



## Andersen Update Employment Law News

### REGULATIONS

October 17, 2025, General Directorate of Labor Resolution, which publishes the list of public holidays for the year 2026.

- > The General Directorate of Labor has published in the BOE (Official State Gazette) the resolution that establishes the official calendar of public holidays for 2026. The text includes the national and regional holidays and the particularities of Ceuta and Melilla.

The Autonomous Communities have been able, as always, to substitute the national holidays that coincide on Sunday with their own celebrations and, where appropriate, to establish an additional recoverable day. In addition, each municipality will be able to establish up to two paid and non-recoverable local holidays, which will be published in the corresponding official gazettes.

The text also includes the public holidays of each Autonomous Community, which allows companies to start planning the 2026 working calendar.

October 28 Royal Decree-Law 12/2025, adopting urgent reactivation, reinforcement and prevention measures within the framework of the Plan for immediate response, reconstruction and relaunching in the face of the damage caused by the DANA.

- > The Royal Decree-Law 12/2025, published in the Official Gazette on October 29, extends the actions of the Immediate Response Plan against the damage

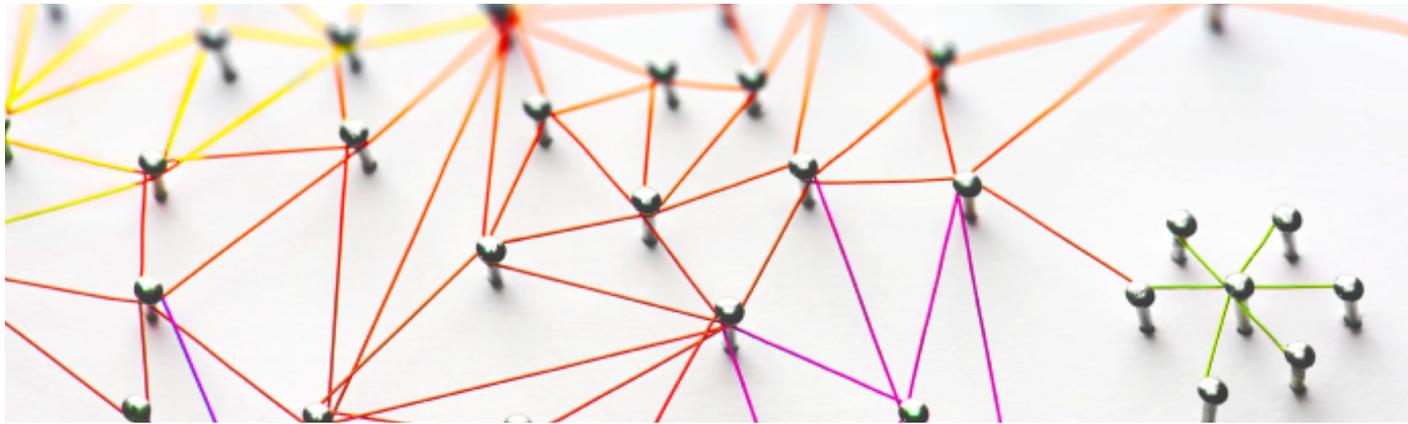
caused by the 2024 floods, with particular effect in the Valencian Community. The regulation reinforces the capacity to respond to future emergency situations and consolidates the framework of economic, social and employment support measures aimed at companies, employees and local administrations affected by the catastrophe.

In the Employment and Social Security matters, the deferrals in the payment of Social Security quotas are extended, access to subsidized financing to sustain employment is facilitated and an extraordinary benefit for termination of activity is introduced for the self-employed who continue to be affected.

### Guide for Labor inspectors' actions on employment in digital platforms

- > The Labor Inspectorate has published this month its Guide to Inspection Action on Work in Digital Platforms, in which it sets specific criteria for supervising companies operating through delivery platforms and digitized services, recognizing the particularities of a work managed by algorithms and applications that require inspection tools adapted to their changing nature.

The guide anticipates the mandatory transposition of Directive (EU) 2024/2831 on working conditions on digital platforms, which is due to expire on December 2, 2026, and incorporates the requirements of Regulation (EU) 2024/1689 on artificial intelligence applicable to automated personnel management systems. This document marks a before and after in the employment supervision of the digital sector,



establishing clear parameters of regulatory compliance that companies must be aware of to adapt to the new European regulatory scenario.

October 13 Order PJC/1146/2025, which creates and regulates the Evaluation Commission on the concurrence of objective circumstances that justify the application of reduction coefficients of retirement age.

