

GARRIGUES

Labor and Employment Newsletter

March 2026

Compilation of key legal developments in the field of labor law in Spain.



The anatocism or compounding of work breaks



[Federico Durán López](#)

A recent Spanish judgment on the overlapping of public holidays and rest days has reopened the issue of whether an additional rest day should be granted. This is not necessarily the case, there are other factors to be taken into account.

I have allowed myself to use the term *anatocism*, referring to unpaid interest on a loan, which is compounded on the capital sum and creates new interest (article 1249 of the Civil Code), because it helps understand the excesses of a judicial doctrine (encouraged, nevertheless, by rules that increasingly propagate protection of cases of inactivity at work and dilute the differences between the effective performance of work and absence of benefit) in which the idea is gaining ground that breaks from work create, at least in certain cases, new breaks. A recent example is the judgment by the Supreme Court (Labor Chamber), dated January 26, 2026 (number 62/2026, appeal 205/2025), which holds that the parental leave under article 48 bis of the Workers' Statute must be treated as effective working time for the purposes of accruing vacation. The balance between working time and inactive time is extremely delicate and brings into play the defence of productivity referred to in article 38 of the Spanish Constitution (SC), on the one hand, and the protection of health and safety of the workers and their right to rest (article 40.2 SC) and to a work-life balance, on the other. In order to achieve a balance between the two, collective bargaining must play a fundamental role, which can be clouded by excess judicial control over what has been agreed in collective agreements.

In this context, although the issue raised does not relate exactly to creating new breaks for the breaks taken, the supreme court judgment of April 30, 2025 (number 372/2025, appeal 113/2023), which is giving a host of interpretative doubts over its application, is very relevant. It questions whether workers with work shifts from Monday to Sunday, and a rest day between Monday and Friday, are entitled, in the event that their allocated rest day coincides with a public holiday, to take their rest day on another day. The Supreme Court cited its own precedents, although they relate to different cases (judgment 1132/2020, which addresses the issue of remuneration or compensation for public holidays and weekly rest periods when neither one or the other can be taken) or address different scenarios (judgment 570/2022, which examines a case of shift work in which rest periods are not taken on fixed days but in an irregular and random manner on a discretionary basis). Despite this, and the fact that the court itself is aware of the different scenarios examined (in the case, "the weekly rest period is predetermined when the annual personal calendar is set, and the company cannot change it depending on public holidays"), which it makes clear by saying that "at first glance there is a difference that makes the application of the

doctrine established in the cited judgments unfeasible", the doctrine in those decisions hovers over the judgment being discussed (otherwise the extensive reproduction in this judgment of the legal grounds of those decisions cannot be understood).

After completing this curious presentation of the judicial precedent, despite not applying to the case, the court raises the fundamental issue of the debate: "whether, in the absence of any (sic) tortuous intention on the part of the company, anyone whose predetermined weekly rest period overlaps with a public holiday on a workday has the right to take a rest day to compensate for the "loss" caused by that overlap". To answer this question, the court makes an interesting distinction between the purposes of articles 37.1 and 37.2 of the Workers' Statute: whereas article 37.1 "is for preserving the occupational health" of workers, article 37.2 "bears no relation whatsoever to occupational health, but to "facts of special relevance or consequence in the civil or religious order", although "their rules impact the content of the employment relationship". However, no consequences are drawn from this distinction, nor is it taken into account that civil or religious aims can also be met if the holiday coincides with a day of inactivity from work (rest period). Instead, the distinction is disregarded to bring everything back to the right to rest: "the rules on days off, by specifying the right to rest and the associated consequences, affect the essential elements of the employment contract". For this reason, "the principles governing the right to work and rest from work as a whole, *whether for health or by social convention*" (my italics) are considered.

These brief arguments are used to confront the ruling in the judgment, which replies to the question raised, although with two important preliminary observations:

- Recognition (which is going to occur) of the right to take all weekly and annual rest periods and public holidays must not have consequences on annual working hours, leaving aside also the repercussions that this rest period may have on their distribution (these issues fell outside the subject of the proceedings).
- Therefore, in summary, the right to rest at issue should not in itself affect annual working hours or their distribution.

This takes us to the ruling, which finds that workers at the company affected by the conflict have "working days from Monday to Sunday, have an established weekly rest day on a fixed day between Monday and Friday, have the right to be compensated where a public holiday on a workday coincides with their rest day, and can take another rest day in lieu of that public holiday, without limitation to compliance with the annual working hours".

