

The 12 new features of the Labour Reform

30th December 2021

As the year 2021 draws to a close, there are new legal developments in the labour field following the publication of the reform that has been negotiated in recent months.

The main new labour developments have been introduced through Royal Decree-Law 32/2021, of 28th December, on urgent measures for labour reform, the guarantee of employment stability and the transformation of the labour market, published today, 30th December 2021, whose explanatory memorandum emphasises the need to modify the regulations, especially in terms of temporary employment and unemployment.

Below is a summary of the 12 main developments regulated by Royal Decree-Law 32/2021:

1. Updating training contracts

A new training contract is created to replace the existing training contracts (internship contract, training and apprenticeship contract and dual university training contract), which will disappear.

The current training contract, which will come into force on 31st March 2022, is regulated under two forms: the alternating training contract and the training contract for obtaining professional practice. Although each modality has its own peculiarities, both contracts have in common aspects such as their formalisation in writing or their calculation for seniority in the company, among others.

Existing training contracts that have been eliminated by this reform are expected to remain in force for the duration of the contract.

In terms of Social Security, a new system of contributions will be established as of 31st March 2022, applicable to existing training and apprenticeship contracts and to new alternation contracts.

2. Simplification of temporary contracts

On the one hand, there is a general presumption that the employment contract is for an indefinite period and, on the other hand, the fixed-term contracts for works and/or services, temporary and interim contracts are abolished and simplified to two temporary contracts: contracts for circumstances of production and contracts for the replacement of a worker.

In both cases, the cause justifying the temporary nature of the contract must be clearly identified, it being understood that production circumstances occur when an occasional and unforeseeable increase in the company is generated and the oscillations of the activity produce a temporary mismatch between the stable employment available and that required, including the period derived from annual leave. This contract may only be concluded for a maximum period of 6 months. Contracts may also be entered into under this method when it is necessary to meet occasional and foreseeable production circumstances with a reduced and limited duration, which may only be used for a maximum period of 90 days in the calendar year.

A substitution contract is understood to exist when it is necessary to replace a worker with a job reservation, and the contract must state the name of the person being replaced and the reason for the substitution, including the need to complete the reduced working day with another worker or to cover a vacancy during the selection or promotion process.

These new fixed-term contracts are expected to enter into force on 31st March 2022. In the meantime, existing fixed-term contracts concluded between 31st December 2021 and 31st March 2022 will be governed by legal or contractual regulations.

Likewise, fixed-term contracts for works and/or services, temporary and interim contracts entered into before 31st December 2021 and which have been eliminated by this reform will remain in force until their planned duration.

On the other hand, it is established that fixed-term contracts of less than 30 days will have an additional contribution to be paid by the employer at the end of the contract, excluding the Special System for Agricultural Workers, the Special System for Household Employees or the Special Scheme for Coal Mining and replacement contracts.

3. Redefining the permanent-seasonal contract

The permanent-seasonal contract is redefined, establishing it for situations such as seasonal work, work linked to seasonal productive activities, intermittent work with certain, determined or indeterminate periods of execution and work consisting of the provision of services within the framework of the execution of foreseeable commercial or administrative contracts that form part of the company's ordinary activity.

It is also foreseen that the fixed-discontinuous contract method regulated by this reform will enter into force on 31st March 2022.



4. Changes in the construction sector

The company is obliged to make a written outplacement proposal to the worker at the end of the work. Once this proposal has been made, the contract may be terminated for reasons inherent to the worker when (i) the worker rejects the relocation, (ii) the worker's qualifications after a training process are inadequate or (iii) there is no vacancy in the province in which he/she is hired in accordance with his/her professional qualifications. In such cases, he/she shall receive compensation of 7% of the salary concepts established in the Collective Bargaining Agreement.

5. New regulatory framework for subcontracting

The collective bargaining agreement applicable to contractors and subcontractors shall be that of the sector in which the activity is carried out.

6. Removal of the priority of application of company agreements in wage matters.

Wage conditions regulated in company collective agreements cease to have priority over other collective agreements.

It is envisaged that all company collective agreements that have been signed, submitted for registration or published prior to 31st December 2021 will maintain their priority of application in wage matters until they lose their express validity and at the latest until 31st December 2022. Once this deadline has been reached, the collective bargaining agreements must be adapted to the changes within a maximum period of 6 months.

7. No limits to ultra-activity

The collective bargaining agreement remains in force if no agreement has been reached after the bargaining process.

All collective agreements that have been reported by 31st December 2021 will remain in force with indefinite ultra-activity until a new collective agreement is adopted.