> The Ministerial Order specifies the provisions of Royal Decree 402/2025, creating the interministerial Evaluation Commission, in charge of determining which jobs are eligible for retirement age reduction coefficients.

This Commission represents a relevant change in the management of early retirement, since it will apply technical and objective criteria, based on indicators such as sick leave, permanent disability and mortality associated with certain working activities. Its binding reports, issued within a maximum period of one month, aim to guarantee a transparent and regulated process.

In addition, the Commission will be able to make recommendations to improve occupational risk prevention and will meet at least twice a year to ensure continuous monitoring of working conditions. For companies, this provides a clear framework for identifying positions eligible for early retirement and adjusting their personnel management and resource planning policies.

## JUDGEMENTS OF INTEREST

September 30, 2025, Judgment of the Supreme Court (Social Chamber) no. 128/2025. Parental leave under article 48 bis ET (Labor Act) is unpaid.

> The Supreme Court held that the 8-week parental leave provided for in Article 48 bis LA is unpaid. The Court reasons that the legislator, when transposing the European Directive, consciously chose not to expressly attribute remuneration to the new leave, unlike other cases of Article 37 LA. Furthermore, neither the EU legislation nor its transposition imposes the obligation to pay during the leave, limiting itself to guaranteeing the employee's right to be absent to care for children under eight years of age.

Thus, the Court warns that it is not up to the Court to supplant the legislator or to convert unpaid leave into paid leave, since this would mean setting aside its interpretative function and starting to legislate.

Therefore, the use of parental leave entails the suspension of the employment contract without pay, unless a collective bargaining agreement or internal agreement provides otherwise.

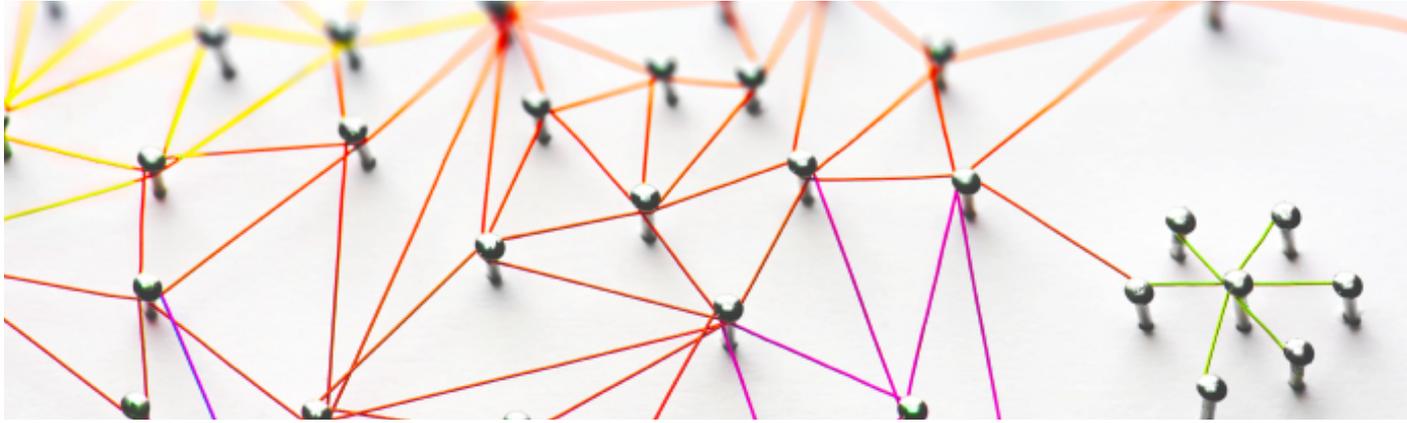
September 26, 2025 (rec. no. 568/2025) Judgment of the Cantabria Superior Court of Justice (1st Section) no. 638/2025. The lack of obligation to make reasonable adjustments after a permanent disability disappears if the company has no activity.

> The Court specifies that the obligation to make the necessary reasonable adjustments following a declaration of permanent disability of an employee disappears when the company has no activity. Specifically, it is considered as a situation of absolute impossibility of adaptation, comparable to the case of not making reasonable adjustments due to an excessive burden on the company or the non-existence of a vacant job.

Notwithstanding the foregoing, in the case in question, the decision emphasizes that the company did not comply with the required formalities when carrying out the dismissal, since it omitted the mandatory requirement of notifying the employee in writing, and therefore classifies the decision as unfair dismissal.

October 15, 2025, Judgment of the Supreme Court (Social Chamber) no. 905/2025. Amount of processing wages in the case of null dismissal in cases of illegal assignment.

