ANDERSEN

NEWSLETTER october 2024

Andersen Update
Employment Law news

REGULATIONS

September 10th Royal Decree 893/2024, which regulates the protection of safety and health in the area of family home services

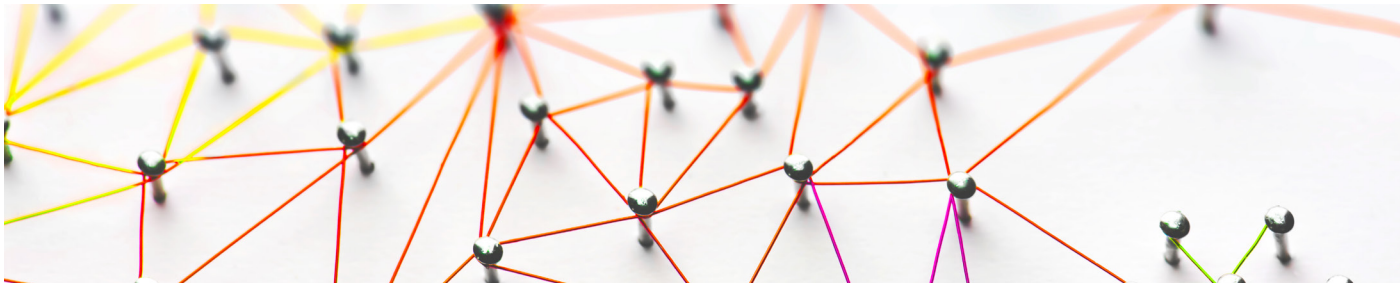
This new regulation establishes a regulatory framework for the protection of the safety and health of employees in the family household service sector. It seeks to extend labour protection to a sector that has been historically neglected, aligning itself with 189 ILO Convention on domestic work. Some of the main points of this royal decree are as follows:

- Occupational risk assessment: Employers must conduct a risk assessment in the home environment, like what is required in any other work sector.
- Personal protective equipment (PPE): Domestic workers shall be entitled to receive the necessary protective equipment to perform their tasks safely.
- Prevention training: it is mandatory for employers to provide occupational risk prevention training to employees, which will ensure that they are trained to identify and prevent potential hazards.
- Health surveillance: this surveillance may include the performance of a medical examination that considers all risks to which employees may be exposed, as identified in the risk assessment.

In summary, this standard not only improves occupational health and safety in the domestic sphere, but also represents an opportunity for the occupational risk prevention sector, promoting the formalization of employment in this sector and the creation of a culture of prevention.

September 5th Order IGD/954/2024, which approves the rules for the award of the “Equality in the Company” award and announces the call for applications for the year 2024

The purpose of this Order is to announce the procedure for the awarding of the distinction, to recognize and promote the work of companies and entities that are committed to equality, standing out for implementing gender equality policies in working conditions, in organizational models and in other areas such as services, products and advertising of the company. The regulation establishes, among other aspects, the possible candidates and their requirements, the process for submitting applications, the necessary documentation, as well as the procedure and criteria for the awarding of the distinction. The deadline for submitting applications is one (1) month from the day following the publication of the Order in the BOE, which took place on September 13th 2024.



JUDGMENTS OF INTEREST

The July 17th 2024 Judgment of the Supreme Court (Social Chamber), No. 1034/2024, Rec. No. 278/2022. The Supreme Court recognizes the prevalence of a more favourable base salary over the salary tables stipulated in the collective bargaining agreements

Previously, the judgment issued by the Social Chamber of the Castilla-La Mancha High Court of Justice upheld a collective dispute claim, declaring null and void the substantial modification of the working conditions challenged by the employees, consisting of the adjustment of the salaries paid to the provisions of the new applicable collective bargaining agreement. Said judgment established that the company had maintained a practice of paying the base salary in an amount higher than that set forth in the salary tables of the collective bargaining agreement for more than five (5) years, which constituted a more beneficial condition for the affected employees.

Finally, the Supreme Court dismissed the appeal filed by the company, in which it argued that the substantial modification of working conditions is not justified by the application of the new collective bargaining agreement, since the latter does not repeal the most beneficial condition previously consolidated in reference to the base salary.

The high court reaffirms its doctrine in this matter, confirming that the continuity in the payment of a salary higher than that stipulated in the collective bargaining agreement generates a consolidated right for the employees. The company's decision to unilaterally adjust remuneration without following the legally established procedure for the substantial modification of working conditions is not compliant with article 41 of the Labour Act, which requires a process of consultation and justification before the employee representatives.

