

Employment Update

Can reception of the economic benefit of Temporary Incapacity exceed the period of 18 months for the same illness?

31st January 2020

About the Supreme Court Ruling of 6 November 2019

A.- Approach to the litigation:

The recent Supreme Court ruling of 6 November 2019 (ECR I-774), which was issued in the context of the European Court of Justice's decision on the case of the European Commission's decision on the European Court of Justice's case, is the most recent one. 1363/2017), issued in a doctrinal unification, aims to determine whether the National Institute of Social Security ("INSS"), can deny the economic effects of a new process of Temporary Disability ("IT"), when previously the same worker had exhausted the maximum period of a first IT process without a declaration of Permanent Disability, **with the only argument of the lack of exceeding the period of 180 days between one process and another**, and without the INSS justifying such denial based on the possibility or not of the worker recovering from work.

The aforementioned ruling was handed down in the appeal for the unification of doctrine, against the ruling of the Madrid High Court of Justice of 13 February 2017, which in turn rejected the worker's appeal, confirming the ruling of the social court that ratified the INSS's criteria that denied her the economic benefit for temporary disability.

It should be noted that, according to the judgment appealed against and reversed by the Fourth Chamber, the administrative refusal of the economic benefit was in accordance with the law, without the case law requiring the INSS to justify the refusal of economic effects on the basis of the possibility of recovery of the worker's working capacity during the period of further medical leave.

B.- Court's decision:

The legal debate therefore focuses on whether the INSS should expressly justify the refusal of the economic benefit based on the recovery of the working capacity of the worker concerned.

In this regard, it should be noted that the Supreme Court upholds the Appeal in Cassation and revokes the Decision appealed against, considering that the correct doctrine is that provided in the Decision of contrast, since *"the authority of the INSS is not, in any way, discretionary"*, and its decisions should be based on objective criteria that truly justify the denial of the right requested.

The High Court concludes that the INSS must, consequently, "rule on the state of health of the worker who has obtained a new medical leave from the health services", since, in the event that the economic effects of such a leave are denied, it will have to make a well-founded ruling *"on the possibilities of recovering his or her working capacity, having regard to the bodies competent to evaluate, qualify and review the worker's situation of permanent disability"*.



For all these reasons, the Supreme Court upholds and annuls the ruling issued by the Madrid High Court of Justice, and recognizes the worker's right to receive the economic benefits for temporary disability that she is entitled to by law, given that both the ruling under appeal and the administrative decision that was challenged were well founded, exclusively, in the fact that the new leave was taken before the end of the minimum period of 180 days that must mediate between one and another process of Temporary Incapacity for the same or similar pathology, **"without being based on other objective data, singularly, on the consideration or not that the worker could recover his working capacity"**.

C.- Legal-practical considerations of interest:

Firstly, it is important to highlight the fact that the Supreme Court once again emphasizes the obligation of the INSS to base its decisions on an analysis and assessment of the specific state of health of the worker in question, in order to be able to deny the economic effects of a new leave, based on objective data and, in particular, *"on whether or not the worker was able to recover his or her working capacity"*.

The significance, therefore, of the ruling lies in the **possibility established by our High Court of recognizing the economic effects of a new situation of Temporary Incapacity** for the same or a similar illness, even when no more than 180 days have elapsed between the two processes of Temporary Incapacity, since this will depend on whether or not the worker is able to recover his or her working capacity, and these economic effects must be recognized when a true situation of incapacity of the worker is accredited.

The above comments contain informative aspects, without constituting any professional opinion or legal advice, not necessarily including the opinion of the authors.

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

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