> The Supreme Court ruled on whether, following the declaration of the nullity of the dismissal of an employee and the existence of an illegal assignment, the processing wages should be calculated in accordance with the salary received in the assigning company at the time of dismissal or the salary corresponding to the equivalent position in the assignee company, which the employee chose to join after the final judgment was handed down.



The Court reasoned that the execution of a judgment must be carried out in accordance with the terms set forth in the final decision. In this case, the option to join the transferee company was exercised after the judgment that had already determined the amount of the processing wages, so that this option cannot retroactively alter the amount fixed.

Therefore, even if the employee is reinstated in an equivalent position in the transferee company, in this case, the processing wages must be calculated in accordance with the salary recognized in the dismissal judgment, corresponding to the transferor company.

September 17, 2025, Judgment of the Supreme Court (Social Chamber) no. 787/2025. Christmas hamper as a benefit, timely replacement with a gift card?

> In the specific case, the employees had been receiving the Christmas basket since 1997 as a perk incorporated into the employment contract. In December 2022, the company offered the option of choosing between the usual basket or a gift card of 100 euros, given to the rest of the permanent staff who did not receive any other Christmas gift. The unions argued that this option represented a unilateral and discriminatory modification of a consolidated benefit, while the company defended that the basket was maintained and that the card was a one-off and voluntary benefit.

The Court ruled that, although the Christmas basket is indeed a more beneficial acquired condition, it is legitimate for the company to offer, on an exceptional and voluntary basis, a specific alternative (such as the gift card) without this implying the loss or definitive modification of the consolidated benefit. .

October 15, 2025, Judgment of the Supreme Court (Social Chamber) no. 927/2025. Effective date of maternity allowance.

> The Supreme Court has resolved the appeal of a male pensioner who requested the maternity supplement for demographic contribution almost five years after retiring on February 10, 2016.

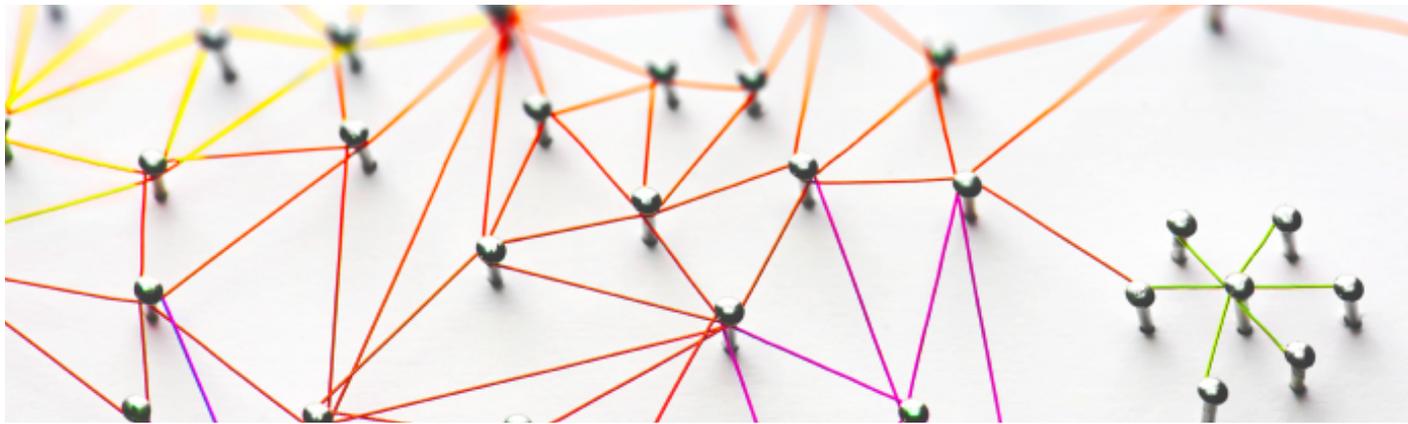
After different controversial resolutions in the administrative and judicial phase, finally, the High Court upholds the employee's request and agrees to grant the supplement, with effect from the initial date of the pension, ignoring the statute of limitations limits of the Spanish regulations. According to the ruling, making full reparation for the discrimination suffered implies recognizing the right retroactively, even if the application was filed years later, since the delay was due to a rule that was discriminatory in its origin.

September 18, 2025, Judgment of the Supreme Court (Social Chamber) no. 794/2025. The employer's requirement of generic and prior specification of the working time credit does not violate the fundamental right to freedom of association.

