATIONS ON PROCEDURES FOR COLLECTIVE LAYOFFS AND FOR TEMPORARY INTERRUPTIONS OF CONTRACTS AND SHORT-TIME WORKING

On October 30, 2012, Royal Decree 1483/2012, of October 29, 2012 was published in the Official State Gazette. The Royal Decree approves the regulations on procedures for collective layoffs and for temporary interruptions of contracts and short-time working, which are primarily aimed at adapting these procedures to the sweeping changes implemented by the reform of the Workers' Statute.

This Royal Decree (which will enter into force on October 31, 2012) therefore repeals the previous regulations approved by Royal Decree 801/2011, of June 10, 2011.

Below you will find a brief summary of the provisions contained in the regulations, focusing in particular on any new legislation or changes.

1. THE COLLECTIVE LAYOFF PROCEDURE

1.1 Grounds and subject-matter of the procedure

The regulations reiterate the provisions in the Workers' Statute as regards (i) the number of terminations required in order for a collective layoff to exist, and (ii) the definition of the economic, technical, organizational or production-related grounds that must be present to justify the layoff.

For the purposes of calculating the number of employees at the company to determine the percentage of terminations effected in a ninety-day period, the regulations expressly state that all employees who are working at the company on the date on which the procedure is commenced must be computed, regardless of their contractual status.

1.2 Start of the procedure

1.2.1 Notification to the workers' representatives

The regulations essentially contain the same provisions as before with respect to (i) the contents of the notification by the company to the workers'

representatives of the commencement of the consultation period, and (ii) the documents that must accompany that notification.

Although the following new legislation or changes may be highlighted:

- As a result of the labor law reform, and as anticipated in Order ESS/487/2012 of March 8, 2012, on the validity on a transitional basis of certain articles of Royal Decree 801/2011, the new regulations **have eliminated the need to justify** the number of terminations in relation to the existence of the economic ground and the aim of preserving or favoring the enterprise' competitive position in the market.

- Moreover, where the enterprise's adverse economic position consists of a **persistent decline in revenues or sales**, the employer must submit, in addition to the other economic documents required (i.e. financial statements for the previous two complete fiscal years), tax or accounting documents evidencing the persistent reduction in revenues from ordinary operations or sales for, at least, the three consecutive quarters immediately preceding the date of the notification of the commencement of the collective layoff procedure, as well as tax or accounting documents evidencing the revenues from ordinary operations or sales recorded in the same quarters of the immediately preceding year.

- Furthermore, if the layoff affects more that fifty workers, the notification of the commencement of the consultation period must be accompanied by an **outplacement plan**, using authorized outplacement companies, which must ensure that the affected workers (with special treatment for and focus on the oldest employees) have ongoing access to these services for at least six months, with effective measures tailored to their aim in the following areas: (i) mediation, (ii) career guidance, (iii) professional training, and (iv) individual attention, especially as regards the active search for work.

  The contents of the plan may be determined or expanded during the consultation period, although once that period has ended the definitive wording of the plan must be submitted.

  The stipulated number of fifty workers to trigger the obligation to implement an outplacement plan must be computed by reference to the contract terminations at the initiative of the company or companies from the same group, on grounds not attributable to any individual worker. These do not include terminations as a result of expiry of the agreed contractual term in casual contracts, or the completion of the project or services for which the contract was executed, where those terminations occurred within ninety days immediately before the commencement of the collective layoff.

The terms described in the previous paragraph will only apply to employees whose employment contracts are terminated after the entry into force of the regulations.

- Lastly, for the purposes of the **contribution to the Public Treasury** under Additional Provision Sixteen of Law 27/2011, implemented by Royal Decree 1484/2012, where the collective layoff affects workers aged fifty or over at enterprises or groups of enterprises with more than a hundred employees, the following documents will also have to be submitted:

  - A list of the contribution account codes of the enterprise that is starting the procedure and, where applicable, of the other companies in the group of enterprises, stating the number of employees attached to each on notification of the start of the procedure, regardless of the type of contract they have or of whether they work full or part time.

