New features from the Royal-Decree Law on urgent measures for labor reform, the guarantee of employment stability and the transformation of the labor market

Following the announcement of the labor reform agreement, the BOE published the text that, among other things, modifies the type of contracts, establishes new flexibility mechanisms and reintroduces the ultra-activity of collective bargaining agreements.

The Official State Gazette of December 30, 2021 published Royal Decree-Law 32/2021, 28 December, on urgent measures for labor reform, the guarantee of employment stability and the transformation of the labor market, which amends both the Workers' Statute (WS) and a series of other regulations.

The following is a summary of the main new features by subject area.

1. Training contracts

The amendment of Article 11 of the WS involves the creation of two new figures: **the training contract in alternation and the training contract for obtaining professional practice**, which respectively replace the contract for training and apprenticeship and the internship contract.

Modality	Purpose	Main aspects of the regulation of each contract
Training contract in alternation	Compatibility of paid work activity with the corresponding training processes (vocational training, university studies, and the National Employment System's Catalog of Training Specialties)	▪ It may be entered into with persons without professional qualifications. ▪ Within the framework of level 1 and 2 certificates of professionalism, and public or private programs of training in alternating employment - training, which are part of the Catalogue of training specialties of the National Employment System, the contract may only be concluded with persons up to thirty years of age. ▪ The activity performed by the employee must be directly related to the training activities, coordinated and integrated into a common training program. ▪ The figure of the tutor is regulated both in the training entity and in the company, as well as the elaboration of individual training plans. ▪ Both theoretical and practical training are considered substantial. ▪ The minimum duration shall be three months and the maximum duration shall be two years, which may be developed on a non-continuous basis. If the duration of the agreement is less than the legal maximum and the title, certificate, accreditation or diploma has not been obtained, it may be extended by agreement until the title has been obtained, without ever exceeding the maximum duration of two years. ▪ Generally, only one contract may be concluded for each training cycle. However, contracts with several companies on the basis of the same cycle, certificate of

		professionalism or itinerary may also be executed, as long as they respond to different activities linked to the cycle, the plan or the training program. In such cases, the maximum overall duration of all of them cannot exceed two years. ▪ The effective working time (compatible with training) is subject to limits: 65% on the first year and 85% on the second year. ▪ This contract may not be entered into when the activity or position has been previously performed by that employee in the same company for a period of more than six months. ▪ Generally, no overtime, shift work or night work may be performed, with some exceptions. ▪ A trial period cannot be established. The remuneration shall be that established by the collective bargaining agreement. Where it does not regulate this, the compensation may not be less than 60% (first year) or 75% (second year) of that fixed for the corresponding professional group or level, never being under the minimum wage.
Training contract for obtaining professional practice	Performance of a professional activity aimed at acquiring a professional practice adequate to the corresponding level of studies: ▪ University degree. ▪ Vocational education and training or certificate of higher education. ▪ Specialist or professional master's degree. ▪ Certificate of the vocational training system. ▪ Equivalent degree of artistic or sports education.	▪ It must be entered into within three years following the completion of the corresponding studies (extendable to five years in case of disability). It may not be executed with anyone who has already obtained professional experience, or who has carried out training activities in the same activity within the company for a period of more than three months. ▪ The minimum duration shall be six months and the maximum duration shall be one year, but the collective bargaining agreement for the industry can specify other limits within these. ▪ A person may not be hired for the same qualification in the same or a different company for more than the above limits. Nor may a person be hired for the same job for a period longer than the maximum, even if it involves a different qualification or different certificate. ▪ A maximum trial period of 1 month may be established (except as provided by collective bargaining agreement). ▪ The job must allow for adequate professional practice according to the level of studies or training that is the subject of the contract. An individual training plan shall be drawn up. ▪ The employee shall have the right to obtain certification of the content of the internship performed. ▪ The employee may not work overtime. ▪ The remuneration for the effective working time will be that established in the agreement applicable in the company for these contracts or, in its absence, that of the according professional group and remuneration level. In any case may the remuneration be less than the minimum remuneration established for the contract for training in alternation or the minimum wage (“SMI” for the acronym in Spanish).

