

Employment Update

Adaptation of Art. 34.8 of the Statute of Worker's Rights

14th November 2019

Regarding the Judgment of the Labour Court of October 30, 2019

One of the main developments introduced by RDL 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment, is the modification of article 34.8 of the Workers' Statute, which establishes the business obligation to undertake a negotiation process with the worker for a maximum period of thirty days - in the absence of conventional and/or collective provisions - in order to adapt the working day as a consequence of the need to reconcile family and working life.

Given that this is a matter of current interest, the Employment Department of the Firm is constantly monitoring and analysing all the judicial resolutions that are dictated on its application and interpretation, being of special significance the recent Judgment of the Labour Court No. 7 of Madrid, dated October 30, 2019, in a case of the office.

These are the key points:

A.- Litigation approach:

The origin of the matter lies in the refusal of a request for an adaptation of the working day on grounds of conciliation. The employee holds the post of Director of the payroll department of all the Group's companies whose headquarters are in Madrid. The request was to provide services from his family home in A Coruña in the form of teleworking or subsidiarily in the office in A Coruña from 8:00h to 15:00h, in order to attend and care for an elderly direct relative, who suffers from a psychiatric illness. It is of special interest that the worker, before submitting his application, provided services for a period of three months from the office in A Coruña following an agreement reached with the Company. Likewise, it is relevant that the Director was in a situation of Temporary Disability ("IT") from the very moment of the request for adaptation of the working day, remaining there even on the date of the trial.

The company decided to deny the worker's request, as it had been demonstrated that during the three months he had been posted, he had not exercised his responsibilities correctly, thus causing incoordination and discomfort among subordinates, among other issues, as most of the time was difficult to locate.

B.- Court's Decision:

The LC rejects the request to adapt the working day, since the company has not had any possibility of opening the obligatory negotiation process provided for in Article 34.8 SWR, and this because the worker incurred in a process of IT, which makes the employment relationship is suspended since then, thus ceasing the bilateral obligations between the parties.

Additionally, it is considered that the reasons given by the company to justify its refusal to grant the adaptation of the working day are reasoned causes, considering that a Team Director cannot be aware of the daily incidents that may arise handling the payrolls of all employees of the Group companies, being more than 650 km away from their work centre, with the organizational difficulties that such



circumstance arise, as well as being a case of geographical mobility, which could only be adopted by mutual agreement and / or under the protection of Article 40 SWR.

C.- Considerations of interest following the redrafting of Article 34.8 SWR:

a.- Article 34.8 SWR does not protect the right of the worker to unilaterally demand his geographical mobility.

b.- The organisational and productive reasons of the company take precedence over the worker's request to adapt his working day when he performs functions of high responsibility that would imply his habitual presence in the workplace in which he provides services.

You can read the [complete sentence](#) for more information.

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