Thus, the Supreme Court's ruling not only protects the rights of the affected employees, but also underlines the importance of legal certainty in labour relations, preventing companies from altering previously accepted conditions without following due process.

The July 9th 2024 Judgment of the Supreme Court (Social Chamber), no. 995/2024, Rec. no. 182/2022. The interprofessional agreement for the extrajudicial resolution of collective conflicts does not violate the right to strike by requiring prior mediation

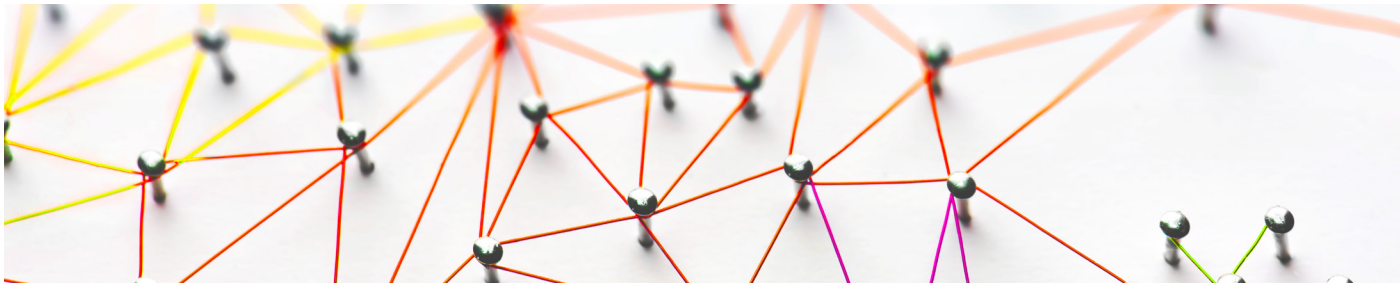
The Chamber ruled on the lawsuit filed by the General Employment Confederation of Andalusia, which challenged articles 5 and 28 of the Interprofessional Agreement regulating the Extrajudicial System for the Resolution of Labor Disputes in Andalusia, alleging that these articles violated the fundamental right to strike by requiring a prior mediation requirement.

The claim was dismissed by the Social Chamber of the High Court of Justice of Andalusia, which considered that the challenged articles were not contrary to law, and that prior mediation did not limit the essential content of the right to strike. In this regard, it emphasized that prior mediation is a procedure that seeks to facilitate the resolution of labour disputes and that its inclusion in the interprofessional agreement is valid, given that it derives from the autonomy of the parties and does not impede the exercise of the right to strike. This criterion is confirmed by the Supreme Court, reaffirming the validity of the mediation requirement and its nature as a collective bargaining agreement with general effectiveness.

The July 26th 2024 Judgment of the Superior Court of Justice of Asturias, (Social Chamber), No. 1313/2024, Appeal No. 1135/2024. Unfairness of dismissal and violation of fundamental rights in the context of temporary disability

The Superior Court of Justice of Asturias dismissed the appeal filed by a female employee against the judgment issued by a Labor Court that had declared her dismissal unfair, since the company failed to prove that it was justified by objective reasons. The plaintiff claimed that her dismissal should be declared null and void due to discrimination on the grounds of her temporary disability.

The Court concluded that no violation of fundamental rights had been demonstrated, since the company had justified its decision to dismiss the employee



due to her unjustified absences. Furthermore, it emphasizes that, although the employee had been medically discharged, she did not communicate with the company to justify her absence from work, which allowed the company to act in accordance with labour regulations.

The ruling reaffirms the importance of communication between the employee and the company in situations of temporary disability. Therefore, it confirms the unfairness of the dismissal, ordering the reinstatement of the worker and the payment of processing wages.

The July 24th 2024 Judgment of the High Court of Justice of Castilla y León (Social Chamber), No. 648/2024, Rec No. 379/2024. The High Court of Justice of Castilla y León declared a worker with post covid syndrome to be absolutely disabled

- The judgment of the Social Court upheld the claim filed by an employee against the National Institute of Social Security and the General Treasury of the Social Security, declaring the plaintiff to be in a situation of absolute permanent disability derived from a common illness, given that the employee suffered from chronic post COVID headaches and cognitive disorders that prevented her from exercising her profession as a graphic designer.

  The appeal filed by the social security authorities was dismissed, and the Court upheld the decision of the Social Court. Specifically, it concludes that the continuous and daily headaches make it impossible to perform adequately in any profession, which justifies the recognition of absolute permanent disability.

