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ROYAL DECREE-LAW 3/2012, OF FEBRUARY 10, 2012, ON URGENT MEASURES TO REFORM THE LABOR MARKET

This labor and employment law update summarizes the key aspects of **Royal Decree-Law 3/2012, of February 10, 2012, on urgent measures to reform the labor market**, which entered into force on February 12, 2012.

1. SUBJECT MATTER AND PURPOSE OF THE LAW

The aim of the Royal Decree-Law is to put in place a clear labor and employment law framework that will contribute to more efficient management of employment relationships, lead to the creation of jobs and stable employment, and is based, essentially, on the following core principles:

- Measures to enhance the efficiency of the job market and cut down on the two-tier system (between insiders who have indefinite term contracts and outsiders who do not).
- Measures to promote internal flexibility at companies as an alternative to destroying jobs.
- Encouraging employers to use indefinite-term contracts and other measures to help create jobs.
- Measures to boost the employability of workers.

2. MEASURES TO ENHANCE THE EFFICIENCY OF THE JOB MARKET AND CUT DOWN ON THE TWO-TIER SYSTEM

2.1 New rules on collective layoff procedures

2.1.1 General provisions

The new decree sets out an array of major amendments to the rules on collective layoffs, in terms of the enabling reason. Chief among these amendments is the disappearance of the need for prior authorization from the government authorities.

Moreover, within a month the government is set to approve a royal decree containing the regulations on collective dismissal procedures, temporary interruptions in employment contracts and short-time working, to implement the provisions of this decree, with a particular emphasis on the consultation period, the information to be provided to workers' representatives during that period and the activities of the labor authorities to oversee its effectiveness, as well as the outplacement schemes and collective layoff packages to be adopted by the employer.

The key new provisions and points of interest concerning the legal grounds are following:

- Economic grounds include cases where it may be inferred from a company's earnings that it is in an adverse economic situation, in cases such as the existence of current or expected losses, or a persistent decline in its level of revenues or sales (this reference to sales is new). It has been provided that a decline will be deemed persistent in all cases where it takes place over three consecutive quarters as an objective parameter to determine the existence of this ground.

- Technical grounds include cases where changes occur within the scope of the means or instruments of production.

- Organizational grounds include cases where changes occur within the scope of the working systems or methods of personnel or how production is organized.

- Production-related grounds include cases where changes occur to the demand for the products or services the company is looking to place on the market.

The definition of the above grounds applies equally to individual dismissals on objective grounds. All references to the reasonable nature of the measure have been removed from the law.

The most prominent changes concerning the legal procedure are:

- The consultation periods remain unchanged with respect to the previous legislation (15 days at companies with less than 50 employees and 30 days at all other companies), and the matters dealt with in those consultation periods must cover, at least, the possible ways to avoid or reduce collective dismissals and to soften their impact by putting in place employee assistance initiatives, such as outplacement, training and retraining plans to enhance employability.

- The commencement of the consultation period must be notified in a document sent to the workers' legal representatives, with a copy provided to the labor authorities. This document must set out the following information: (i) the grounds for dismissal, (ii) the number and professional classification of the workers affected, (iii) the number and professional

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classification of the workers habitually employed over the last year, (iv) the period in which the dismissals are to be carried out, and (v) the basis on which the affected persons were selected. A report explaining the grounds for the collective layoff must be attached to the notification.

- Alongside the priority already granted to the workers' representatives, priority for staying at the company may be established in collective labor agreements or agreements reached during the consultation period for other groups, such as workers with dependent relatives, persons of a certain age and disabled persons.

- On receipt of the notification, the labor authority will inform the authorized agency for unemployment benefits and must obtain a mandatory report from the labor and social security inspection authorities, to be issued within a non-extendable period of 15 days.

- Employers must inform the labor authorities of the outcome on completion of the consultation period: (i) by sending a complete copy of the agreement, if one has been reached, and (ii) in the absence of agreement, by sending the workers' representatives and the labor authorities the final collective dismissal decision adopted and its terms and conditions.

- After notifying the decision to the workers' representatives, the employer will individually notify the workers concerned of the dismissals in line with the requirements for individual objective dismissals. At least 30 days must elapse between the date on which the opening of the consultation period is notified to the authorities and the effective dismissal date.

Any company carrying out a collective layoff that affects more than fifty workers must offer the workers concerned an outplacement plan at an authorized outplacement companies spanning a period of at least six months, including professional guidance and training measures, personalized attention and an active job search. This provision will not apply to companies under insolvency proceedings.

If their employers fail to comply with the above obligation or the employee assistance measures they have assumed, employees will be able to claim compliance, and very serious infringements can be levied under the new article 8.14 of the Labor and Social Security Infringements and Penalties Law.

2.1.2 Provisions on the public sector

For the purposes of dismissals on economic, technical, organizational or production-related grounds in a public sector context, economic grounds will be deemed to exist where there is a persistent unanticipated shortfall in budgetary funding for the public services concerned. A shortfall in budgetary funding will be deemed to exist where it occurs over three consecutive quarters.

Elsewhere, technical grounds will include changes in the area of the means and instruments for the provision of the public service concerned, while organizational grounds will include changes to the working methods and systems of the personnel assigned to the public service.