The following provisions are common to both contracts:

- The protective action of the Social Security will include all protectable contingencies and benefits (including unemployment and FOGASA).
- Certain situations interrupt the duration of the contract (temporary disability, childbirth, risk during pregnancy, risk during breastfeeding and gender-based violence).
- The contract will be executed in writing and will include the training plan and tutoring activities.
- The age and duration limits do not apply to persons with disabilities or at risk of social exclusion.
- Collective bargaining agreements may determine which positions, groups or levels may be covered through training contracts.
- During the implementation of internal flexibility measures (furlough, known in Spanish as “ERTE” or RED Mechanisms), training contracts cannot be signed to replace affected workers.
- If at the end of the training contract the employee is hired by the company, a probationary period cannot be established in the new contract and seniority will accounted for.
- Contracts to evade the law or in which the company fails to comply with its training obligations will be understood as ordinary permanent contracts.
- The company must inform the workers' legal representatives of the educational or training cooperation agreements.

Companies intending to sign training contracts may request information from the competent employment service as to whether the persons they intend to hire have been previously hired under a training contract. Such certification will have the effect of releasing them from the obligation not to exceed the maximum duration of these contracts.

In relation to curricular and extra-curricular internships provided for in the official curriculums, the Government will convene the social agents for the development of an Intern’s Statute.

When do these new training contracts come into force?

Three months after the entry into force of the Royal-Decree Law.

What will occur with training and apprenticeship contracts currently in force under the previous rule?

Training and apprenticeship contracts and internship contracts will be valid up to their maximum duration, in accordance with the prior regulation.

2. Fixed-term contracts

In the new Article 15 of the WS, temporary contracts as we knew them (contracts for projects, substitution and due to backlog) disappear. From now on, only two main types of temporary contracts exist, according to the cause that justifies said contract: **contracts due to circumstances of production and contracts for substitution.**

Type	Causes
Fixed-term contracts due to circumstances of production	A distinction is made between two types of production circumstances: ▪ Occasional, unforeseeable increase and any oscillation that (even though within normal activity) generates a temporary mismatch (including those derived from annual vacations): a. Maximum duration: may not exceed six months (extendable to twelve months by collective bargaining agreement for the industry). b. A single agreed extension may be granted, provided that the maximum limit is not exceeded. ▪ Occasional, predictable increase with a reduced/limited duration: a. Maximum duration: ninety days per calendar year, regardless of the number of workers required on each of these days to meet the specific situations that justify the hiring, which must be duly identified in the contract. b. These ninety days may not be used on a continuous basis. c. The company must inform the workers' legal representatives of the annual forecast for the use of these contracts. The performance of work under contracts, subcontracts or administrative concessions that constitute the usual/ordinary activity of the company may not be identified as a cause of this contract.
Fixed-term contracts for the substitution of employees.	Several types of causes can be distinguished: ▪ Substitution of a worker with the right to reserve the job position, provided that the name of the person substituted and the cause of the substitution are specified in the contract. It may begin before the absence occurs, coinciding with the substituted employee the time necessary to ensure the proper coverage of the position and, at most, for fifteen days. ▪ To complete the reduced working day of another worker, when such reduction is covered by legally or conventionally established causes. The name of the person partially substituted and the cause of the substitution must be identified. ▪ Temporary coverage of a job position during a selection or promotion process to be covered by a permanent contract (in this case never for a period of more than three months).

Likewise, the new Article 15 of the ET establishes a series of rules common to all temporary contracts, the following being particularly noteworthy:

- Employees hired in breach of the temporary regulations will acquire the status of permanent employees. Likewise, workers who have not been registered after the expiration of a period equal to or greater than that which could have been legally established for the trial period will acquire the status of permanent employees.