> The Supreme Court ruled on the requirement by the company to request from all unions a generic justification of the use of union hours corresponding to the first quarter of 2023. In the case in question, while other unions responded in due time, the USO (Social Workers' Union) and its representatives did not do so, which led to the opening of individual disciplinary proceedings. The USO alleged violation of the fundamental right to freedom of association and discrimination during the union election process.

The Court reasoned that the requirement of a generic and prior justification of the use of union time credit does not violate the right to freedom of association, if it is not an exhaustive requirement and does not imply undue surveillance.

Therefore, the lack of justification regarding the use of union credit by union representatives can legitimize the opening of individual disciplinary proceedings, without this implying union discrimination, since the company acted within its legal powers.



Judgment of the Supreme Court (Social Chamber) no. 825/2025, of September 24, 2025. Adaptation of working hours and individual negotiation process.

- The Supreme Court ruled on the rejection of the request for an adjustment of the working day filed by an employee who requested to change from a split working day to a continuous schedule to take care of his underage daughters.

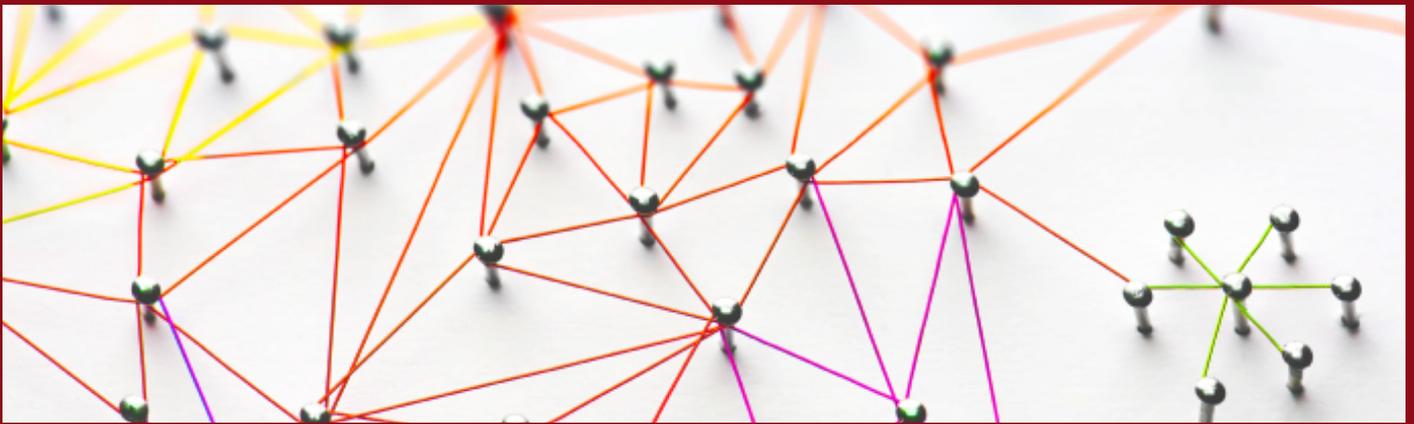
The company rejected the request alleging organizational reasons, without opening the legally required individual negotiation process. The employee challenged the refusal in court and claimed compensation for violation of fundamental rights.

The ruling recalls that the company is obliged to initiate an individual negotiation process in good faith when faced with a request to adapt the working day for family reconciliation. In this case, the employee's request was reasonable and proportionate, and the company did not prove that it had negotiated or offered alternatives.

In short, the decision consolidates the doctrine, establishing that the breach of the duty to negotiate on the part of the company entails the judicial acceptance of the adaptation of the working day requested by the employee.

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## COMMENT OF THE MONTH

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### BACK TO THE ISSUE OF PARENTAL LEAVE PAY UNDER ARTICLE 48 BIS OF THE LABOR ACT, POSITION OF THE NATIONAL COURT, SOCIAL CHAMBER, IN ITS RULING DATED 30 OCTOBER 2025.

The 20 June 2019 transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council on the reconciliation of family and working life for parents and carers, and repealing Council Directive 2010/18/EU, is analyzed in this Judgment of the National Court.

Through June 28th Royal Decree-Law 5/2023 (RDL), a new article 48 bis was introduced in our Labor Act, which establishes the right of employees to take parental leave for the care of a son, daughter or foster child for a period of more than one year, until the child reaches the age of eight.

This leave, of a duration not exceeding eight weeks, whether continuous or discontinuous, may be taken on a full-time basis or on a part-time basis.

In any case, it does not follow from the literal wording of the regulation that it must be paid or compensated, and since the publication of the RDL, the Courts have been questioning whether this leave must be paid to the employee.

