



# labour

17-2012  
November, 2012

## **ROYAL DECREE 1529/2012, OF NOVEMBER 8, 2012, IMPLEMENTING THE TRAINING AND APPRENTICESHIP CONTRACT AND LAYING THE FOUNDATIONS FOR DUAL PROFESSIONAL TRAINING**

This legislation update offers a brief summary of the key new legislation and most important components of Royal Decree 1529/2012, of November 8, 2012, implementing the training and apprenticeship contract and laying the foundations for dual professional training, published in the Official State Gazette on November 9, 2012.

### **1. TRAINING AND APPRENTICESHIP CONTRACT**

#### **1.1 Labor legislation applicable to the training and apprenticeship contract**

The royal decree implements the concept of a training and apprenticeship contract envisaged in article 11.2 of the Workers' Statute. As a general rule, the provisions in the Workers' Statute have been kept in place, although with some new additions, including most notably the following:

- Enterprises entering into training and apprenticeship contracts must simultaneously execute an agreement with the training center or body designated by the education or labor authority that delivers the training and with the worker. This agreement must set out the matters concerning the training to be received and will be attached to the employment contract. The enterprise must inform the workers' legal representatives of the agreements, indicating, at least, the hired persons, the job and the contents of the training initiative. Where the training is to be delivered at the enterprise itself, the agreement will be executed between the enterprise and the worker.
- Both the training and apprenticeship contract and the attachments containing the agreements mentioned above must be set down in writing on the official form and notified to the Public Employment Service within ten days. Terminations of the contracts must also be notified within the same period.
- The trial periods under training and apprenticeship contracts will be governed by the general provisions of article 14 of the Workers' Statute.
- In cases where employee's working day includes both actual working time and training activities, any necessary travel time to the training center will count as unpaid actual working time.

- In the absence of proof otherwise evidencing the temporary nature of the work, the training and apprenticeship contracts will be deemed to have been concluded/renewed for an indefinite term and for full-time work in the following circumstances:
  - Those concluded with avoidance of the law.
  - Where the requirements to set the arrangement down in writing have not been met.
  - Where the workers have not been registered for social security purposes once a period equal to the amount of time set for the trial period has elapsed.
  - Where the worker continues working after the maximum term for the contract has elapsed and express notice of termination has not been served.
- Where a contract terminates at the end of the agreed term, prior notice of termination must be served by one of the parties. The party serving such notice must inform the other of the termination at least fifteen days in advance. Any failure by the employer to observe the deadline provided above will entitle the worker to receive severance equal to the salary that the worker would have earned in the breached notice period.
- The workers' representatives must be informed of any contract renewals.
- Before entering into this type of contract, the employer may obtain a written certificate from the competent Public Employment Service placing on record the period of time for which the worker has been hired under a training and apprenticeship contract before the contract intended to be made and the work-related activities or occupation to which the vocational qualification associated with the contract relates. The time periods under the type of training contract will also be taken into account.

The Public Employment Service will issue a certificate within ten days. If the certificate has not been issued within that time limit, the employer will be released from any liability for concluding contracts in breach of the maximum term requirements for the contract for the same work-related activities or occupation, unless the employer has been made aware, by the worker or otherwise, of sufficient information to the effect that it could be breaching those requirements by concluding the contract concerned.

## 1.2 Training-related elements of the training and apprenticeship contract

Having described the main new additions to labor legislation concerning training and apprenticeship contracts, we will now describe the key training-related provisions in the royal decree:

- Before concluding an employment contract, the enterprise must check that there is a training activity relating to the work to be performed which matches a vocational training qualification at high school level or above or a vocational competence certificate and that this will form the training activity under the contract.

- The training activity under the training and apprenticeship contract must be authorized before it starts by the competent Public Employment Service. For such purposes, the employer must submit the agreement for the training activity, which must be attached to the employment contract.
  - The employer will be required to provide the worker with actual work that is related to the professional profile of the vocational training certificate or the vocational competence certificate and to guarantee conditions that will enable the worker to attend the training programs.
  - For their part, the workers hired for training and apprenticeship will be required to perform actual work and actually take part in the training. Any lack of punctuality or unjustified absences from the training activities may be classified as absences from work for the appropriate legal purposes.
  - Training not included in the National Catalog of Vocational Qualifications may be included in order to cater to both the needs of workers and of employers, although any such training must be authorized by the competent Public Employment Service and will not count as actual work.
  - Subject, in each case, to the provisions of the legislation governing vocational training, the vocational competence certificates or the education system, training activities specific to training and apprenticeship contracts may be offered and delivered:
    - In the field of vocational training for employment, using face-to-face or distance training formats or a combination of the two.
    - In the field of education, using face-to-face or distance learning formats.
- Moreover, these training activities may be concentrated, on the terms expressly agreed on by the contracting parties, within certain periods of time with respect to the work-related activities in the term of the contract.
- Training activities may have a flexible timetable, which must at all times ensure that the worker is able to study the vocational modules in the training cycle or the training modules for the vocational competence certificate.
- The training activity must be for, at least, the length of time required to obtain the vocational training qualification, the vocational competence certificate or the partial, cumulative accreditation or academic certificate.
  - Tutors:
    - A tutor will be assigned to the worker at the enterprise, who will be tasked with following up on the training activity agreement, coordinating work and training activities and communication with the training center. The tutor must also prepare a report on the worker's performance in the job when the work-related activities end.

