



# labour

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**ROYAL DECREE-LAW 16/2013, OF DECEMBER 20, 2013  
ON MEASURES TO ENCOURAGE STABLE HIRING AND IMPROVE THE  
EMPLOYABILITY OF WORKERS**

This Newsletter contains a brief description of the key elements from a labor and employment law standpoint of **Royal Decree-Law 16/2013, of December 20, 2013** on measures to encourage stable hiring and improve the employability of workers, published in the Official State Gazette on December 21, 2013.

## **1. PART-TIME EMPLOYMENT CONTRACTS**

Various amendments have been made to the rules on part-time employment contracts, including most notably:

- Part-time workers can no longer do overtime, except in the scenarios set out in article 35.3 of the Workers' Statute (namely, to prevent or repair accidents or other extraordinary or urgent damage).
- It has eliminated the preference to fill a full-time job in the same professional group or equivalent category for workers who had converted their full-time contract into a part-time contract or who had worked on a part-time basis for three or more years.
- The rules on additional hours have been changed to make them more flexible; part-time working hours can be increased by a stipulated number of supplementary hours and by offering to do supplementary hours which can be accepted on a voluntary basis.
- The working hours of part-time workers must be recorded each day and a monthly total drawn up, a copy will be delivered to the worker, with their pay statement, of a summary of all the regular and supplementary hours worked each month. The employer must retain monthly summaries of working-hour records for at least four years. If the employer's record obligations are breached, the contract will be presumed to be concluded on a full-time basis, unless proven otherwise.

## **2. SHORT-TIME WORKING FOR CHILDCARE**

The ages of minors under legal guardianship for whom short-time working can be taken with a proportional reduction in salary has been increased from eight to twelve years.

### **3. DEFINITION OF GROUP OF ENTERPRISES FOR THE PURPOSES OF FINANCIAL CONTRIBUTIONS FOR LAYOFFS CONCERNING WORKERS AGED FIFTY OR OVER AT COMPANIES WITH PROFITS**

A new paragraph has been added at the end of point 1 of additional provision number sixteen of Law 27/2011, which sets out that a group of enterprises for the purposes of the financial contributions for layoffs concerning workers aged fifty or over at companies with profits, is that defined in article 42.1 of the Commercial Code, although to determine the income for the year only the income obtained in Spain by the companies in the group of enterprises will be taken.

### **4. CHANGES CONCERNING THE TRIAL PERIOD UNDER EMPLOYMENT CONTRACTS**

The trial period cannot be longer than one month for the definite-term contracts under article 15 of the Workers' Statute (contracts for a specific project or service, relief contracts and casual contracts) which cannot be for a term longer than six months, unless the applicable collective labor agreement provides otherwise.

Furthermore, the rules on the cases in which the trial period can be interrupted have been updated, by being lengthened to take in further scenarios (risk during pregnancy, risk while breastfeeding, and paternity leave) to those already in force.

Any trial periods arranged before the legislation came into force will continue to be governed by the legislation under which they were concluded.

### **5. UNEVEN DISTRIBUTION OF WORKING HOURS**

In relation to the uneven distribution of working hours, an offset of any hours by which the worked hours go above or below the maximum statutory or stipulated regular working hours can be claimed on the terms stipulated in the collective labor agreement or, if there are no provisions in this respect, subject to an agreement between the company and the workers' representatives. In the absence of any stipulation, differences must be offset within twelve months from when they take place.

### **6. WORK-EXPERIENCE EMPLOYMENT CONTRACT THROUGH TEMPORARY EMPLOYMENT AGENCIES**

Temporary employment agencies are authorized so that, in the same way they have been concluding vocational training and apprenticeship contracts, they can conclude work-experience contracts to supply workers to the user companies.

The new royal decree has extended the reduced social security contributions for changing work-experience contracts into indefinite-term contracts at user companies which, uninterruptedly, conclude an indefinite-term contract with workers on work experience placements supplied by a temporary employment agency.

## 7. CHANGES CONCERNING SOCIAL SECURITY

### 7.1 Items computable in the social security contribution base

An amendment has been made to article 109 of the General Social Security Law setting out the items, in cash and in kind, that must be included in the contribution base.

The amendments concerning the items not to be included in the contribution bases (point 2) affect the following:

- New wording has been brought into effect in relation to transportation expenses, and accommodation and living expenses.