The July 9th 2024 Supreme Court Ruling No. 991/2024, Appeal No. 3161/2021. Subsidy for people over 52 years of age: requirement of uninterrupted enrolment since the end of unemployment benefits

- This ruling analyses the requirements for accessing unemployment benefits for persons over 52 years of age, highlighting that registration as a job seeker must be maintained uninterruptedly, not only from the age of 52, but also from the time the protected situation arises. In other words, the employee must demonstrate an active search for employment to be entitled to the subsidy upon reaching that age. The ruling emphasizes that the subsidy is intended for those who have been unsuccessfully seeking employment, not for those who have voluntarily withdrawn from the labour market. This ruling is important for interpreting the regulations on unemployment benefits, especially for employees over 52 years of age in a vulnerable situation.

The July 23rd 2024 Judgment of the Audiencia Nacional (Social Chamber), no. 100/2024, Rec. no. 163/2024. Revocation of sanction for obstruction to the inspection work

- The Chamber upheld the claim of a company against the Labour Ministry, revoking a fine of 70,000 euros for obstruction of the inspection work. The fine had been imposed after an inspection in which alleged irregularities in the hiring of employees were detected. Some employees fled during the inspection, but the company argued that they did not belong to its staff and that those present were duly registered with the social security system.

  The Chamber determined that there was insufficient evidence to link the unidentified persons to the company. Furthermore, it considered that requiring the identification of unknown individuals was a “diabolical request”. Consequently, it annulled the fine, highlighting the importance of correct identification and documentation in labour inspection processes, in accordance with Law 23/2015 and the Law on Infractions and Sanctions in the Social Order.

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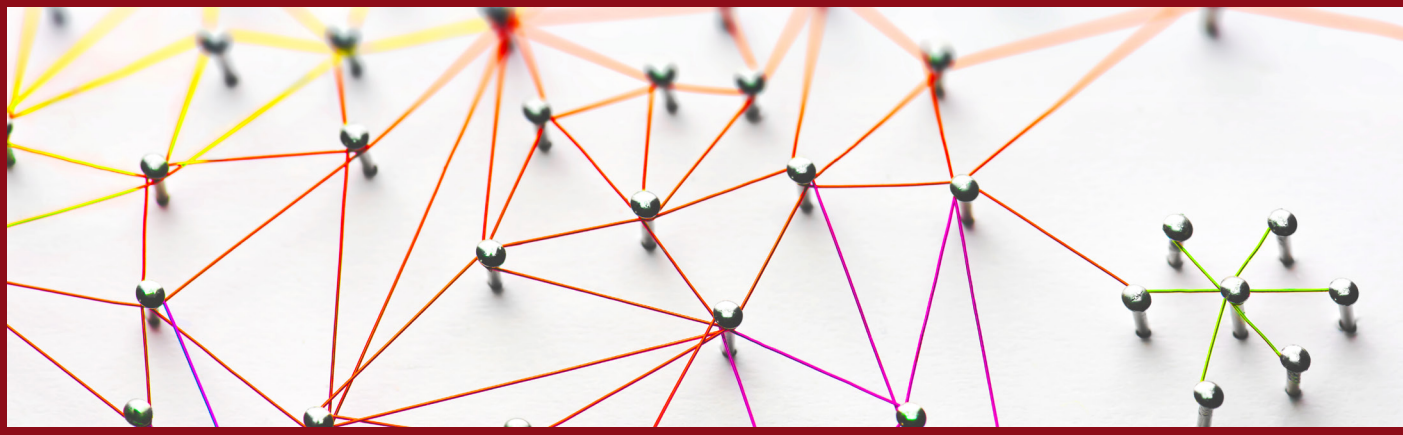


COMMENT OF THE MONTH

Current status of the negotiation of the reduction of the maximum legal working day: analysis and consequences