- The training center will also appoint a tutor in charge of programming and following up on the training, as well as coordinating assessments with any teachers and/or tutors involved. This person will also liaise with the employer for the performance of the training and work-related activities under the agreement.
- Employers may fund the cost of the training under training and apprenticeship contracts out of reductions to employer social security contributions.

A ministerial order will determine the upper limits on the amounts eligible for reductions and the formalities and requirements to be met, as well as the circumstances in which training activity may be funded out of reductions and under collaboration agreements.

The State Public Employment Service will be responsible for monitoring the reductions provided. Any employer that breaches the obligations deriving from the training activity under a training and apprenticeship contract will have to repay any reductions it has taken.

## 2. DUAL PROFESSIONAL TRAINING

Dual professional training means all the combined work-related and training activities and initiatives aimed at enabling workers to obtain professional qualifications under an arrangement alternating work-related activities at an enterprise and the training received within the context of the vocational training system for employment or the education system.

Dual professional training may be delivered in any of the **following formats**:

- Training exclusively at a training center, combining and alternating the training acquired at the training center and the work-related activities carried on at the enterprise.
- Training with participation of the enterprise, meaning the enterprises provide training centers with the spaces, facilities and experts required to deliver professional or training modules.
- Training at an approved or accredited enterprise and at a training center, delivered at the enterprise in parallel with the training center.
- Training shared between the training center and the enterprise, based on joint participation in teaching and apprenticeship processes. The enterprise must obtain approval from the education authorities and/or accreditation from the relevant labor authority and must be enrolled at the center with which it shares training duties.

- Training exclusively at the enterprise, in the event the training is delivered entirely at the enterprise under the training and apprenticeship contract, where it is equipped with suitable facilities and personnel with the appropriate technical and pedagogical training in order to evidence their professional competence and qualifications.

In this regard, dual professional training is deemed to include both the training activity specific to the training and apprenticeship contracts described above and projects delivered as part of the education system.

### 3. DUAL PROFESSIONAL TRAINING IN THE EDUCATION SYSTEM

The royal decree also aims to set in place a framework for the performance of dual vocational training projects within the education system, with the joint participation of teaching institutions and enterprises, in the absence of a training and apprenticeship contract.

Thus, it provides that the dual professional training projects must be approved by the relevant education authority and formalized in an agreement with the collaborating enterprise on the terms and conditions established by the education authorities.

The agreement must determine, at least, the following elements: (i) the training program, (ii) the number of students taking part, (iii) the rules on scholarships, (iv) the working hours and timetable at the center and at the enterprise, (v) the conditions to be met by employers, students, teachers and tutors, and (vi) the necessary insurance for students and teaching staff to cover the training.

Students may receive grants from enterprises, institutions, foundations, etc. or from public authorities, in the manner that will be determined for each project.

### 4. OTHER NEWSWORTHY PROVISIONS

The following are among the other newsworthy provisions in the new legislation:

- The royal decree contains two specific provisions on the training and apprenticeship contracts which (i) are entered into with disabled persons or (ii) are executed within the context of the initiatives and measures set forth in Article 25.1, d), of Law 56/2003, of December 16, 2003, on employment, including workshops, trades training schools and employment workshops and any other initiatives that may be approved.
- The provision has been kept whereby training and apprenticeship contracts may be executed with workers under the age of 30 without the maximum age limit applying until the unemployment rate falls below 15%.
- Moreover, it contains two transitional rules for those training and apprenticeship contracts in force on the various dates of approval of legislative and regulatory amendments that have altered the legislation on this type of contract, in particular,

Royal Decree-Law 10/2011, of August 26, 2011, and Royal Decree-Law 3/2012, of February 10, 2012.

## 5. ENTRY INTO FORCE

The royal decree entered into force on November 10, 2012, although its provisions will apply to the training and apprenticeship contracts executed on or after August 31, 2011 where this does not run counter to the legislation in force on the date on which the contract was executed.

This publication contains information of a general nature and therefore does not constitute a professional opinion or legal advice.

© November 2012. J&A Garrigues, S.L.P. All rights reserved. The exploitation, reproduction, distribution, public communication or transformation, in whole or in part, of this document is prohibited without the written consent of J&A Garrigues, S.L.P.