- With respect to the concatenation limit of temporary contracts, permanent status is acquired by those who in a period of twenty-four months have been hired for a period of more than eighteen

months, with or without solution of continuity, for the same or different job with the same company or group of companies, through two or more contracts due to circumstances of production, directly or through temporary employment agencies. Likewise, the status of permanent employee shall be acquired by a person who occupies a position which has been occupied with or without solution of continuity for more than eighteen months in a period of twenty-four months through contracts due to circumstances of production, including contracts made available through temporary employment agencies.

- In the two abovementioned cases, the company must inform the workers and their representatives of the fact that they have been granted permanent status within ten days following the expiration of the established time limits. The Public Employment Service will also inform the Labor and Social Security Inspectorate if it notices that the maximum time limits have been exceeded.

- Workers' representatives must be informed of existing vacancies (it is also required for training and temporary contracts, so that it allow the employee to have opportunities of accessing permanent employments).

- Collective bargaining agreements may establish plans to reduce temporary employment.

When do these new temporary contracts enter into force?

Three months after the publication of the Royal-Decree Law (30 March 2022), notwithstanding the transitional regime.

What will occur with the temporary contracts currently in force? And to those that may be entered into after the publication of the regulation?

Fixed-term contracts entered into before December 31, 2021 will be governed by the preceding regulations up to their maximum duration.

Contracts for specific projects and/or services and contracts due to backlog entered into from December 31, 2021 until the entry into force of the provisions on temporary contracts (March 30, 2022) will be governed by the regulations in force on the date on which they were entered into and their duration may not exceed six months.

How is the limit on the concatenation of temporary contracts applied after the publication of the Royal Decree-Law?

This limit will apply to employment contracts entered into after the entry into force of the Royal-Decree Law.

With respect to contracts signed previously, for the purposes of calculating the number of contracts, the period and the term, only the contract in force at the date of entry into force of the regulation will be taken into consideration.

3. Discontinuous permanent contract

One of the pillars of the labor reform is the commitment to the discontinuous permanent contract regulated in Article 16 of the WS. The most relevant aspects of the new discontinuous permanent contract are as follows:

- This type of contract may be used for the performance of work of a seasonal nature or linked to seasonal activities and for the performance of work that is not of a seasonal nature but which, being of an intermittent nature, has certain, determined or undetermined periods of performance.

- It may be used to carry out work in the context of commercial or administrative contracts which, being foreseeable, are part of the ordinary activity. In this case, periods of inactivity may only occur as waiting periods between relocations between subcontracting. The maximum period of inactivity shall be three months, unless otherwise provided for in the collective bargaining agreement. Once this period has expired, the company must proceed to adopt the appropriate temporary or definitive measures.

- A discontinuous permanent contract may be entered into between a temporary employment agency and a person hired for temporary employment.

- The discontinuous permanent contract must be formalized in writing and reflect the essential elements of the work activity (among others, the duration of the period of activity, the working hours and its hourly distribution, although the latter may be stated on an estimated basis, to be specified at the time of the call).

- Collective bargaining agreements (or company agreements) will establish the criteria to call the employee. Likewise, the legal representatives of the workers must be informed sufficiently in advance, at the beginning of the calendar year, of the forecasts of the calls.

- A collective bargaining agreement for the industry may:

    - Establish an employment pool of discontinuous permanent workers.

    - Agree to part-time contracts, when the peculiarities of the industry so justify.

    - Agree on the obligation to draw up an annual census of discontinuous permanent workers.

    - Establish a minimum call period and an end-of-call amount.

- Discontinuous permanent workers are entitled to have their length of service encompass the entire duration of the employment relationship (and not only the time actually worked), except for those conditions that require other treatment due to their nature.

- The companies must inform the discontinuous permanent workers and the workers' representatives of the existence of vacancies of a permanent-ordinary nature.