  - A list of the employment contracts that have been terminated in the three years immediately preceding the date of the notification of the start of the procedure, although not before April 27, 2011, at the initiative of the enterprise or enterprises belonging to the same group, on grounds not attributable to an individual employee other than the expiry of the agreed term in casual contracts or the completion of the project or service for which the contract was executed.

  - The economic documents required in cases where the enterprise pleads an adverse economic position, regardless (i) of the type of grounds pleaded in the actual collective layoff, and (ii) of whether the enterprises in the group to which the enterprise starting the procedure belongs have the same business activity, belong to the same industry, or have debts owed by or owing to that enterprise.

  It should be noted that the regulations attach particular importance to the information that needs to be provided to the workers' representatives to ensure they are adequately informed of the grounds triggering the procedure and that they can participate appropriately in the solution.

1.2.2 Notification to the labor authority

Along with the notification, employers must also provide the labor authority with the submissions and documents delivered to the workers' legal representatives, accompanied by information on:

- The members of the workers' representatives.

- The negotiating committee for the collective layoff procedure, specifying, if more than one workplace is involved, whether the negotiations will be carried out for all the workplaces as a whole or for each workplace separately.

- Any workplaces that do not have their own representatives, including: (i) the document informing the employees at those workplaces that they can appoint an *ad hoc* negotiating committee under article 41.4 of the Workers' Statute and, as applicable, (ii) the minutes on the appointment of that committee to represent the employees.

The labor authority will submit the notification and the documents to the labor and social security inspection authority, the National Employment Institute (responsible for unemployment benefit), and the social security authority (in this latter case, if the enterprise is not involved in an insolvency proceeding and the collective layoff includes employees aged fifty-five or over who were not members of a mutual insurance company on January 1, 1967).

1.3 Consultation period

The regulations aim to protect the effectiveness of the consultation period for the procedures, which acquires primary importance in the new regulations following the elimination of the need for the labor authority's prior approval:

- Meetings

  As a new addition with respect to the previous regulations (Royal Decree 801/2011), the regulations lay down exhaustive requirements as to the number of meetings and the intervals between them, which, unless the parties agree otherwise, will be as follows:

  - Upon commencement of the consultation period, a meeting schedule must be set.
  - The first meeting in the consultation period must be held within not less than three days from the notification to the labor authority.
  - At enterprises with less than fifty employees (with a consultation period lasting not longer than fifteen calendar days), at least two meetings must be held, separated by an interval of between three and six calendar days.
  - At enterprises with fifty or more employees (with a consultation period lasting not more than thirty calendar days), at least three meetings must be held in the consultation period, separated by intervals of between four and nine calendar days.

  Despite this, the consultation period can be brought to a close, in all cases and at any time, when the parties so decide, if they consider that an agreement cannot be reached or, conversely, if an agreement has been reached, and they must notify those circumstances expressly to the labor authority.

  Minutes must be drawn up of all meetings held in the consultation period and signed by all of those present.

- Collective layoff assistance measures for employees

  The consultation period must deal at least with the chances of (i) avoiding or reducing the collective layoffs, and (ii) softening the impact on the employees concerned, through collective layoff assistance measures.

  The regulations have kept the measures of this kind that were in the previous legislation (geographic or functional mobility (moving employees to other locations or other jobs), material modifications to working conditions, outplacement or redeployment, training initiatives, among others) which may be considered to achieve both aims, although:

  - They include a further measure to avoid or reduce the effects of the procedure: the chance to opt out of the working conditions in the applicable collective labor agreement.

    When the agreement reached in the consultation period includes the decision to opt out of the conditions in the applicable collective labor agreement, the enterprise must file that agreement.

  - It also adds another measure to soften the impact on the employees concerned: a preferred right to be reinstated in any vacancies for the same or a similar professional category arising at the enterprise.