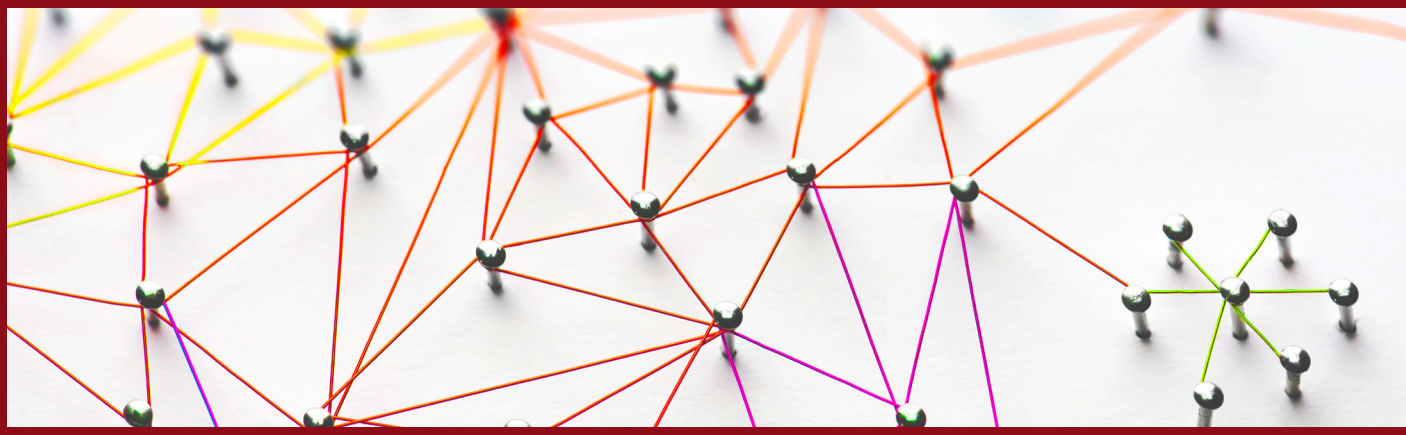
One of the great updates foreseen in labour matters for the coming months is the reduction of the maximum legal working day in 2024 or 2025, to move, in a first phase, from the maximum legal working day of 40 hours per week, in force since 1983, to another of 38.5 hours per week, and in a second phase to 37.5 hours per week.

Although this measure is still in the process of study and negotiation, the different master lines and positions that the different social agents and parties involved in the negotiation are already known, all of them agreeing that, in no case, this reduction will ever be less than 37.5 hours per week, which would be implemented in two stages: in a first stage, the working day would be reduced to 38.5 hours per week, and in a second and last stage to 37.5 hours per week.

The timetable for implementation and the regime for reducing the maximum legal working hours, which is a key point in the negotiations, is not yet clear, with a gradual reduction to 37.5 hours per week from January 2025 currently being considered.

It seems that in the negotiations, at present, a large majority agrees that employees will receive the same current salary, at least, working 1.5 or 2.5 hours less per week, which would result in an increase in the cost of the hour worked, but the reduction will not affect in principle the Minimum Interprofessional Wage (SMI), so that the hour worked will be worth more also for those who receive this salary. It is also intended in the negotiation to regulate in some way the irregular distribution of 10% of the working day in which the right to digital disconnection must be sufficiently resolved to avoid contacts between company and worker outside the working day and hours, and in which sanctions are established for companies in the event of non-compliance. The legal reduction of the working week will not affect all sectors equally, since collective bargaining agreements will be able to establish, as is currently the case, working hours that are shorter than the legal working week, since this is a matter available for collective bargaining.
As negotiations on this issue are going slowly, it is possible that the dates initially planned for its application will be delayed and its entry into force will not take place until 2025, with gradual application of the reform over the course of that year.

Although the situation of the reform of the maximum legal working day has been widely reported in the media, we will allow ourselves an update on it by way of a summary, even though the definitive scope of the reform is not yet known.



Regarding the good or bad of this measure, the International Monetary Fund (IMF) has warned that wages will bear part of the costs of the working day, which could lead us to years of wage moderation.
The closest experience we know of in this matter is that of France, which a few years ago reduced the maximum legal working week to the current 35 hours a week, and we must conclude that this measure had its supporters and detractors, although overall it was considered positive.

The IMF did not eliminate the negative consequences of this reform, some of which were significant, because, as nothing is free, in the end the workers ended up bearing part of the costs of the reduction in working hours; salaries were also frozen and remained unchanged for 1 to 3 years. In some cases, there was wage moderation for a long time, lowering per capita income in the medium term.

Finally, the IMF has warned that this initiative should be accompanied by wage moderation and flexibility should be allowed, as well as the job creation that could be generated by the reduction in working hours is unclear and would probably be small.

In France, in general, jobs were neither created nor destroyed, due to the multiple changes that accompanied the reform; there was some dissatisfaction among workers due to the worse evolution of wages, although a relocation of activities from large to small companies was observed to reduce the labour cost.

The problem at the present time in our country, independently of the fundamental issues, is to be found in the procedure to be followed, that is, in the form, since companies refuse to reduce the working day by law and the possibilities of reaching an agreement at the negotiating table are, for the time being, remote.

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