Employment Update

Allowances for social security contributions for accidents at work and occupational diseases of employees performing services in exclusive office work must be made prioritising their occupation (Table II of DA 4 Law 42/2006) and not the activity of the company.

14th June 2019

Regarding the Judgment of the Supreme Court, Administrative Chamber, dated June 3, 2019

Based on the fact that the Social Security contribution system in relation to tariffs for occupational accidents and diseases is covered in the fourth additional provision of Law 42/2006, of 28 December, on General State Budgets for 2007, as amended by the eighth final provision of Law 48/2015, of 29 October, on General State Budgets for 2016, it establishes two tables of contribution rates, the I for "economic activities" and the II for "occupations and situations in all activities".

Well, in the resolution commented on - which has as its speciality that it departs from the traditional ones in this matter already judged and all of which refer to the sector of transport of goods by road - the question focuses on determining whether the workers of a company should contribute according to the corresponding economic activity of the company, except in the cases strictly provided for in Table 2, or an extensive interpretation can be made of this second table, as regards its epigraph (a) of "personnel in exclusive office work", allowing for the lowest contribution provided for all personnel who physically carry out the activity of the company in the office, without differentiating it from what is office work.

Thus, in the appeal filed by the General Social Security Treasury that preceded the present Supreme Court ruling, the aforementioned body sought to declare that the 4th DA of Law 42/2006, of 28 December, prior to the review carried out by the 8th DF of Law 48/2015, of 29 October, was to be interpreted as including in Table I workers according to the activity of the enterprise, and in Table II(a) **only those who carried out office work irrespective of the part of the working day performed by the workers at the physical headquarters of the company.**

In short, the controversy exclusively affects the delimitation of the scope of the third rule that regulates the type of contribution that is applicable when the employment of an employee who, providing services in a company with an economic activity included in a certain epigraph of Table I, coincides with one of those listed in Table II. Let us remember that the third rule mentioned in point two reads:

> a.- In its original form: "*Third.-Notwithstanding the foregoing rule, when the occupation performed by the employee, or the situation in which the employee finds himself, corresponds to any of those listed in Table II, the applicable contribution rate shall be that provided for in said Table for the occupation or situation in question, insofar as this differs from that which corresponds by reason of the activity of the company.*"
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> b.- With the reform introduced by Law 48/2015: "*Third. Notwithstanding the foregoing rule, when the occupation performed by the employed person corresponds to any of those listed in Table II, the applicable contribution rate shall be that provided for in said table for the*

occupation in question, insofar as the rate corresponding to such occupation differs from that corresponding to the activity of the company.

For the purposes of determining the contribution rate applicable to the occupations referred to in letter "a" in Table II, "staff employed exclusively in office work" shall mean employed workers who, without being subject to the risks of the economic activity of the undertaking, carry out their occupation exclusively in carrying out their own office work, even if such work corresponds to the activity of the undertaking, and provided that such work is carried out only in the places assigned to the undertaking's offices.

Well, there are three issues that are resolved by the recent and relevant Judgment of the Supreme Court, Administrative Chamber, dated June 3, 2019, rec. 871/2018 (Samoa Case), summarized below:

1ª.- Scope of the amendment to the first paragraph of rule three of point two of DA 4 Law 42/2006 made by DF 8 Law 48/2015, regarding the type of contribution **applicable when the employee's occupation** corresponds to one of those listed in Table II.

Well, in this point there is the resolution that has not changed the purpose of the Social Security rules (teleological interpretation) in that a higher risk employee work entails the need for higher Social Security contributions to meet the relevant benefits for accidents at work as established by legislation since before the amendment carried out on 29 October 2015.

In short, it is concluded that what should differ is the type of contribution and not the activity of the company. Then, for the purpose of fixing the contribution of the employees included in Table II (rates applicable to occupations and situations in all activities), the employee's occupation predominates and not the company's activity.

2ª.- Specify the interpretation of the content of the new second paragraph in terms of what is to be understood by **"personnel in exclusive office work".**

The ruling correctly states that: *"the third rule cannot be understood as a regulation of the contribution by occupation of the worker, parallel or alternative and on an equal footing with the rule of contribution by economic activity of the company. And it is not because it begins with the expression "nevertheless" which is indicative of exceptionality (or speciality) and, as such, represents the application of a different rule for exceptional, non-alternative or parallel."*

Therefore, on the basis that the second paragraph of the third rule reads as follows: "Employees who, without being subject to the risks of the economic activity of the undertaking, carry out their occupation exclusively in carrying out their own office work, even if that work corresponds to the activity of the undertaking, and provided that such work is carried out only in the places assigned to the undertaking's offices, shall be regarded as 'personnel in exclusive office work';', the consideration of exclusive office work requires the fulfilment of the following requirements:

a) it must be an "exclusive" occupation, in office work;

b) office work may include not only what may be administrative activities, but may also be related to the carrying out of company activities;

c) that such work related to the activity of the undertaking does not subject the worker to the risks of the company;

d) which is carried out "only" in the places assigned to the company's offices.

3ª.- And finally, to fix the **determination of the temporal scope of the change**. In effect, to analyse the projection that the reform introduced by Law 48/2015 may have, in order to specify what should be understood as "personnel in exclusive office work", with respect to situations prior to its entry into force, with effect from 1 January 2016.

In short, if the interpretative criterion reached with respect to the paragraph included by that legal reform in the third rule of section Two (second paragraph), can be taken into consideration for

contribution situations prior to the reform and to determine the type of contribution by occupation of the worker. The answer to the commented sentence says *"it must be affirmative because it is essential that the reform has not altered the "concept" taken into consideration by Table II(a) of the occupation contribution: "personnel in exclusive office work", but has only specified, by way of authentic interpretation, what should be understood by such "concept" and for the purposes of determining the contribution rate for that occupation".*

You can read the full sentence for more information.

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