2.1.3 Special procedure for challenging collective dismissals

In tune keeping with the new wording of article 51 of the Workers' Statute, a new procedure has been put in place to challenge collective dismissals, which is provided for in article 124 of the Law Regulating the Labor Jurisdiction, and applies to collective layoffs commenced after the entry into force of the decree. This procedure's key components are detailed below:

- The company's decision may be challenged by the workers' legal or labor union representatives on the following grounds: (i) the legal ground provided in the written notification does not exist, (ii) the company has not observed the provisions in the Workers' Statute on the consultation period and force majeure, (articles 51.2 and 51.7), or (iii) there was fraud, willful misconduct, coercion or an improper use of the law in the adoption of the termination decision.

- To file a complaint, it will not be necessary to have first carried out any of the procedures to avoid the process (conciliation, mediation, prior claim, etc), and the complaint must be lodged within the twenty-day nontollable time period from the notification to the workers' representatives of the collective layoff decision adopted by the employer on completion of the consultation period. For these purposes, the days in August will be treated as working days.

- This process will be of an urgent nature. These matters must take absolute priority over any others, except for the safeguarding of fundamental rights and public freedoms. Indeed, employers will have only five days to submit (preferably in an electronic format) the documentation and minutes of the consultation period and the notification to the labor authorities of the outcome of the period, as well as to notify any workers that may be affected of the existence of the process, so that they may inform the court within fifteen days of the address where the judgment is to be notified. Once ten working days have elapsed from the time limit for filing a complaint, the court clerk will summon the parties to the hearing, which must take place at the specified time within the following 15 days.

A ruling will be handed down, holding the dismissal decision:

- To be lawful: where the employer, having observed the provisions of articles 51.2 or 51.7 of the Workers' Statute, evidences the existence of the legal ground.

- To be null and void: where the provisions of articles 51.2 or 51.7 of the Workers' Statute have not been observed, or where court authorization has not been obtained from the insolvency judge where required by law, as

well as where the company decision has been taken in breach of fundamental rights or freedoms, or with fraud, willful misconduct, coercion or improper use of the law.

- To be unlawful: where the employer has failed to evidence the existence of the legal ground provided in the layoff notification.

Where the purpose of the process is an individual challenge to the termination of an employment contract at the labor courts, the procedure envisaged for terminations on objective grounds will be applied, with certain specific differences. If, after an individual procedure has been commenced, a complaint is filed by the workers' representatives; the first procedure will be put on hold until this second complaint has been resolved.

2.1.4 Collective layoffs at companies with profits affecting employees aged 50 or over

Any companies having an obligation to make financial contributions to the Public Treasury (under additional provision no. 16 of Law 27/2011, of August 1, 2011 on the updating, adaptation and modernization of the social security system) that have performed collective layoffs already authorized by the labor authorities prior to the entry into force of the decree, need only make those financial contributions where the decisions authorizing the terminations affect, at least, 100 workers.

The new decree has also amended the wording of the above additional provision on the following terms:

- Any companies carrying out collective dismissals that include workers aged 50 or over must make a financial contribution to the Public Treasury, where: (i) the dismissals are carried out by companies with 500 workers or more or companies belonging to groups employing that number of workers, (ii) they affect workers aged 50 or over (no minimum number of affected workers is required) and (iii) even if the economic, technical, organizational and production-related grounds enabling the dismissal prevail, the company or group of companies to which it belongs has posted profits in the two fiscal years immediately before the year in which the employer commences the collective layoff procedure.

- The financial contribution will be calculated by reference to the amount paid to the employees in unemployment benefit and subsidies, including the contributions made by the Public Employment Service.

  Also included for the purposes of calculating the financial contributions will be any amounts contributed by the Public Employment Service in respect of unemployment benefit and subsidies for workers aged 50 or over whose contracts were terminated by the company or companies in the same group, for reasons not related to the individual workers themselves (other

than termination of a temporary contract), where the terminations took place in the three years before or after the commencement of the collective layoff.

Where the company concerned so requests, the amounts of any unemployment benefits or subsidies for any affected workers aged 50 or over who have been reemployed in the following six months will be excluded.

- The amount of contributions will be determined each year by applying the rate established in the following table to each of the items detailed below:

WORKERS AGED 50 OR OVER AS A PERCENTAGE OF THE TOTAL NUMBER OF DISMISSED WORKERS	PROFITS AS A PERCENTAGE OF REVENUES	NUMBER OF WORKERS AT THE COMPANY		
		More than 2,000	Between 1,000 and 2,000	Between 501 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 whole amount actually paid out in respect of contributory unemployment benefits of which all or part came out of the contributions reported at the company performing the dismissal.

- The whole amount actually paid out in respect of social security contributions during the period in which those contributions were received.

- A fixed charge for each worker who has used up their contributory unemployment benefit and has begun receiving the subsidy available after it has been used up or the subsidy for workers aged over 52, calculated by adding up, over a six-year period, the total annual cost of the unemployment subsidy and the annual cost of the contribution in respect of retirement by the management agency authorized by the social security authorities in the year in which the benefit is used up. The fixed charge will also be paid for each worker qualifying directly for the unemployment subsidy.

- Where the collective layoff implies that the company will stop its activities in Spain completely, injunctive remedies may be adopted in order to ensure payment of the financial contribution, even where this amount has not been quantified and assessed beforehand.

2.1.5 Transitional rules

Any collective procedures for terminations or temporary interruptions of employment contracts or short-time working, which are in progress on the entry into force of the decree, will be governed by the legislation in force on the date on which they were commenced.