- The employees hired with this type of contract will be a priority group for access to training initiatives during periods of inactivity.

4. Subcontracting of projects and services

The new regulation amends Article 42 of the WS to emphasize that the collective bargaining agreement applicable to contractor and subcontractor companies will be that of the industry of the activity carried out in the contract or subcontract, regardless of its corporate purpose, unless there is another agreement applicable in the industry in accordance with the provisions of Title III of the WS. Also, under the terms of Article 84 of the WS, paragraphs 1 and 2, contractors may apply their own collective bargaining agreement.

5. Reduction of working hours or suspension of the contract for economic, technical, organizational and/or production grounds or due to force majeure

New provisions are introduced in Article 47 of the WS, which regulates temporary labor force adjustment plans (ERTE) for economic, technical, organizational and/or production reasons (ETOP) and due to force majeure.

Regarding ERTE ETOP:

- The consultation period shall have a maximum duration of fifteen days, except when the company has a workforce of less than fifty employees, in which case the consultation period shall not exceed seven days.

- The possibility of extending the ERTEs is provided for after a consultation period established with the legal representatives of the workers, the duration of which shall not exceed five days.

ERTE due to temporary force majeure is regulated in more detail:

- The procedure shall be initiated by means of a simultaneous request to the workers' representatives and the labor authority, the latter being responsible for verifying the existence of the temporary force majeure.

- The issuance of a mandatory report by the Labor and Social Security Inspectorate is foreseen.

- The resolution will be issued within five days of the request. If no response is issued within this period, the positive administrative silence will operate (the existence of the force majeure will be understood as accepted).

- In the event that the force majeure is still present at the end of the file period, a new verification of the existence of the force majeure must be requested.

- Temporary force majeure may be determined by impediments or limitations in the normal activity of the company resulting from decisions adopted by the competent public authority, including those aimed at the protection of public health. In these cases, the same procedure will be followed as in the case of temporary force majeure, although with some qualifications (for example, the report of the Labor and Social Security Inspectorate will not be mandatory).

- Rules common to all ERTEs are established:

    - Priority will be given to the reduction of working hours over the suspension of work contracts.

- The reduction in working hours will range from a minimum of 10% to a maximum of 70%.The company must indicate (i) the period within which the measure is to be applied; (ii) the identification of those affected; and (iii) the type of measure to be applied to each worker.

- During the application of the measure, workers may be affected or disaffected.

- For the duration of the measure, the following may not be carried out: (i) overtime, (ii) labor hiring; nor (iii) outsourcing of activity. Regarding the last prohibition of outsourcing activities, it will be allowed when the workers affected by the measure do not have sufficient training/qualification to perform the required functions.

- The contribution benefits linked to the ERTE will be conditioned to the maintenance of employment and, in some cases, to the development of training actions.

- During the application of the measures, companies may develop training actions for the affected workers with the objective of improving professional skills and their employability. The companies may be entitled to an increase of credit to finance the training actions.

6. Employment flexibility and stabilization network mechanism (the RED Mechanism)

A new figure is created, the RED Mechanism for Employment Flexibility and Stabilization (new Article 47 bis of the WS), which will allow companies to request measures for the reduction of working hours and suspension of employment contracts in certain cases and with the following specialties.

6.1 Modalities of the RED Mechanism

Two modalities are foreseen:

- **Cyclical:** When there is a general macroeconomic situation that advises the adoption of additional stabilization instruments with a maximum duration of one year.

- **Industry-related:** When permanent changes are observed in a specific industry that generate requalification and professional transition needs, with an initial maximum duration of one year and the possibility of two extensions of six months each.

6.2 Procedure

6.2.1 Activation of the RED Flexibility and Stabilization Mechanism

The RED Employment Flexibility and Stabilization Mechanism will be activated by the Council of Ministers.

In the industry-related type, the most representative trade union and business organizations at the state level may request the convening of a tripartite commission to analyze the need to activate this measure in a specific industry.