Although there is a striking lack of consideration of the system agreed at the company (which the court does not ignore, although it does not enter into assessing it), with recognition of additional days' vacation (differentiating between workers affected by the conflict, with working hours from Monday to Sunday, and those who are not), an analysis of the ruling for the purpose of applying the judicial doctrine arising from the judgment (in addition to enforcing it at the company concerned) must dissect its content. Thus:

- *In cases involving working days from Monday to Sunday.* Therefore, only in cases of work being performed every day of the week.
- *They have an established weekly rest period on a fixed day between Monday and Friday.* Therefore, only where the employee works every day of the week and a fixed weekly rest day has been established between Monday and Friday.
- *If the set day of rest coincides with a public holiday.* Therefore, the only case contemplated is where, for a specific worker, the set day of rest coincides with a public holiday.
- *The worker will have the right to be compensated for the rest on a public holiday with "another day of rest in lieu of that public holiday".* Therefore, an additional day of rest is provided to compensate for the public holiday not taken (not the rest day that coincides with the public holiday).

- *Without limitation to compliance with the annual working hours.* Therefore, the annual working hours may not be reduced by the granting of a rest period in lieu of an additional public holiday.

Leaving aside how odd it may seem that if it is the public holiday that is treated as not being taken, and rather than being a rest for the worker as an occupational health measure, it is for religious or civil purposes (not prevented, but rather facilitated, by the fact that the worker is enjoying a rest from work), the issue should be resolved by granting an additional day of rest (when the rest is considered to have actually been taken), there are several interpretative problems raised by the ruling:

- If what has not been taken is a rest day for a public holiday, could the granting of the additional day be replaced with the payment of the compensation for that day? Without the 75% increase, because there has been no actual provision of work (article 47 of Royal Decree 2001/1983, of July 28, 1983). By bearing in mind that, because it is a public holiday that has not been taken (not a weekly rest period), the protection of occupational health does not come into play, instead the religious or social conventions underlying the holiday. The worker would not be deprived of a right to participate in religious or civil celebrations, but due to being on a rest day they would receive the relevant amount of economic compensation. In this way, it would be guaranteed that the annual working hours would not be affected, as required by the Supreme Court, nor would it be necessary to adapt their distribution.
- If an additional rest day is chosen, how can the annual working hours not be affected? The additional day does not seem to be able to be divided to be enjoyed with reductions in working hours over several days, because the judgment specifically speaks of "another day". The options would therefore be to:
 - Remove an additional rest day or days from vacation (at the company, as the judgment acknowledges, there were four rest days in addition to those provided for in the agreement for workers working from Monday to Sunday, and only three for the others).
 - Establish additional working days, by modifying the workday calendar, in such a way as to ensure compliance with the working hours.
 - Establish extensions of daily working hours to ensure compliance with annual working hours.

All these issues must be addressed by collective bargaining, by establishing a number of annual working hours and drawing up a workday calendar that provides a suitable response. Nothing in the judgment allows us to conclude that the overlapping of a day of rest with a public holiday always and automatically entails the granting of an additional rest day.



News

Spain: Publication of the minimum wage (SMI) for 2026

The minimum wage (SMI) has been increased by royal decree by 3.1%, to 1,221 euros per month, effective since January 1. [Read more](#)

Repeal of Royal Decree-Law 2/2026, which included social security contribution measures, the rate for occupational accidents and illnesses, and restrictions on dismissal

As happened with RDL 16/2025, RDL 2/2026 has not been approved either, containing, among others, measures on social security contributions, the rate for occupational accidents and illnesses linked to the CNAE-2025 and restrictions on dismissal at companies benefiting from public aid. [Read more](#)

The Government approves the draft Law on the Intern Statute

After several years and despite no agreement being reached within the context of social dialogue, the Lower House of the Spanish Parliament admitted for processing, on March 10, 2026, the [bill for the so-called statute for people on internships without an employment contract](#) (known colloquially as the Intern Statute). This is a legislative initiative promoted by the Government that seeks to regulate the position of students and graduates who work on internships without an employment contract.

CCOO and UGT sign agreement for amendment of the Occupational Risk Prevention Law

On February 10, 2026, the Government and trade unions (UGT and CCOO) signed an agreement to reform the Occupational Risk Prevention Law in Spain, without the participation of employers' associations. The aim of the draft bill is to update the rules to deal with occupational risks in the 21st century. Key changes include incorporating a gender and age perspective into prevention management, as well as responding to challenges arising from the digital, climate and demographic transitions. It also includes an undertaking to approve a specific standard for psychosocial risks at work.