  - In relation to the encouragement of employees to become self-employed or work at employee cooperative enterprises, the regulations specify that employers cannot use this measure to have the employees concerned continue working at the same enterprise under contracts for projects or services or similar types of contracts aimed at avoiding the obligations under employment contracts.

1.4 Role of the labor authority and the labor inspectors

The regulations also make changes concerning the roles of the labor authority, and the labor and social security inspectors in the course of the consultation period which not only authorize them to give warnings or recommendations, but also to mediate or provide assistance where this would help to resolve the problems posed by the collective layoff:

- As for the labor authority:

  - It must notify both parties of any documents that contain warnings or recommendations, even if they are addressed to one particular party.

  - It may (i) provide assistance at the request of either party or on its own initiative, in particular, it may make suggestions and recommendations to the parties regarding the collective layoff assistance measures and the contents and implementation of any outplacement plan and (ii) mediate at the request of both parties.

- The workers' representatives can submit remarks on any matters to the labor authority, as they see fit and at any stage in the procedure.

- The employer must reply in writing to the labor authority, before the end of the consultation period, on any warnings or recommendations it may have made, and send a copy of its reply to the workers' representatives.

- In relation to the labor and social security inspection authority:

  - It has been given the right to assist and support the labor authority in any of its mediation and assistance activities.

  - The period in which the labor and social security inspectors must issue their compulsory report has been extended from ten to fifteen days. That time period starts to run from the notification to the labor authority of the end of the consultation period (under the previous regulations –Royal Decree 801/2011- the report had to be in the possession of the labor authority before the end of that period).

1.5 End of the Procedure

After the consultation period has ended, the employer has up to fifteen days from the last meeting in the consultation period to notify the labor authority of (i) the outcome of the period; and (ii) the decision on the collective layoff it is carrying out, providing justification, should the case arise, for laying off any employees that have been given priority to stay at the enterprise by law or under an agreement.

That notification must be accompanied by (i) the minutes of the consultation period, (ii) the documents relating to the collective layoff assistance measures (and the outplacement plan where the enterprise is required to prepare one) and, if there has been an agreement, (iii) a complete copy of the agreement reached.

If the notification is not made within the above period, the collective layoff procedure will be discontinued, which will prevent the employer from terminating the employment contracts, although he will be able to start a new procedure.

Following the notification to the labor authority of the employer's decision to carry out the collective layoff procedure, the employer can start to notify the dismissals individually to the employees concerned, which must be done subject to the terms and conditions in article 53.1 of the Workers' Statute for objective dismissal, and the new regulations have kept the requirement for at least thirty days to run from the notification of the commencement of the consultation period to the labor authority.

Challenging the agreements and decisions on collective layoffs at the Labor Courts will be governed by Law 36/2011, of October 10, 2011 governing the labor jurisdiction.

2. PROCEDURE FOR TEMPORARY INTERRUPTION OF EMPLOYMENT CONTRACTS AND SHORT-TIME WORKING ON ECONOMIC, TECHNICAL OR PRODUCTION-RELATED GROUNDS

The detailed rules set out in the regulations on the procedure for temporary interruption of employment contracts or short-time working are very similar to the rules stipulated for collective layoffs, except for the specific rules on this measure. Some of these rules are as follows:

- The evidence of the grounds that the employer has to provide must bear a relation to the environment in which the enterprise operates.

- The documents on economic matters that the employer must submit must relate to the last fiscal year and the documents evidencing a persistent decline in revenues from ordinary operations or sales must relate only to the two consecutive quarters immediately preceding the start of the consultation period (and the same quarters in the previous year).

- The consultation period cannot last more than fifteen days. The first meeting must be held within not less than one day after the commencement of that period and at least two meetings must be held, separated by an interval of between three and seven days.

3. PROVISIONS SHARED BY THE PROCEDURES FOR COLLECTIVE LAYOFFS, AND FOR TEMPORARY INTERRUPTIONS OF EMPLOYMENT CONTRACTS AND SHORT-TIME WORKING

Among these shared elements, the regulations have basically kept the provisions of their predecessor, although the following changes must be noted:

- If the procedure affects more than one workplace and a negotiating committee has been set up for each workplace concerned, it will be considered that an agreement has been reached in the consultation period only at those workplaces where a majority of the members of the negotiating committee of each workplace has voted for the agreement.