Similarly, any collective procedures on which the labor authorities have rendered a decision and are being implemented on the date on which the decree comes into force will be governed by the legislation in force on the date on which the decision on the procedure was rendered.

2.2 New provisions regarding individual dismissals

The new decree contains new provisions on unjustified dismissals. In these cases companies must choose, within five days from the notification of the judgment, either to:

- Reinstate the worker, in which case the worker will be entitled to pay arrears, or
- Pay severance equal to thirty-three days' salary per year of service, plus the pro rata share by months for fractions of a year, subject to a cap of twenty-four months' salary (the previous severance payment was 45 days' salary per year of service subject to a cap of 42 months' salary). The decree expressly states that payment of severance will give rise to the termination of the employment contract, which will be deemed to have taken place on the date the employee actually stops working. The new decree does not provide for any pay arrears in the event of opting for severance, except in the case of workers' representatives and union delegates.

The severance payments for dismissal referred to above will apply to contracts entered into after the entry into force of the legislation. For earlier contracts severance will be calculated at 45 days' salary per year of service for the time worked up until the above date of entry into force, and at 33 days' salary per year of service for time worked after that date. The resulting severance cannot exceed 720 days' pay, unless the calculation of the severance for the period prior to the entry into force of the decree already resulted in a higher figure, in which case that amount will be taken as the maximum amount of severance, which cannot under any circumstance exceed 42 months' salary.

Contracts to promote hiring for an indefinite period will continue to be governed by the legislation under which they were created, although any severance for unjustified dismissal will be calculated in line with the preceding paragraph in the event of disciplinary dismissal.

2.3 Other changes regarding dismissal on objective grounds

The decree also amends two of the reasons for termination in individual dismissals on objective grounds:

- In order to terminate an employment contract on the ground of non adaptation to the modifications to the jobs, employers must first offer workers the training to adapt to them. While the contract will be temporarily interrupted during the training, the worker will still be paid their average salary. Termination cannot be agreed on until after the end of at least two months since the modification was made or the training was completed.

- Terminations based on failure to attend work are no longer linked to the overall absenteeism rate at the workplace, but based only on the employee's absences.

2.4 Shortening of the temporary disapplication of the restriction on back to back temporary contracts

The temporary disapplication of Article 15.5 of the Workers' Statute, under which any workers hired for more than twenty-four months within thirty months, whether uninterruptedly or otherwise, for the same or a different job with the same company or group of companies, under two or more temporary employment contracts, directly or via temporary employment agencies, acquire indefinite status, is now in effect only until December 31, 2012 (it was originally determined to last until August 31, 2013).

2.5 Wage guarantee fund (FOGASA)

Article 33.8 of the Workers' Statute has been amended in relation to the payment out of the wage guarantee fund of part of the severance at companies with less than 25 workers.

From now on, the wage guarantee fund will be used to indemnify companies with less than 25 workers in an amount equal to eight days' salary per year of service, plus the pro rata share by months for fractions of a year, in the event of terminations under collective layoffs, under insolvency proceedings or on any objective grounds for dismissal (this was previously restricted only to dismissals on objective grounds under article 52.c of the Workers' Statute, i.e., those performed for economic, technical, organization and production-related reasons). It has also been clarified that no indemnification will be paid in cases of unjustified dismissal.

3. MEASURES TO PROMOTE INTERNAL FLEXIBILITY AT COMPANIES AS AN ALTERNATIVE TO DESTROYING JOBS

3.1 Professional classification and functional mobility

Professional categories have disappeared from the professional classification system, and now the only point of reference is the professional group. The collective labor agreements in force must bring their professional classification system into line with the new legal framework before one year is out.

Workers must be assigned to a professional group and the contents of the employee's work under the employment contract must be determined as the performance of all or some of the duties relating to the group. Where it is agreed that the employee is to carry out duties relating to more than one group (functional polyvalence), the employee's professional group will be determined according to the duties on which the most time is spent.

Functional mobility will be based on the academic or professional qualifications required to perform the job and, in keeping with the new provisions governing professional classification, reference is no longer made to categories.

It will now only be possible to move employees to other jobs to perform higher or lower duties not belonging to their professional group, where there are also technical or organizational grounds for moving employees, and they can only be moved for the amount of time absolutely necessary. Employers must notify the workers' representatives of their decision and the reasons behind it.

3.2 Material modifications to working conditions

The key new provisions relating material modifications to working conditions are as follows:

- Economic, technical, organizational and production-related grounds are deemed to be those relating to the competitiveness, productivity or organization of technical or work-related matters at the company. Before, the law stated that "*the adoption of the proposed measures must contribute to preventing declining performance at the company or to improving its situation or prospects through a more appropriate organization of its resources, which will enhance its competitive position on the market, or a better response to demand requirements.*"

- The new decree specifically refers to both the compensation system and the possibility of changing the "salary amount".

- Material modifications to working conditions may affect the conditions recognized for workers not only under a collective agreement or covenant or in a unilateral decision by the employer, but also under an employment contract.

- A modification will be deemed to be individual if it does not meet the thresholds for collective modifications within the specified period. In cases of individual material modifications, the decision must be notified by the employer fifteen days in advance (formerly, 30 days).

- The number of cases in which a worker may terminate a contract with severance has been expanded. Under the new wording, terminations on these terms can be carried out in all of the circumstances referred to in article 41.1 of the Workers' Statute, except for modifications to the working system and performance.