Forexample, last February, the Cuenca 1st Contentious-Administrative Court issued a ruling recognizing the right of a female public sector employee to take 8 weeks of paid parental leave.

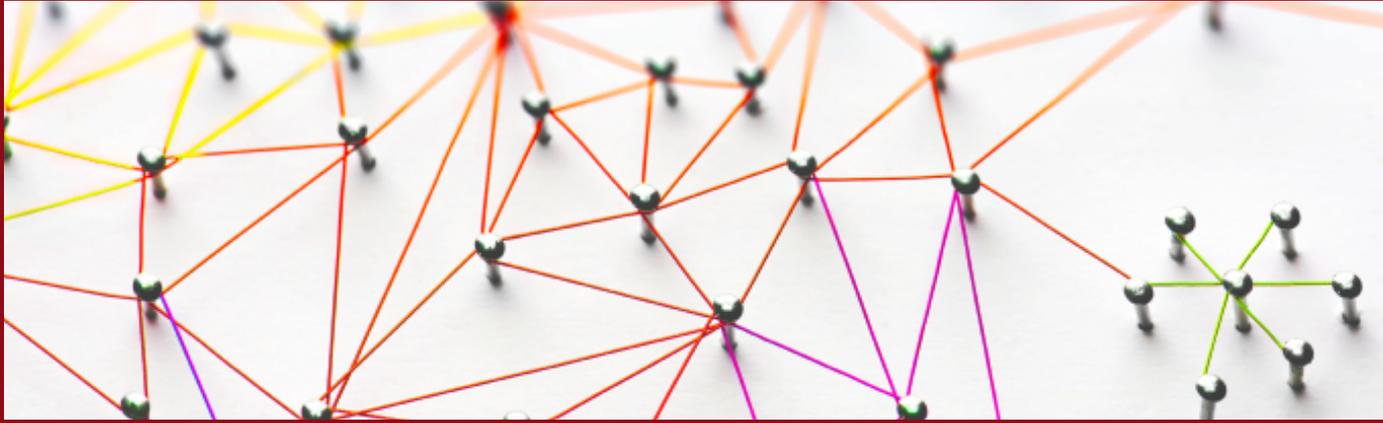
Subsequently, last July, the Barcelona No. 1 Social Court recognized the right of a private sector employee to take paid parental leave.

Both judicial pronouncements have considered the direct application of EU Directive 2019/1158 (the Directive) and the principle of primacy of Union Law, above our national regulation, the new art. 48 bis of the LA.

On this occasion, it is the National Court, in a collective dispute claim, which has had to resolve: (i) whether parental leave has the nature of paid leave similar to those provided for in art. 37.3 of the LA and, (ii), assuming that the EU Directive has been transposed as regards its remunerative nature, the direct effectiveness of the EU rule must be applied.

The analysis is done by the National Court, which considers as a starting point that art. 8 of the Directive does not unequivocally impose that the leave must be paid, since the provision itself refers to the fact that the leave must be accompanied by “remuneration or an economic benefit”. In other words, it is provided that the remuneration may be paid by the employer or by the public budget in the form of a benefit from the public system. Each Member State must determine which of the two options it adopts.

Parental leave in the national legal system has been configured as a case of suspension of the employment contract (general framework of Art. 45 and 48 LA), but the legislator has not modified the Social Security regulations to consider the correlative right of access to a benefit from the Social Security system.



The National Court understands that the protection of the employee for the care of a minor child goes beyond the content of art. 48 bis LA. In fact, going to the 4th and 5th cases of art. 48 LA (suspension of the contract for birth of a child), they specify a minimum of 5 weeks of suspension for the care of the child with recognition of public benefits.

The care of the child is also guaranteed by breastfeeding leave, regulated in art. 37.4 of the LA, in which, on average, the employee can enjoy 3 weeks of accumulated breastfeeding leave with remuneration paid by the employer.

Thus, our system would already cover 8 weeks of absence, either paid or covered by economic benefits, satisfying the minimum requirements established by the Directive.

On the other hand, in order to consider the transposition and direct application of a Community Directive, this would be possible when: (i) we are faced with a clear and precise configuration of its content that allows its application and (ii), when it does not require a subsequent intervention or commitment under the condition of adoption by the Member States.

The former option would lapse in the case of horizontal application or application between individuals, in this case between the company and the employees. Contrary to the possibility of doing so vis-à-vis the State.

The Court concludes that if it were to declare that parental leave is paid at the employer's expense or must be covered by a benefit, it would become de facto a legislator and not an organ of interpretation of the rules.

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