Spain ratifies ILO Convention on Maternity Protection

The BOE has published the [Instrument of ratification of Spain of ILO Convention No. 183 on Maternity Protection](#), which will enter into force on December 11, 2026. The Convention strengthens the protection for pregnant and nursing workers, including specific risk assessments, minimum financial benefits equivalent to two-thirds of the previous salary and greater protection against dismissal, for which justification lies with the employer. It also prohibits requests for pregnancy tests in selection processes and recognizes nursing breaks as paid working time.

Ministry of Equality starts process for the new badge for "Equality at the company and for a society free of gender-based violence"

The Ministry of Equality has announced the start of the [hearing](#) and public information process for the royal decree that will regulate the new badge for "Equality at the company and for a society free of gender-based violence". The new decree will replace the existing Royal Decree 1615/2009 and will update the rules on the recognition of companies that stand out for their equality policies and for their commitment to combating gender-based violence.

Social Security Ministry launches the Government Observatory of Temporary Disability

The Social Security Ministry has [announced](#) the creation of the Government Observatory of Temporary Disability, a permanent technical body attached to the Secretary of State for Social Security and Pensions. Its purpose will be to provide continuous analysis of temporary disability (sick leave) in Spain, promote more effective and equitable management, identify trends and propose good practices.

Judgments



Determining shifts in a way that avoids the "early morning" bonus does not constitute fraud upon the law where it responds to substantiated operational needs

The Supreme Court has confirmed, in a [judgment](#) dated January 14, 2026, that the determination of shifts in a way that prevents the "early morning" bonus from arising does not constitute fraud upon the law where it responds to substantiated operational needs, by finding that the timetable established by the company relates to flight schedules not to an unlawful intention to avoid the payment of supplements. The Chamber recalled that the power to manage the business includes the power to distribute shifts and that in order to find the existence of fraud it is essential to prove a deliberate intention to harm the workforce, which was not proven. It stated further that the consequence of not giving rise to certain bonuses cannot in itself be considered an indication of fraudulent action.

Disciplinary dismissal of pregnant worker for forging medical certificate is justified

The Madrid High Court has confirmed, in a [judgment](#) of July 10, 2025, the justified nature of the disciplinary dismissal of a pregnant worker who forged a medical certificate using the technology of a dental clinic and passing it off as being issued by the doctor. This conduct was confirmed by an expert and recognized by the worker herself. The Chamber rejected the request to hold the dismissal null and void and pointed out that dismissal during pregnancy is not automatically discriminatory, and the existence of a real ground unrelated to her pregnancy was the decisive factor. It concluded

that forgery is a serious breach of good faith that implies a loss of trust and affects the company's image, due to being behavior totally unrelated to her pregnancy or her condition as a mother.

Employer's tolerance of counting the sandwich break as effective working time does not generate a more beneficial condition

The National Appellate Court held, in a [judgment](#) dated January 30, 2026, that the employer's tolerance of counting the sandwich break as effective working time does not bring about the vesting of a more beneficial condition if there is no unequivocal intention to grant that benefit permanently. It dismissed the claim that the modification of the calculation of working time constituted a substantial modification under article 41 of the Workers' Statute, and pointed out that a practice merely tolerated or applied on a one-off basis does not generate any right without a conscious and express decision of the employer. The Chamber concluded that, in this case, there was no evidence of the company's intention to incorporate the break in the working day on a permanent basis, since it was simply a temporary concession that cannot be considered to be incorporated into the staff's vested rights.

Parental leave is effective working time for the purposes of accruing vacation and must be taken in weekly periods

The Supreme Court established, in a [judgment](#) dated January 26, 2026, that the parental leave under article 48 bis of the Workers' Statute must be counted as effective working time for the purposes of accruing vacation and that it can

only be taken for full weeks, given that the legal design of the leave – restricted to a maximum of eight weeks, taken in one go or in separate periods – prevents them from being taken on single days or smaller blocks of days, since the article strictly requires it to be structured in weeks.

Refusal by the employer to specify the working hours requested by a worker does not in itself constitute an indication of sex-based discrimination

The Supreme Court declared, in a [judgment](#) dated February 4, 2026, that a mere refusal by the employer to specify the working hours requested by a worker does not in itself constitute an indication of sex-based discrimination that justifies the payment of indemnity for a violation of fundamental rights. It upheld the company's appeal and partially revoked the judgment of the Galicia High Court, which had determined a €7,501 indemnity payment. In a finding based on the Supreme Court's doctrine in judgment 379/2023, the Chamber highlighted that in the examined case the company had already recognised a previous reduction in working hours, provided plausible organisational reasons – as Saturday was the busiest day – and suggested that the worker propose an alternative, and there was no connection between the refusal and a discriminatory ground. The court upheld the

worker's right to specific hours but overturned the order to pay indemnity because no violation of fundamental rights was found.