- It is still possible to delegate representative authority to a committee of three members appointed, in line with the number of workers they represent, by the industry's most representative labor unions.

- Any decision on a collective modification to working conditions must be notified by employers to workers on completion of the consultation period without an agreement and will enter into force within the seven days following the notification. Previously, this period was 30 days.

- The circumstances in which working conditions may be modified under a collective labor agreement will be governed by article 82.3 of the Workers' Statute (opt-out of employment conditions), containing the key provisions described below.

Lastly, there has been a rewording of article 50 of the Workers' Statute, relating to termination of contract at the will of the employee where material modifications are made in breach of article 41 of the Workers' Statute and which prove detrimental to the dignity of the worker (the legislation previously referred to the modification proving detrimental to professional training as a ground).

3.3 Opting out of the collective labor agreement conditions

The new article 82.3 of the Workers' Statute allows companies to opt out of industry-wide or company-specific collective labor agreement conditions where economic, technical, organization or production-related grounds arise, by agreement between the company and the workers' representatives, following the implementation of a consultation period in line with the provisions governing material modifications.

The conditions companies can opt out of are: (i) working hours, (ii) timetable and distribution of working time, (iii) the shift work system, (iv) the compensation system and salary amount, (v) the working and performance system, (vi) any duties falling outside the limits under article 39 of the Workers' Statute, and (vii) voluntary improvements to social security benefits and services.

The statutory grounds allowing companies to opt out will be deemed to have arisen where there are:

- Economic grounds: where a company's earnings show an adverse economic situation, in cases such as the existence of current or expected losses, or a persistent decline in its level of revenue or sales. A decline will be deemed persistent in all cases where it takes place over two consecutive quarters.

- Technical grounds: including changes occurred within the scope of the means or instruments of production.

- Organizational grounds: including changes occurred within the scope of the working systems and methods of personnel or how production is organized.

- Production-related grounds: including changes occurred to the demand for the products or services the company is looking to place on the market.

The agreement must specifically identify the new working conditions that apply at the company and their duration, which may not go beyond the date on which a new collective labor agreement starts to apply at the company and must be notified to the joint employer/employee collective labor agreement committee and the labor authorities.

In the event of disagreement during the negotiations, mechanisms have been put in place to submit the disagreement to the joint employer/employee committee or, where it fails to reach an agreement, to apply the procedures provided for in the central government or autonomous community inter-professional agreements in order to effectively resolve any discrepancies arising from the negotiation. Lastly, where the consultation period concludes without agreement and the parties have not used the above procedures, or those procedures have failed to resolve the discrepancy, any of the parties may submit the discrepancies for resolution by the National Collective Labor Agreement Consultative Committee (where there are workplaces in more than one autonomous community), or the relevant autonomous community agencies in other cases.

3.4 Collective bargaining

3.4.1 Concurrent agreements

The principle that a collective labor agreement cannot be affected during its term by agreements with a different scope of application remains in force, albeit subject to provisions on the overriding force of the company agreement.

In this respect, it has been determined that the conditions in a company agreement will take precedence over any central government or autonomous community or agreements with a smaller scope, on the following matters:

- The amount of the base salary and salary supplements, including any relating to the company's situation and earnings.
- The payment of compensation for overtime and the specific compensation for shift work.
- The timetable and the distribution of working hours, the shift work system and the annual vacation planning.
- Adapting the company to the professional classification system for employees.
- Adapting aspects relating to contract types that are attributed to company agreements.
- Measures to reconcile work and family life.
- Any others that may be provided for in collective labor agreements.

3.4.2 Term of the collective labor agreements

A new provision has been added to the effect that, during the term of a collective labor agreement, authorized parties may negotiate its review. Similarly, it has been laid down that if, after the end of two years following the notice of termination of an agreement, no new agreement has been decided upon or an arbitral award has not been handed down, the original agreement will cease (unless agreed otherwise) to be valid and a collective labor agreement with a wider scope will be applied. Previously, in the absence of an agreement, the original agreement remained in force.

For notices of termination of collective labor agreements that have already been issued on the date on which the decree entered into force, the two-year period will run from the date of entry into force of the decree.

3.4.3 Commencement of collective labor agreement negotiations

The negotiating committee must be set up within a month from the receipt of the notification of commencement of negotiations. The party receiving the notification must reply to the negotiation proposal and the two parties must put in place a negotiation schedule or plan.

3.4.4 Minimum contents of collective labor agreements

The list of matters forming the minimum contents of collective labor agreements has been amended, to restrict them to: (i) identification of the parties that negotiated the agreement, (ii) the scope of the agreement in terms of personnel, functions, territory and time, (iii) the procedures to effectively resolve any discrepancies that may arise over an opt-out from working conditions, adapting, where applicable, the procedures to the central government or autonomous community inter-professional agreements according to the provisions of the relevant articles, (iv) the form and conditions for serving notice of termination of a collective labor agreement, as well as the latest date for such a notice before the termination of an agreement's term, and (v) the appointment of a joint employer/employee committee and the establishment of procedures and deadlines, including an agreement to submit any discrepancies arising within the committee to the out of court dispute resolution systems established in the central government or autonomous community inter-professional agreements.

