



labour

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ROYAL DECREE 1484/2012, OF OCTOBER 29, 2012, ON THE FINANCIAL CONTRIBUTIONS TO BE MADE BY ENTERPRISES IN PROFIT CARRYING OUT COLLECTIVE LAYOFFS AFFECTING WORKERS AGED FIFTY OR OVER

This legislation update offers a brief summary of the key components of **Royal Decree 1484/2012, of October 29, 2012, on the financial contributions to be made by companies in profit performing collective layoffs affecting workers aged fifty or over**, published in the Official State Gazette on October 30, 2012.

The royal decree sets out the procedure for making contributions to the Public Treasury by enterprises carrying out collective layoffs affecting workers aged fifty or over, subject to certain requirements (which are described below) in implementation of additional provision no. 16 of Law 27/2011, of August 1, 2011, on the updating, adapting and modernization of the social security system.

1. SCOPE OF APPLICATION

The provisions of the royal decree apply to the following cases:

- (i) Enterprises carrying out **collective layoffs** in line with the provisions of article 51 of the Workers' Statute and meeting the following requirements:
 - They must have more than one hundred workers or form part of groups of enterprises employing that number of workers.
 - The collective layoff must affect workers aged fifty or over (and it sets out the methods for determining the date to be taken into account to calculate that age).
 - Even if economic, technical, organizational or production-related grounds have arisen, the enterprises or groups of enterprises to which they belong must have obtained profits in the two fiscal years before the year in which the collective layoff procedure is commenced. An enterprise is deemed to have had profits where it has had positive earnings in the fiscal year per the standard income statements prepared under Royal Decree 1514/2007, of November 16, 2007, approving the Spanish National Chart of Accounts.
- (ii) Enterprises that have implemented **temporary layoff measures** under article 47 of the Workers' Statute (interruptions of contracts or short-time working on economic, technical, organizational or production-related grounds or deriving from

force majeure events) **affecting workers aged fifty or over prior to the termination of those workers' employment contracts, regardless of the ground for the termination**, provided not more than one year has elapsed between the date when they stopped being legally unemployed and the termination date of their employment contracts. For the purposes of this specific provision, workers aged fifty or over will be those who have reached or reach that age within the period envisaged for implementing the temporary layoff measures.

2. CONTRIBUTION AMOUNT

2.1 Items for determining the contribution amount

The financial contribution to the Public Treasury will be calculated by reference to:

- (i) The gross amount of the **unemployment benefits and subsidies** of the workers aged fifty or over affected by the collective layoff, **including the social security contributions** made by the Central Government Public Employment Service.
- (ii) The amounts paid by the Central Government Public Employment Service in respect of the above items for workers aged fifty or over whose contracts have been terminated on the initiative of the enterprise or enterprises from the same group, on grounds not attributable to any individual worker, other than the termination of temporary contracts on the expiry of their term, where the contract terminations have taken place in the three years before or after the commencement of the collective layoff procedure.

The enterprise concerned can apply to have excluded from the calculation of the financial contribution, the unemployment benefits or subsidies of any affected workers who have been redeployed at the same enterprise or at another enterprise in the same group, or any other enterprise, within the six months following the termination, provided the new employment contract (i) is of the same type and has an equivalent number of working hours as the terminated contract and (ii) is for at least a three-year term (unless terminated on the ground of justified disciplinary dismissal, resignation, death, retirement or total, permanent or absolute disability or comprehensive disability).

The application procedure for excluding these items is defined in article 6 of the royal decree, and involves evidencing that the requirements have been met within a fifteen-day period starting from the proposed assessment by the Central Government Public Employment Service, and in the submissions stage in the procedure.

2.2 Calculating the contribution amount

The contribution will be calculated annually, as a percentage of certain items, which are summarized below:

- (i) The percentages are set out in a scale in section 4 of additional provision no. 16 of Law 27/2011, as follows:

NO. AFFECTED WORKERS AGED 50 OR OVER AS A PERCENTAGE OF THE TOTAL NUMBER OF WORKERS LAID OFF	PROFITS AS A PERCENTAGE OF REVENUES	NUMBER OF WORKERS AT THE ENTERPRISE		
		More than 2,000	Between 1,000 and 2,000	Between 101 and 999
More than 35%	More than 10%	100%	95%	90%
	Less than 10%	95%	90%	85%
Between 15% and 35%	More than 10%	95%	90%	85%
	Less than 10%	90%	85%	80%
Less than 15%	More than 10%	75%	70%	65%
	Less than 10%	70%	65%	60%

The percentage must be determined using the following rules:

- The number of affected workers aged fifty or over as a percentage of the total number of workers under the collective layoff will be calculated on a year-by-year basis, within the period envisaged for the performance of the layoffs featuring in the notification of the enterprise’s decision to the labor authority, by reference to the total number of employees in both groups that have been dismissed in a collective layoff, until the year in which the calculation is made.