8. Modifications to the Temporary Redundancy Programmes

Se A reduction in the working day or temporary suspension of employment contracts for ETOP reasons (collective layoffs justified by economic, technical, organisational or production causes) is permitted,



with the reduction of the working day taking priority over the suspension of employment contracts. In such cases, certain requirements of the ERTE (temporary workforce restructuring plan) procedure are modified, such as the reduction of days in the consultation period for companies with fewer than 50 workers (from 15 to 7) or the simplification of the number of days for setting up the negotiating committee (from 7 to 5 with legal representation of the employees and from 15 to 10 without legal protection). Greater flexibility is also granted in the procedures, allowing the possibility of extension through a new consultation period of a maximum of 5 days.

The restructuring procedure is regulated for reasons arising from Force Majeure, along the same lines as the regulations issued during the pandemic, and a new cause of force majeure is included: due to an impediment or limitation of the company's normal activity.

In addition, companies that train workers affected by Temporary Layoffs will be entitled to an increase in credit for the financing of actions in the field of programmed training.

The restructuring procedures carried out due to an impediment or limitation to the activity linked to COVID-19 will continue to be governed by the provisions of article 2 of Royal Decree-Law 18/2021, of 28th September, until 28th February 2022.

In Social Security matters, companies will be able to voluntarily avail themselves (when the established requirements are met) of the exemptions in Social Security contributions on the company's contribution for common contingencies and for joint collection concepts, specifically (i) 20% for temporary lay-offs due to collective layoffs justified by economic, technical, organisational or production causes (exclusively in the case of companies that carry out training activities), (ii) 90% for temporary lay-offs due to force majeure and due to impediments or limitations in the company's normal activity (iii) and in temporary lay-offs where the RED Mechanism is applicable (in its cyclical modality, the percentage will vary between 60% and 20%).

9. Establishment of the Employment Flexibility and Stabilisation RED Mechanism

A RED mechanism is created as an instrument for employment flexibility and stabilisation which, after activation by the Council of Ministers, will allow companies to adopt measures to reduce working hours and suspend employment contracts in two ways: cyclical (in response to a macroeconomic situation) and sectoral (in response to changes in sectors of activity that require retraining and professional transition processes).

A RED Fund, attached to the Ministry of Labour and Social Economy, will be set up to finance both forms of the RED mechanism.



Unemployment protection of 70% of the regulatory base is also established for the duration of the measure, which will come into force on 31st March 2022.

10. Amendments in the field of infringements and penalties

New infringements are established, which are detailed in the following table:

Article	New infringements	Type of infringement	Penalty applicable
Article 6 paragraph 5	Failure to report vacancies to those hired on training contracts or on permanent contracts.	Light	From 70 to 750 euros
Article 7 paragraph 14	New hires in breach of the prohibition established in an ERTE. One infringement will be considered for each person hired..	Serious	From 1,000 to 10,000 euros
Article 8 paragraph 3	Collective dismissal or ERTE RED mechanism (in any of its forms) without following the procedures established in articles 51 and 47 and 47 bis of the Workers' Statute.	Very serious	From 7,501 to 225,018 euros
Article 8 paragraph 20	Establishing new outsourcing of activity in breach of the prohibition set out in article 47.7.d) Workers' Statute.	Very serious	From 7,501 to 225,018 euros
Article 18 paragraph 2 f) Article 19 paragraph 2 g) Article 19 third paragraph 2 h)	Formalising contracts for the provision of jobs for which the required risk assessment has not been carried out beforehand.	Serious	From 2,451 to 49,180 euros



It is clarified that, when a breach of fixed-term and temporary contracts is committed, as well as formalising contracts for the provision of services for cases other than those provided for in the law, these will be considered infringements for each of the workers affected.

Infringements committed before the entry into force of this regulation, on 31st December 2021, will be sanctioned in accordance with the amounts of the previous regime.

11. Future Statute for Interns

Trade union and employers' organisations shall be convened within 6 months to discuss the Statute for Interns, which shall cover authorised practical training in companies or similar bodies, as well as the training activity carried out within the framework of curricular or extracurricular internships provided for in official studies.

12. Alteration of the Minimum Wage

The Minimum Interprofessional Wage approved for 2021 is extended until the relevant Royal Decree setting the minimum interprofessional wage for 2022 is approved.

We hope these comments are useful and, in any case, the Andersen Employment team remains at your disposal to clarify any doubts you may have in this regard.

For further information, please contact:

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