6.2.2 Application process for companies

Once the RED Mechanism has been activated, companies may request the competent labor authority to reduce the working day or suspend contracts. Simultaneously, the workers' legal representatives will be notified. In the sectorial modality, a requalification plan must be included.

The procedure will be processed in accordance with the provisions of Article 47.5 of the WS
(ERTE of force majeure), following a period of consultation in accordance with the terms regulated in article 47.3 of the WS (ERTE ETOP), with a series of particularities.

The labor authority must send the company's request to the Labor Inspectorate and request the latter a mandatory report on the fulfillment of the requirements, which will be issued within seven days from the company's notification to the labor authority.

The consultation period may end:

- With agreement: the labor authority will authorize the application of the mechanism.
- Without agreement: the labor authority will decide whether to approve or reject the request depending on whether or not the cyclical or sectorial situation exists.

The labor authority must issue a decision within seven calendar days from the conclusion of the consultation period. In the absence of an express resolution within such period, the measures will be deemed to be authorized.

6.3 Common rules applicable to the two modalities of the RED Mechanism

- Both the possibility of extension and the other measures common to all ERTEs provided for in Article 47 ET will be applicable to the two modalities of the RED Flexibility and Stabilization Mechanism.
- Affected workers will be entitled to a specific benefit from the RED Mechanism.
- A RED Fund for Employment Flexibility and Stabilization is established for the future financing needs of benefits and exemptions from social security contributions and training costs.
- During the application of the measures, companies may develop training actions for the affected workers with the objective of improving their professional skills and employability.

7. Collective bargaining agreements

In the area of collective bargaining, the following changes are noteworthy:

- Priority of application of the company collective bargaining agreement with respect to the agreements for the industry with which they compete (article 84.2 of the WS): the priority of application of the company or group of companies' collective bargaining agreement with respect to the amount of the salary is eliminated. This does not affect company agreements that are not concurrent with sectoral agreements, since they enjoy priority of application by virtue of the provisions of article 84.1 of the WS.

  The above will be applicable to those collective bargaining agreements entered into and submitted for registration or published prior to the entry into force once they lose their express validity and, at the latest, within one year from the entry into force of the regulation. The agreements must be adapted to the aforementioned amendments within six months of their application to the scope of the agreement as indicated above.

  The aforementioned modifications may not lead to the compensation, absorption or disappearance of any more beneficial rights or conditions enjoyed by the workers.

- The indefinite ultra-activity of collective bargaining agreements is restored (Article 86 of the WS): Once one year has elapsed since the termination of the agreement without an agreement having been reached, the parties will submit to the mediation procedures established in the interprofessional agreements. Likewise, and provided there is an express agreement, the parties may submit to the arbitration processes regulated by the interprofessional agreements. In the absence of an agreement, when the negotiation process has elapsed without reaching an agreement, the collective bargaining agreement will remain in force.

  Collective bargaining agreements denounced at the effective date and until a new agreement is adopted, will remain in force under the terms established in the new standard.

8. Social Security

The regulation also amends several provisions of the General Social Security Law, among which we highlight the following:

- Additional contribution rates for short-term temporary contracts (all contracts with a duration of less than 30 days) are increased.

- Specific contribution rules are established in the event of reduction of working hours and suspension of the work contract.

- The contribution rules for training contracts in alternation and the transitional contribution rules for training contracts are established.

- The list of situations in which a worker is unemployed is updated.

- A benefit is created for workers affected by the RED Mechanism for which no minimum period of prior Social Security contributions is required and its enjoyment does not imply the consumption of any contributions that may have been previously made.