3.5 Temporary interruptions of contracts or short-time working on economic, technical, organization or production-related grounds

3.5.1 New provisions

The procedure for temporary interruptions of contracts or short-time working approved by the new decree, which can be used regardless of the number of workers at the company or the number of persons affected, essentially consists of:

- A notification to the labor authorities and the simultaneous commencement of a consultation period with the workers' legal representatives lasting not more than fifteen days. The labor authority will inform the authorized agency for unemployment benefits of this circumstance and must obtain a mandatory report from the labor and social security inspection authorities, to be issued within a non-extendable period of 15 days.

- At the end of the consultation period, employers must notify the workers and the labor authorities of their decision on the temporary interruption (this was previously subject to a decision by the labor authorities).

- All references to the reasonable nature of the measure and a solution to the temporary circumstances have been eliminated.

- Where the consultation period ends with an agreement, it will be presumed that the justifying grounds are present and may only be challenged on grounds of fraud, willful misconduct, coercion or an improper use of law in concluding the agreement. The agreement may also be challenged by the labor authorities at the request of the authorized agency for unemployment benefits on the ground of benefits received incorrectly.

- These mechanisms for temporary interruptions of contracts will not apply to the public authorities or the public law entities related to or dependant on them or other public bodies, except for those that finance themselves mainly out of revenues obtained in exchange for transactions performed on the market.

- Any company decisions relating to temporary interruptions of employment contracts or short-time working on economic, technical, organizational or production-related grounds or by reason of force majeure may be challenged at the labor courts under the process envisaged for challenging decisions on geographic mobility or material modifications to working conditions. Where a number of workers equal to or greater than the thresholds established for collective dismissals is affected, they will be handled under the collective dispute procedure, notwithstanding the possibility of individual claims. The company's decision will be rendered null and void, among other reasons, where the provisions on the consultation period were avoided.

3.5.2 Reductions to employer social security contributions in cases of temporary interruptions of contracts or short-time working

Companies will be entitled to a 50% reduction in employer social security contributions for common contingencies to be made for as long as the work is interrupted, which cannot under any circumstance exceed 240 days per worker. These reductions will apply to any applications for collective layoff procedures submitted between January 1, 2012 and December 31, 2013.

A condition for these reductions is that the workers remain in employment for at least one year after the temporary interruption or short-time working arrangement has ended. If this requirement is not observed, the reductions must be returned, and any associated penalties paid, although the company will not be considered to have failed to meet the requirement in the event of a disciplinary dismissal held to be justified, resignation, death, retirement or total or absolute permanent or severe disability.

Any companies that have terminated or terminate contracts in unjustified or collective dismissals and have taken reduced social security contributions for those contracts will be unable to take reductions from social security contributions for a twelve-month period. This restriction applies to a number of contracts equal to the number of contracts terminated and will be calculated from the date on which the dismissal was acknowledged or held to be unjustified or from the date of termination of the employment contracts under a collective layoff procedure.

The law must also be read in conjunction with certain provisions on the requirements and exclusions under Law 43/2006 to create growth and employment.

3.5.3 Reinstatement of the right to unemployment benefit

The option to reinstate the right to unemployment benefit has been restored for workers affected by temporary layoffs or temporary interruptions whose contracts have subsequently been terminated under dismissal on objective grounds or a collective layoff, including terminations within the context of insolvency proceedings.

Those workers will be entitled to reinstatement of their contributory unemployment benefit for the same number of days for which they would have received all or some of the benefit under those temporary interruptions or short-time working arrangements up to a maximum limit of 180 days, provided the following conditions are met: (i) the temporary interruptions or short-time working arrangements take place from January 1, 2012 through December 31, 2012, or (ii) the dismissal takes place between the date of entry into force of the law and December 31, 2013.

Any worker whose employment contract has been terminated prior to the entry into force of the decree, in the scenarios referred to above, who had previously been affected by a temporary layoff or short-time working procedures, will be entitled, where applicable, to reinstatement of their right to unemployment benefit, on the terms and subject to the limits provided for in the legislation in force on the date of the dismissal or the administrative or court decision authorizing the contractual termination.

3.6 Geographic mobility

The changes to the former legislation on geographic mobility are as follows:

- Economic, technical, organizational and production-related grounds are deemed to be those relating to the competitiveness, productivity or organization of technical or work-related matters at the company, as well as contracts relating to the business activity. Before, the law referred to the fact that they contribute to "*improving the company's situation through a more appropriate organization of its resources,*" enhancing "*its competitive position on the market or a better response to demand requirements*".

- The ability of the labor authorities to order in certain cases an extension to the deadline for incorporation or halt the transfer, provided for under the previous legislation, has been eliminated.

- Alongside the priority already granted to the workers' representatives, priority for staying at the same workplace may be established in a collective labor agreements or in agreements reached during the consultation period for certain groups, such as workers with dependent relatives, persons of a certain age and disabled persons.

3.7 Uneven distribution of working hours

As a general rule, it has been provided, in the absence of an agreement to the contrary, that companies can distribute five percent of working hours on an uneven basis over the course of a year, provided the minimum daily and weekly rest periods are observed at all times.

4. MEASURES TO INCREASE THE USE OF INDEFINITE-TERM CONTRACTS AND OTHER MEASURES TO HELP JOB CREATION

4.1 Indefinite-term employment contract in support of entrepreneurs

A new type of indefinite-term employment contract for full-time work has been created aimed at promoting stable employment while encouraging entrepreneurship initiative, and available to companies with less than 50 workers.