The performance of activities incompatible with temporary incapacity, such as habitual alcohol intake during pharmacological treatment, justifies disciplinary dismissal

The Andalusia High Court (Granada) confirmed, in a [judgment](#) dated January 8, 2026, the justified nature of the disciplinary dismissal of a worker on temporary incapacity (sick) leave who engaged in activities incompatible with his treatment, after it had been proven using a detective that he habitually ingested significant amounts of alcohol and drove, despite being medicated with drugs which are expressly not allowed to be taken along with the consumption of alcohol. The Chamber dismissed the employee's appeal and pointed out that, although temporary incapacity suspends the obligation to work, it does not relieve employees of the duty of good faith, which requires them not to engage in conduct that delays recovery. It concluded that the consumption of alcohol during treatment and the performance of activities incompatible with the employee's medical condition constitute a serious breach of contractual good faith under article 54.2.d) of the Workers' Statute, justifying disciplinary dismissal.



Other publications

What is a sustainable work mobility plan and why is it important for the family business?

The new Sustainable Mobility Law introduces the obligation for companies with workplaces that exceed 200 workers, or 100 per shift, to implement sustainable work mobility plans, which impact workforce management and collective bargaining at family businesses. [Read more](#)

Labor Blog

The use of AI in people management requires new guarantees to avoid gender bias

Artificial intelligence (AI) applied to people management (selection, hiring, promotion, and remuneration) can perpetuate and amplify gender biases if algorithms learn from historical data with inequalities. In application of European and Spanish regulations, organizations can reduce this risk by auditing their AI systems, integrating the gender perspective, guaranteeing human supervision and training their teams to ensure that technology does not compromise equality in the workplace. [Read more](#)

Pay equity: the path towards eliminating gender pay gaps

Every February 22, Equal Pay Day is commemorated in Spain. Multiple actions deployed at the international, European and Spanish levels promote the equalization of

working conditions between both sexes. In this post we review the most recent and outstanding ones, focusing on Directive (EU) 2023/970, of May 10, pending transposition. [Read more](#)

Use of union credit: prior notice and justification?

Due to the nature of paid leave, the use of trade union credit requires prior notice and justification, even if it is generic (for example: assembly, meeting, training, congress, etc.), so as not to infringe on freedom of association. [Read more](#)

In the press

Spain creates a public body to curb high absenteeism rates

In the debate on high absenteeism in Spain, our partner Cecilia Pérez explains in this article from *International Employment Lawyer* the main options that companies have to manage sick leave and verify their justification within the current legal framework. [Read more](#)

The Intern Statute guarantees that students can work and receive unemployment benefit

In relation to the new Intern Statute, Eloy Castañer, partner in charge of Labor and Employment at Garrigues, explains in this article in *Voz Pópuli* that the instrument simply clarifies and specifies the compatibility between internships and unemployment benefits, and adapts the rules to the inclusion of students in the Social Security system. [Read more](#)

In Latin America

Peru: Main criteria to ensure a discrimination-free work environment for women

Timed to coincide with Women's Day and Zero Discrimination Day, we take a look at the main criteria that employers must follow to ensure a discrimination-free work environment for female workers. [Read more](#)

Mexico continues the legislative process for reduction of the 40-hour working week

The constitutional reform sets out a gradual reduction until 2030, maintains wages and benefits, and redefines overtime limits, requiring companies to reorganize shifts and processes to sustain their productivity. [Read more](#)

Peru: Five key rulings on the Day for the Fight against Sexual Harassment at the Workplace

On the occasion of the Day for the Fight against Sexual Harassment at the Workplace, we examine the courts' and the authorities' most recent criteria with an impact on business management: from the value of the victim's statement to the importance of giving reasons for decisions, observing time limits and applying protocols correctly. [Read more](#)

Mexico: INM adjusts fees for immigration procedures for 2026 and reinforces the need to provide reasons for stay

Mexico's National Institute of Migration (INM) has introduced separate 100% and 50% fees in several immigration procedures by 2026. Only those who can prove family unity, a job offer or a non-profit invitation will be able to access the reduction, which forces companies and users to review each case more carefully. [Read more](#)

Peru redefines the payment of remuneration by incorporating digital wallets as a regulated channel

Peru has included digital wallets as a new channel for receiving wage and salary payments, increasing the worker's freedom of choice and requiring companies to adapt processes, guarantee security and ensure the traceability of payments. [Read more](#)

Peru: Employment benefits broadened for workers with cancer

On the occasion of World Cancer Day, celebrated on February 4, we review the regulations that have broadened access for workers with cancer to certain benefits and work facilities in recent years. [Read more](#)

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