Where there are workers aged fifty or over affected by temporary layoff measures who have had their contracts terminated on any ground before one year has elapsed from the date on which they stopped being legally unemployed, those workers will be included in the calculation of the above percentage.

- The profits of the enterprise or group of enterprises will be calculated by reference to the percentage that median earnings for each fiscal year bear to the revenues from continuing and uninterrupted operations, in the two fiscal years immediately before the year in which the employer notifies the labor authority of the commencement of the consultation period.

- The number of workers at the enterprise or group (working full or part time) will be calculated by reference to the employees registered at the enterprise or group on the date on which the labor authority is notified of the commencement of the consultation period.
- (ii) Items to which the percentage is to be applied.
- The total amount effectively paid by the Central Government Public Employment Service in respect of the contributory unemployment benefit of workers aged fifty or over affected by the collective layoff and contract terminations on grounds not attributable to any individual worker, other than the termination of temporary contracts on the expiry of their term, where the contract terminations have taken place in the three years before or after the commencement of the collective layoff, generated in whole or in part by the contributions evidenced at the enterprise instituting the dismissals.
 - The total amount effectively paid by the Central Government Public Employment Service in respect of social security contributions for the above workers.
 - A set fee for each worker defined above who has used up their unemployment benefit and has begun to receive the subsidy available after entitlement to unemployment benefit has been used up, or that established in article 215.1.3 of the General Social Security Law (for those aged over fifty-five).
 - A set fee for each worker directly accessing the unemployment subsidy, as a result of the collective layoff or contract termination on grounds not attributable to the worker concerned other than the termination of temporary contracts on the expiry of their term, where the contract termination has taken place in the three years before or after the commencement of the collective layoff.

In the event of the termination of employment contracts following the adoption of temporary layoff measures, the rules on reinstatement of the contributory unemployment benefit period will also be taken into account. Where workers reach the age of fifty during the temporary layoff, only the amounts for the period following the date on which they reach that age will be taken into account.

3. ASSESSMENT AND PAYMENT OF THE CONTRIBUTIONS

3.1 The information to be sent by the labor authority to the Central Government Public Employment Service

The labor authority receiving notification from an enterprise of a decision to carry out a collective layoff in which the above requirements are met will send a certificate to the Central Government Public Employment Service, evidencing:

- The number of workers registered at the enterprise or group of enterprises.
- The number of workers affected by the collective layoff and a list of the employment contracts terminated during the three years immediately before the notification date of the commencement of the consultation period on the initiative of the enterprise or enterprises from the same group, on grounds not attributable to the individual worker other than the termination of a temporary contract on the expiry of its term, unless those contracts are terminated before April 27, 2011.
- The percentage median profits at the enterprise or group of companies to which it belongs bear to revenues in the previous two fiscal years.

The Central Government Public Employment Service may institute the procedure even if the labor authority has not issued the certificate mentioned above.

3.2 Assessment procedure

Each year, the Central Government Public Employment Service will send to the enterprises included in the scope of application of the royal decree a proposed assessment, which will include, among other information, the total amount of the debt to be paid into the Public Treasury.

Enterprises may file submissions against the proposed assessment within fifteen days, attaching any proof they may deem necessary and providing evidence of any redeployed workers.

On completion of the fifteen-day period, the Director-General of the Central Government Public Employment Service will issue an assessment ruling.

Enterprises must pay over to the Public Treasury the amount determined for the contributions in each of the annual rulings within 30 days of the date of the notification of the ruling.

4. OTHER PROVISIONS OF INTEREST

- **Definitive closure of operations:** Where the collective layoff entails the complete closure of the enterprise's operations in Spain, the competent body may adopt injunctive relief in order to secure payment of the debt.
- **Business succession:** In cases of business succession, the new employer will be subrogated to the obligations deriving from payment of the financial contribution.

5. ENTRY INTO FORCE AND TRANSITIONAL RULES

The royal decree entered into force on October 31, 2012. It will, however, apply to any workers affected by collective layoff procedures initiated on or after April 27, 2011.

The amount of the financial contributions to be made by enterprises for collective layoffs initiated on or after April 27, 2011 and before the entry into force of Law 27/2011, of August 1, 2011 will be determined, subject to the limits and requirements set forth in the wording of additional provision no. 16 of this royal decree, by reference to the date of commencement of the collective layoff, and that amount may not include any sum relating to the unemployment benefit or subsidies of workers aged fifty or over who have been laid off by the enterprises that were required to pay that amount before April 27, 2011.

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