- The enterprise must also notify the National Employment Institute (responsible for unemployment benefit), using the electronic media established in the application and implementation provisions, and before they come into force, of the adopted measures in relation to collective layoffs, temporary interruptions of employment contracts or short-time working, accompanying the notification of the enterprise's decision sent to the labor authority.

- If an insolvency order is issued on the enterprise before the labor authority receives the notification of the enterprise's decision for a collective layoff, temporary interruption of employment contracts, or short-time working, the labor authority will end the proceedings and refer them to the insolvency court.

4. COLLECTIVE LAYOFF PROCEDURES AFFECTING EMPLOYEES WORKING AT PUBLIC SECTOR CONCERNS, ORGANIZATIONS AND ENTITIES

The regulations set out a series of specific provisions on dismissals within the public sector. It makes a distinction here based on whether the concerns, organizations and entities qualify as public authorities, as they are defined in article 3.2 of the Public Sector Contracts Law:

- For those qualifying as public authorities, specific rules of procedure are laid down according to their characteristics. The key rules are described below:
  - They first determine the administrative area or unit that must be taken into account to calculate the number of terminations that have occurred in each ninety-day period.
  - They adapt the documents to be submitted in the procedure and the definition of the economic, production-related, technical and organizational grounds to the specific characteristics of public authorities, mentioning in particular scenarios of budgetary shortfalls and the changes that may arise in the provision of public service.
  - In addition to the preferred right to stay in employment envisaged for collective layoff scenarios at private enterprises, a preferred right is also recognized for any employees that had acquired that status, in accordance with the principles of equality, merit and capacity, in a selection procedure called for the purpose.
  - The start of the consultation period must be notified to both the labor authority and the authority in charge of government personnel matters (the ministry of finance and public authorities or the equivalent authority in the autonomous community governments).
  - Where an outplacement plan is required, it must be prepared by the relevant public employment services.
  - Within central government and autonomous community government authorities, the decision that is adopted at the end of the consultation period will have to have a prior favorable report by the competent body in the respective public authority, where the applicable legislation so requires.
- For those concerns, organizations and entities that are part of the public sector as defined in article 3.1 of the Public Sector Contracts Law but do not qualify as public authorities within the meaning specified, the general rules must be applied, although the employer must also provide a list of the grounds for the layoff with the principles contained in Organic Law 2/2012, of April 27, 2012, on Budgetary Stability and Financial Sustainability, with the measures or mechanisms it envisages or with the aims of budgetary stability mentioned in that law.

5. PROCEDURES FOR TEMPORARY INTERRUPTIONS OF EMPLOYMENT CONTRACTS AND SHORT-TIME WORKING ON ECONOMIC, TECHNICAL, ORGANIZATIONAL OR PRODUCTION-RELATED GROUNDS IN THE PUBLIC SECTOR

Any public law entities related or attached to one or more public authorities or other public organizations, where they are funded primarily out of revenues obtained as consideration for transactions performed on the market, can carry out procedures for temporary interruptions of employment contracts and short-time working on economic, technical, organizational or production-related grounds, by implementing the general procedure provided for these purposes in the regulations.

6. COLLECTIVE PROCEDURES IN PROGRESS

A series of transitional rules have also been provided for collective procedures that had started before the regulations came into force:

- For procedures that started in the period between February 12, 2012 and the entry into force of the regulations, the legislation in force when the procedure started will apply.
- Any collective layoff procedures for the termination or temporary interruption of employment contracts, or for short-time working that were in progress on February 12, 2012 will be governed by the legislation in force when they started.
- Any procedures for collective layoffs for the termination or interruption of employment contracts or for short-time working decided on by the labor authority and in force in their application on February 12, 2012 will be governed by the legislation in force when the decision was rendered on the proceeding.