

Employment Update

Application of the adaptation and distribution of the working day ex art. 34.8 Statute of Worker's Rights to the care of children over 12 years

21st February 2020

Regarding the main changes introduced by RDL 6/2019 of 1 March.

One of the main changes introduced by RDL 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in employment, was the amendment of Article 34, paragraph 8 of the Statute of Worker's Rights (hereinafter, ET), incorporating the right of all workers to request the adaptation and distribution of their working hours, in order to achieve the right to reconcile their family and working life.

In this context, the recent Ruling of the Valladolid Social Court No. 1, dated November 22, 2019, resolves a controversy of interest in the current framework of employment relations by responding to whether it is possible to grant the adaptation of the working day to those workers with dependent children **over 12 years of age**.

a.- Why is this statement so relevant?

To date, and unless errors excepted, all the decisions handed down on the subject of the reconciliation of family, personal and working life have dealt with cases in which the requested adjustment to the working day was for the care of children under twelve years of age or their dependent persons. Therefore, there was no specific ruling on whether it was possible to grant the adjustment of the working day to care for children over twelve years of age.

b.- Approach to the dispute arising from the reconciliation of family life and work:

The origin of the issue lies in the request to adapt the working hours for a worker who, since 2016, had been enjoying a reduction in her working hours of five hours a week for the legal guardianship of one of her children under 12 years of age.

When her son turned 12, the worker requested, under article 34.8 ET, an adjustment to her working day, given that her husband worked all over the country, spending most of the week outside the home, and she was the only person who could take care of the children.

However, and despite the reasons given in her application, the company refuses the adjustment on the grounds that her situation ends on 19 July 2019, as this is the date on which her youngest child turns twelve, the company considering that "from that age, the worker would not be entitled to the requested time adjustment".

B.- The Court's Decision:



It considers the request to adapt the working day to be contrary to the interpretation of Article 34.8 ET, since it considers that it would be contrary to the right to adapt the working day only to workers who have children under 12 years of age.

Consequently, the Labour Court understands that under Article 34.8 ET there would be a **generic right** and a **specific right** to adapt the working day. But what would be the difference between them? The general law would apply to all workers who request the right to reconcile family and work life, and the specific law would apply to workers with children under 12 years of age.

In addition, the Labour Court states that *"when the right to reconcile family life is discussed, it must be understood in a broad sense, and must include all persons living with the working person, so there are no limits on the basis of family ties or age"*.

For all these reasons, the Labour Court concluded that it is possible to exercise the right to adapt the working day in order to care for children over 12 years of age, when there are family reasons that make it necessary to adjust the length and distribution of the working day.

C.- Interesting Considerations:

In the first place, it should be noted that the sentence analysed has been issued by a Labour Court, so that from a purely legal standpoint, it does not create a precedent nor should it necessarily be followed, in its opinion, by other courts of the same order. In spite of the above, it cannot be forgotten that, given the recent nature of the norm analysed and the difficulty for this type of matter to be admitted in a plea, there is no doubt that it can serve as a guide for other Courts that enter into the analysis of similar cases.

Based on the foregoing, it should be noted that, after the ruling in this case, Article 34.8 ET would be applicable not only to those requests that seek to adapt the workday for the care of children under 12 years of age, but also to those whose purpose is to care for children over 12 years of age.

Thus, in line with this decision, it is once again confirmed that Labour Jurisdiction deals with the facts that shape the case in question in order to provide a solution to the case under trial, and the judge must be present in each specific case, always taking into account the specific evidence presented at the trial. This circumstance is especially relevant in the area of adapting the working day, where the specific reasons for which the worker justifies the need to adapt his/her family and working life are fundamental.

It is equally important to highlight the fact that the ruling once again emphasizes the company's duty to open a negotiation process for any worker's request to adapt their working hours, and also stresses that the company must offer alternatives to the proposal received before rejecting the request, and must in any case give the organizational reasons for rejecting the requested adaptation.

In any case, this opens up a way that must be taken into account in the future by the companies since, following the aforementioned ruling, they must in any case specify the organizational reasons that would prevent the requested adaptation of the working day from being granted, regardless of whether it is understood that, from a purely legal point of view, the request made would not be appropriate.

For more information please contact:

Alfredo Aspra

alfredo.aspra@AndersenTaxLegal.es

José Antonio Sanfulgencio

jose.sanfulgencio@AndersenTaxLegal.es

The above comments are for information purposes only and do not constitute professional opinions or legal advice, nor do they necessarily include the opinions of the authors. If you are interested in obtaining additional information or clarification of the content, please contact us by telephone on +34 917 813 300 or by e-mail at communications@andersentaxlegal.es.