The contract will be governed by the general provisions of the Workers' Statute, albeit with a one-year trial period. The contract must be perfected in writing in line with the form established for these purposes.

Any companies that, in the preceding six months, have carried out terminations on objective grounds which have been held unjustified in a court judgment or that have implemented collective layoffs, cannot not enter into this type of contract. This limitation will only affect terminations following the entry into force of the law and covering positions in the same professional group and at the same workplace(s).

The contract will give entitlement to the following tax incentives:

- If the first employment contract executed by the company is with a person under the age of 30, it will be entitled to a three thousand euro tax credit.

- Furthermore, where hiring unemployed persons receiving contributory unemployment benefit, the company will be entitled to a tax credit equal to 50% of the unemployment benefit remaining to be received by the worker on the date of the contract, subject to a cap of twelve months' benefit, in line with the following rules: (i) the worker must have received the benefit for at least three months, (ii) the amount of the credit will be set on the date on which the employment relationship commences and will not be modified by subsequent circumstances, and (iii) the company will require that the worker produce a Public Employment Service certificate as to the remaining amount to be paid.

Each month, the hired workers may voluntarily combine, together with their salary, 25% of the amount of the benefit acknowledged and remaining to be received on the date on which they are hired. Alternatively, the worker's right to the outstanding unemployment benefit on the date of the hiring will be maintained.

Regardless of any tax incentives, the hiring of unemployed persons registered at the Employment Office will entitle companies to a reduction to their social security contributions in the following scenarios:

SCENARIO	FIRST YEAR	SECOND YEAR	THIRD YEAR
Unemployed persons from the ages of 16 through 30	€83.33/month (€1,000/year). Increased by €8.33/month (€100/year) in the case of women in industries in which they are less represented	€91.67/month (€1,100/year). Increased by €8.33/month (€100/year) in the case of women in industries in which they are less represented	€100/month (€1,200/year) Increased by €8.33/month (€100/year) in the case of women in industries in which they are less represented
Persons over the age of 45, registered at the Employment Office for at least twelve of the last eighteen months	€108.33/month (€1,300/year) in each of the three years €125/month (€1,500/year) in the case of women in industries in which they are less represented		

The reductions will be compatible with other public aid, although the total reduction can never exceed 100% of the company's employer social security contributions.

In order to take these incentives, companies must continue employing the employee for at least three years, and will be required to repay them if they fail to fulfill this obligation. Companies will not be deemed to have failed to fulfill the obligation to continue employing the employee where the employment contract is terminated as a result of justified disciplinary dismissal, resignation, death, retirement or total or absolute permanent or comprehensive disability.

The provisions of section 1 of chapter I of Law 43/2006 to create growth and employment will apply, except for the provisions on exclusions deriving from contract terminations. The number of workers will be determined by reference to those on the payroll on the date of hiring.

4.2 Amendment to the rules on part-time contracts

Besides keeping the provisions on supplementary hours, the new decree expressly allows overtime, for the number of hours provided in the law in proportion to the agreed working hours.

In any event, the total ordinary hours, overtime and supplementary hours may not exceed the statutory limit on part-time work.

For the purposes of social security contribution bases and benefit computation bases, these hours will be computed according to the provisions of Final Provision no. 9 of the law.

4.3 Telecommuting

The wording of article 13 of the Workers' Stature, governing work performed at home, has been amended to cover cases of telecommuting, to be called "distance work" from now on. It has been stressed that such work must be performed predominantly at the worker's home or a place freely chosen by the worker, as opposed to the company's workplace. The provision determining that the work is performed without the employer's supervision has been eliminated.

The agreement must be perfected in writing and, regardless of whether it is established in the initial contract or otherwise, the rules relating to the basic copy of the employment contract will apply.

With respect to distance workers' rights:

- Distance workers will have the same rights as workers who travel to a workplace, except for any rights that relate specifically to work performed at the workplace. These include access to ongoing professional training in order to enhance their career development, and the company must provide the necessary resources for this purpose. Similarly, in order to enable mobility and promotion, workers must be notified of the existence of vacancies for jobs to be performed on-site at their workplaces.

- They may also exercise the right to collective representation and must therefore be assigned to a specific company workplace.

- Distance workers are entitled to proper health and safety protection, and the occupational risk prevention legislation therefore applies.

4.4 Reductions in social security contributions for the conversion of work-experience, handover and substitution contracts into indefinite-term contracts

The decree sets out a three-year reduction to employers' social security contributions of €41.67/month (€500/year), or €58.33/month (€700/year) in the case of women, for companies converting work-experience, handover and substitution for early retirement contracts into indefinite-term contracts.

This measure applies to companies with less than fifty workers, including self employees, as well as worker-owned enterprises or cooperatives taking on workers as working partners, provided they have elected a social security system specific to salaried employees.

As with other reduction schemes, the provisions of section 1 of chapter I of Law 43/2006 for the enhancement of growth and employment will apply.

5. MEASURES TO INCREASE WORKERS' EMPLOYABILITY

5.1 New legislation on temporary employment agencies

The Workers' Statute, Temporary Employment Agencies Law 14/1994 and Employment Law 56/2003 have all been amended to enable temporary employment agencies to operate as placement agencies, provided that they have filed a solemn declaration at the competent public employment service stating that they meet the established statutory and regulatory requirements. Any employment agencies that act as placement firms will have to comply with the legislation on placement agencies, including the obligation to ensure that workers receive their services free of charge.