Thus, under article 2.a), allowances for transportation expenses for employees traveling away from their customary workplace to perform their work somewhere else and using public transport do not have to be included in the contribution base, where the expenses are supported with an invoice or equivalent document.

The (new) letter b) determines that the allowances for transportation expenses for employees traveling away from their customary workplace to perform their work somewhere else that do not fall under letter a) do not have to be included either, or those for normal living and accommodation expenses incurred in a municipality other than that of the recipient's customary place of work or residence, in the amount and within the scope set out in the central government personal income tax legislation.

- Subarticle 2.d) (formerly 2.c) determines that the following do not have to be included in the contribution base: social security benefits, additional temporary incapacity benefits granted by companies and allowances given by companies to pay for the costs of studies to update or retrain the staff working for them, or provide them with skills, or where those studies are required for the performance of their activities or the characteristics of their jobs.

Employers are also required to notify the Social Security General Treasury in each settlement period of the amount of all the pay items satisfied to their workers, regardless of whether or not they are included in the social security contribution base and even if single bases apply.

### 7.2 Other changes concerning social security

- The contribution rate set for 2014 in respect of the contingency of unemployment for definite-term part-time contracts will be reduced by one percent. As a result, the contribution rate will be 8.30 percent, of which 6.70 percent will be payable by the employer and 1.60 percent, by the employee.
- Amount of the minimum contribution base for certain self-employed workers. Any workers included in the special system for the self-employed or independent contractors who at any time in each business year have hired and working for them simultaneously a number of employed workers equal to or higher than ten, the

minimum contribution base for the following year will be equal to the contribution base for the employed workers falling within contribution group 1 under the general social security system.

This base will also apply to independent contractors pursuant to additional provision 27 of the General Social Security Law and article 21.3 of the Law on Worker-Owned Companies, with the exception of any that are registered for the first time in that system in the first 12 months of their activities, reckoned from the effective date of that registration.

- Point three of additional provision number seven of the General Social Security Law governing the contributions in respect of overtime for part-time contracts has been expressly repealed.

### 8. OTHER RELEVANT CHANGES

- Incentives: the government will embark on a reorganization of the legislation on incentives for hiring in relation to social security contributions, to which end it will include the reductions to social security contributions in force in one provision and harmonize the requirements and obligation set out in the primary and secondary legislation.
- The new royal decree specifies what “sector of activity” means for the purposes of concluding a part-time contract linked to training to be able to receive incentives for this type of contract. Specifically, “sector of activity” will mean that identified as a Class with a code of four numbers in the Annex to Royal Decree 475/2007, of April 13, 2007 approving the 2009 National Classification of Economic Activities (CNAE-2009), pursuant to article 3.d).
- Vocational training and apprenticeship contracts: The time period for concluding vocational training and apprenticeship contracts not related to professional standard certificates or vocational training qualifications has been extended until December 31, 2014. The training activity forming an inherent part of these contracts must have the guidance minimum contents determined in the file of special training contents .
- Contract to support entrepreneurs: The new royal decree sets out the option to conclude a part-time indefinite-term employment contract to support entrepreneurs and that this contract can give entitlement to the incentives for hiring and to the reductions in social security contributions applicable to this type of contract which, for part-time contracts, will be available in a proportional amount relative to the stipulated working hours.

### 9. CORPORATE INCOME TAX AMENDMENTS

The TRLIS (revised Corporate Income Tax Law, approved by Legislative Royal Decree 4/2004, of March 5, 2004), sets out, in article 43, various tax credits for the creation of employment. Their characteristics are as follows:

- Any entities hiring their first worker (aged under 30) under an indefinite-term employment contract to support entrepreneurs, will be entitled to a tax credit, amounting to 3,000 euros, deductible from their gross tax liability.
- In the case of employment contracts concluded with the unemployed receiving contributory unemployment benefit, which must also be indefinite-term contracts to support entrepreneurs, the tax credit (subject to certain requirements) will amount to 50% of the lower of (i) the amount of the unemployment benefit that the employee has left to receive at the time of the contract, and (ii) the amount relating to twelve months of the unemployment benefit the employee is entitled to receive.

Royal Decree-Law 16/2013 broadens the eligibility requirements for these tax credits to take in part-time indefinite-term employment contracts to support entrepreneurs, by determining that the incentives to which they will be entitled in those cases will be in an amount proportional to the working hours stipulated in the contract.

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