- During the processing of the ERTE and the RED Mechanism, companies may voluntarily adhere to the following exemptions applicable to the company contribution for common contingencies and for joint collection concepts:

Measure implemented	Obligatory nature of the training actions?	Exemption
ERTE due to economic, technical, organization and/or productive causes.	Yes	20%
ERTE due to temporary force majeure.	No	90%
ERTE due to impairments or limitations in the normalized activity.	No	90%
Cyclical RED Mechanism	No	A progressive descending rate is applied: ▪ 60% from activation to the last day of the fourth month thereafter ▪ 30% within four months after the end of the previous period ▪ 20% within four months after the expiration of the period set forth in the preceding item
Industry-related RED Mechanism	Yes	40%

The benefit of these exemptions is conditioned to the companies that assume a commitment to maintain the employment of the affected workers for six months from the end of the measure. In the event of non-compliance, the company must return the amount of the exempted contributions corresponding to the worker with respect to whom this requirement has not been complied with. This commitment will not be understood to be unfulfilled when the employment contract is terminated due to disciplinary dismissal, resignation, death, retirement or total, absolute or severe permanent disability of the worker. Nor will it be understood to be breached by the end of the call of discontinuous permanent workers (provided that it is an interruption thereof) or by the termination of a temporary contract entered into in accordance with the requirements set forth in Article 15 of the WS.

The same shall apply in the event of non-compliance with the obligation to carry out training actions in those cases where such obligations are required.

9. New labor infringements and penalties

New infringements are included in Royal Legislative Decree 5/2000, of August 4, 2000, approving the revised text of the Law on Infringements and Penalties in the Social Order –"LISOS" for the acronym in Spanish–, regarding temporary hiring, fraudulent actions by those who implement internal flexibility measures or in the area of temporary employment agencies.

The following are some of the main updates:

Degree of infringement	New defined conducts	Is the penalty increased with respect to the previous legal regime?
Minor	▪ Failure to inform fixed-term contract, temporary and training contract workers of the existence of vacancies.	No
Serious	▪ In the case of non-compliance with the type of contract, an infringement will be considered for each employee. ▪ In labor hiring during the application of an ERTE, an infringement will be considered for each worker. Executing contracts for the provision of services for cases other than those provided for in the law on temporary employment agencies; an infringement will be considered for each worker.	Yes, sanctions may range between € 1,000 and € 10,000.
Very serious	▪ Omitting the procedures established for the implementation of an ERTE and the RED Mechanism. ▪ Establish new outsourcing activities in violation of the prohibition during the application of an ERTE.	No

10. Other relevant issues

Among others, some relevant issues also regulated by the Royal-Decree Law are the following:

- A specific regime is established for the termination of permanent contracts for reasons inherent to the employee in the construction sector.
- The processing and effects of the ERTE due to impediment or limitations to the normalized activity linked to COVID-19, regulated in article 2 of Royal Decree-Law 18/2021, are extended until February 28, 2022.
- The validity of Royal Decree 817/2021, of September 28, which sets the minimum interprofessional wage for 2021, is extended until the Royal Decree setting the minimum wage for 2022 is approved.

11. Entry into force

The regulation shall enter into force on the day following its publication, except for certain provisions which shall enter into force three months after publication:

- Training contracts.
- Temporary contracts, without prejudice to the transitory provisions.
- Modifications affecting discontinuous permanent contracts.

- Social protection measures for workers affected by the RED Mechanism.
- Contribution regulations applicable to training contracts in alternation.
- Paragraphs 2 and 3 of the sole derogatory provision, which repeals the regulations on project or service contracts and other provisions such as:
    - Article 12.3 of the WS, which provides that "a part-time contract shall be deemed to be entered into for an indefinite period of time when it is entered into to perform fixed and periodic work within the normal volume of activity of the company".
    - Paragraphs 1 and 2 of the Additional Provision 15 of the WS, on the application of the term limits of contracts for specific projects or services and the chaining of contracts in the Public Administrations.
    - Additional provision 16 of the WS regarding the application of dismissal for economic, technical, organizational and/or production reasons in the public sector.
    - Additional provision 21 of the WS on substitution of workers on leave of absence to care for family members.

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