Furthermore, if the time limit for the procedure to obtain authorization to act as a placement agency has expired and no express decision has been notified to the affected party, this will result in the application being granted by administrative silence (previously, this meant refusal).

As a transitional provision, temporary employment agencies that have not received definitive administrative authorization to operate when this law comes into force may act as placement agencies provided that they file a solemn declaration at the competent public employment service stating that they meet the requirements set forth in Employment Law 56/2003 and its implementing legislation.

5.2 Professional training. Training and apprenticeship contracts

5.2.1 Entitlement to receive training

The main changes in relation to training are as follows:

- Training to adapt workers to changes in their jobs has been added as a fundamental component of their right to professional development and training. The costs of such training will be met by the company, independently of the possibility of obtaining funs for training. In all cases, the time spent on such training will be regarded as time actually worked.

- Moreover, workers with at least one year of service will be entitled to paid leave of 20 hours per year for training linked to their jobs, which can be accumulated for up to three years. The specifics as to how the leave can be taken will be established by mutual agreement between the worker and the employer.

- Training received by workers throughout their professional career, in accordance with the Catalog of Professional Qualifications, will be entered on a training record, linked to their social security number, on which the public employment services will make the appropriate entries. The government will roll out the training record scheme by means of regulations. In addition, consideration will be given to the possibility of creating training checks to finance each worker's right to training.

- The program to replace trainee workers with workers receiving unemployment benefits is now open to all companies, regardless of the size of the workforce (previously, the program was restricted to companies up to 100 workers).

5.2.2 Training and apprenticeship contracts

The concept of training and apprenticeship contracts has been amended in the following ways:

- They are initially for a term of between one and three years. However, collective labor agreements may establish different terms for the contracts, depending on the organizational or production needs of the companies, although the minimum term cannot be less than six months nor the maximum term more than three years.

- The prohibition on hiring using the same type of contract by the same or a different company is restricted to the same employment activity or occupation as that forming the subject matter of the professional qualification associated with the contract; by contrast, hiring is allowed if the employment activity or occupation is different.

- It is expressly provided that the training associated with the contract can be received at the company if it has the facilities and staff necessary for the purposes of evidencing professional competence or qualifications. This does not affect the requirement to undergo additional training at vocational training institutions, where appropriate.

- The time the employee spends actually working cannot exceed 75% during the first year and 85 % during the second and third years (previously, the figure was 75 % for the entire term).

- As a transitional provision, until such time as unemployment in Spain falls below 15 %, training and apprenticeship contracts can be entered into with workers under the age of 30 and the statutory upper age limit of 25 will not apply.

- Transitional provisions seven and eight of the law set down the rules relating to the financing of training activities under ongoing contracts and contracts entered into after the law comes into force.

5.2.3 Contribution reductions

New reductions in social security contributions have been provided in the following cases:

- Training and apprenticeship contracts entered into after the decree comes into force with unemployed workers who registered at the employment office before January 1, 2012 - reduction of employer contributions for common contingencies, occupational accidents and diseases, unemployment, the wage guarantee fund and vocational training by the following percentages: (i) 100% for companies with less than 250 employees, or (ii) 75% for other companies. Employees' social security contributions will also be reduced by 100% for the entire term of the contract, including any extensions.

- If training and apprenticeship contracts are converted into indefinite-term contracts, regardless of the date on which they were entered into, the employers' social security contributions will be reduced by €1,500 per year for three years. In the case of women, this reduction will be €1,800 per year.

- In all cases, the above reductions will be governed by the requirements and provisions set forth in section I, chapter I of Law 43/2006 to increase growth and employment.

6. OTHER KEY PROVISIONS

6.1 Rules applicable to credit institutions

6.1.1 Severance

Institutions that are mainly owned or financially supported by FROB, the Spanish Bank Restructuring Fund, cannot, under any circumstances, make severance payments upon the termination of contracts in amounts which exceed

the lowest of the following amounts: (i) twice the maximum base figures under rules 3 and 4 of article 5.3.a) of Royal Decree-Law 2/2012, of February 3, 2012 on financial industry reform, in other words, €600,000 for institutions majority owned by the FROB and €1,200,000 for those that, although not majority owned by the FROB, receive financial support from it, or (ii) two years of the stipulated fixed compensation.

The above rule does not apply to directors and executives who joined the institution in question after or at the same time as the FROB acquired ownership or provided its financial support and in these cases the Bank of Spain, basing its judgment on the contractual provisions and the outcome of the reform plan, may authorize the payment of higher amounts, although this is always subject to the above limit of two years of the originally stipulated fixed compensation.

6.1.2 Termination of contracts with individuals holding management or executive positions at credit institutions due to the imposition of penalties

The imposition of the penalties referred to in article 12.1 of Credit Institutions (Discipline and Control) Law 26/1988 on individuals holding management or executive positions at credit institutions under an employment contract (including a senior management employment contract) will be regarded, for the purposes of employment legislation, as a serious and culpable breach of contract and, therefore, constitute a ground for disciplinary dismissal and may result in the employer terminating the contract.

Furthermore, the imposition of those penalties will be regarded as just cause for the termination of contracts other than employment contracts.

