

### Employment Alert

## Royal Decree-Law 11/2018 of 31 August, transposition of directives on the protection of employees' pension liabilities

2<sup>nd</sup> October 2018

The transposition of Directive 2014/50/EU of 16 April 2014 into Spanish law modifies the DA 1st law of regulation of pension plans and funds., by virtue of which it establishes i) the obligation to implement pension commitments assumed by companies with their workers - linked, among other contingencies, to retirement - through group insurance or pension plans, as well as ii) the basic conditions of such insurance so that they may be suitable for this purpose.

### **A.- First additional provision of the LRPPF**

#### **i.- Economic rights recognized to the employee in pension commitments without tax imputation.**

A section 4 is introduced in DA 1 expressly dedicated to insurance contracts without tax imputation to the employee of the premiums contributed by the company. In relation to these, it regulates the possibility of recognising the economic rights of the employee in the event of termination of the employment relationship prior to retirement, as well as the minimum requirements to which such recognition must conform, where applicable.

Therefore, insofar as the policy provides for the acquisition of economic rights before retirement, in the event of termination of the employment relationship of the insured worker before the occurrence of the contingency, the agreed conditions of acquisition of rights shall apply, which must, however, respect the following requirements:

a.- If a minimum waiting period is stipulated for incorporation into the insurance contract or for the acquisition of rights, or both, the combined total period may not exceed three years. When a minimum age is set for the acquisition and consolidation of pension rights, it shall not exceed 21 years.

b.- In the event of termination of the employment relationship prior to retirement, in which the employee has acquired rights, these may not be less than the value of the rights of redemption or reduction derived from the premiums for the retirement contingency paid by the company and from the premiums paid by the employee himself.

However, in the event of the incapacity or death of the worker, the substitution of the aforementioned rights by the benefits insured for these contingencies may be agreed.

c.- Workers who cease to work without meeting the requirements of section a) and without having acquired rights derived from premiums paid by the company, may request reimbursement of the premiums paid for retirement by themselves - or the realisable value of the assets.



## **ii.- Maintenance of the economic rights acquired in the insurance contract or its mobilisation and valuation criteria.**

In the new section 5 of the 1st DA, the possibility is established to maintain in the insurance or to mobilize to another insurance contract or pension plan, those economic rights that have been acquired by the insured workers in the supposition of the cessation prior to retirement. In addition, the contract must specify the valuation criteria for such rights at the time of termination and during their maintenance after termination.

As regards the treatment of those rights retained in the insurance, in accordance with the provisions of the policy, it may be in accordance with the rights of active policyholders or may be adjusted to an interest rate established in the supplementary pension scheme or by the return on investments corresponding to that scheme, in accordance with the financial and actuarial system used.

The value of rights acquired at the time of termination of the employment relationship shall be calculated and the worker shall receive information concerning his rights and future treatment, or the possibility of reimbursement of the premiums paid by him for retirement.

## **iii.- Workers' rights to information**

A section 6 is included, relating to the right of insured workers to obtain the following information on an individual basis:

- a.- Payment of premiums and amounts, redemptions and reductions that affect you.
- b.- Conditions for the acquisition of rights and their consequences upon termination of the employment relationship.
- c.- Value of the economic rights acquired or an estimation of the same carried out at the latest twelve months before the date of the application.
- d.- Conditions governing the future treatment of the rights in the event of termination of the employment relationship.

Employees who retain rights even after their employment relationship has ended may request the information corresponding to sections c) and d).

The insurance company must provide this information within ten days of the request and, in the case of pension and social security plans, this information must be provided at least once a year, specifically in relation to their consolidated or economic rights, and the conditions governing the treatment after termination of the employment relationship and the possibilities of mobilisation of these.

## **B.- Transitional Rules. Ninth Transitional Provision of the LPFP.**

The provisions of DA 1, section 4, b) of the LRPPF shall apply to premiums paid by the company since 21 May 2018 and corresponding to periods of service rendered since that date.

In the case of pension commitments prior to 20 May 2014 (date of entry into force of the Directive) that have ceased to include new workers and are also closed to new employees, the acquisition regime stipulated in the commitment or in the policy shall apply to them.

The maximum date for the adaptation of insurance policies and of the specifications and technical bases of pension plans will be 1 July 2019, a date also foreseen for the adaptation of insurance

companies and pension fund management entities for their corresponding adaptation to the new requirements of the standard.

However, as of August 31, 2018, insured workers who terminate their employment relationship must receive information regarding acquired economic rights and the conditions governing their future treatment.

**C.- Maintenance of more favourable conditions. Tenth Transitional Provision of the LPFP.**

The modifications introduced by Royal Decree-Law 11/2018 may not, in any case, imply the reduction of previously acquired rights, nor impairment of the right to information, nor the establishment of less favourable conditions of acquisition than those stipulated before its entry into force.

This reform gives greater legal certainty and transparency to the matter, especially regarding the economic rights granted to workers in the event of termination of employment prior to the occurrence of the retirement contingency.

For your information and knowledge, you can consult the [Royal Decree-Law 11/2018 of 31 August](#).

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