The termination of contracts of directors or executives on the grounds described above will not entitle them to receive severance of any kind, regardless of the amount or type involved and regardless of the law, contract, agreement or clause, whether individual or collective, or of an employment, civil or services nature, which provides for the severance payment.

6.1.3 Temporary interruptions of contracts with individuals in management positions at a credit institution

Contracts with persons in management or executive positions at credit institutions can be temporarily interrupted on the following grounds: (i) where, pursuant to article 24 of Credit Institutions (Discipline and Control) Law 26/1988, it is provided that the contracts of individuals who have allegedly committed very serious infringements can be temporarily interrupted; and, (ii) where the Bank of Spain orders the temporary replacement of the credit institution's management and executive bodies in the circumstances set forth in article 7.1 paragraphs c) and d) of Royal Decree-Law 9/2009, of June 26, 2009 on bank restructuring and strengthening the equity of credit institutions.

The contract in question will be interrupted for the length of the stipulated temporary interruption or temporary replacement and this entails mutual release from the obligations to work or provide services and to pay compensation for the work or services.

6.2 Particular provisions on contracts for services and senior management employment contracts in the central government public sector

The new decree lays down a series of measures that apply to the central government public sector as defined by article 2.1 of General Budget Law 47/2003, of November 26, 2003, except for authorized management agencies, common services and occupational accident and disease mutual insurance companies belonging to the social security authorities, as well as their centers and joint entities, as summarized below.

6.2.1 Termination of contracts

The termination, as a result of withdrawal by the employer, of contracts for services and senior management employment contracts with staff working in the central government public sector, regardless of the date on which the contracts were executed, will only give rise to an entitlement to severance not exceeding seven days per year of service of the annual compensation in cash, subject to a cap of six months, on the basis of the annual compensation in cash on the date of termination as the full and total fixed compensation, excluding incentives and variable supplements.

At least fifteen calendar days' notice of the withdrawal must be given in writing. Breach of the notice period will give rise to entitlement to compensation in lieu of notice.

No entitlement to severance will arise in favor of a tenured official of the state, the autonomous communities or local government entity or an employee of a public central government, autonomous community or local government entity whose employment position is reserved.

6.2.2 Compensation

The compensation to be established in contracts for services and senior management employment contracts in the central government public sector is classified exclusively as follows: (i) basic compensation, which includes the mandatory minimum compensation determined on the basis of the classification group to which the entity has been assigned by whoever exercises control or financial supervision over it or, as the case may be, by the shareholder; and, (ii) supplementary compensation, which may include a position-related supplement that compensates the specific characteristics of the executive functions or positions and a variable supplement to reward the achievement of previously-established objectives.

The supplements will be allocated by whoever exercises control or financial supervision over the entity or, as the case may be, by the shareholder.

The above provisions on compensation will apply to State-owned business entities. The implementing rules approved by the government will apply to the remaining entities.

6.2.3 Review of lawfulness

Before they are perfected, any contracts entered into will be subject to a report prepared by the government legal service or the body that provides legal advice to whoever exercises control or financial supervision over the public sector entity or, as the case may be, to the shareholder which intends to hire the manager or executive. Clauses that contradict the provisions contained in this decree will be null and void *ab initio*.

6.2.4 Force and effect

The provisions described above will apply to contracts for services and senior management contracts executed before the provisions come into force. The terms of the contracts will have to be adapted to meet the requirements in these provisions not later than two months after their entry into force.

Regardless of the date of execution of the contract, the related severance payment will be governed by this legislation once it comes into force.

6.3 Reconciling work and family life

Final provision one amends the wording of certain provisions on reconciling work and family life. The most important amendments are described below:

- The wording of paragraph one of article 37.5 of the Workers' Statute relating to the right to a reduction in working hours has been amended to specify that the reduction will be of a daily nature.

- As regards employees' rights to organize their working hours, collective labor agreements can establish rules for organizing shorter working hours in view of the worker's right to reconciliation of his/her private, family and work life and the production and organizational needs of the company. Furthermore, except in the case of force majeure, workers must give their employers at least fifteen days' notice or the notice period set forth in the applicable collective labor agreement, and specify the date on which their nursing leave or shorter working hours will begin and end.

- The new wording of article 38.3 of the Workers' Statute establishes that if a vacation period coincides with temporary incapacity, other than by reason of maternity or paternity leave, which prevents the worker from taking all or part of his/her vacation

during the calendar year in question, the vacation can be taken after his/her incapacity has come to an end provided that not more than eighteen months have elapsed since the end of the year in which the vacation arose.

6.4 Capitalization of unemployment benefit

The rules on capitalization of unemployment benefit have been amended so that where unemployment benefit is paid in a single payment, the maximum limit has been increased from 80 % to 100 % if the beneficiary is a young man aged 30 or under or a young woman aged 35 or under, and the age is taken to be that on the date of the application.

6.5 Review of temporary incapacity and occupational accident and disease mutual insurance companies

Under additional provision four of the law the government will, within six months and having first consulted employee and employer representatives, examine the possibility of amending the legal provisions applying to occupational accident and disease mutual insurance companies with a view to managing temporary incapacity more efficiently.

6.6 Repeals

The law repeals, among other provisions, transitional provision three of Law 35/2010, under which the wage guarantee fund would reimburse a proportion of severance payments made in respect of indefinite-term contracts executed after June 18, 2010, and article 4.2 of Law 43/2006, concerning reductions in contributions for women returning to work within two years after the date of commencement of their maternity leave.