

# Main new developments in the Law governing the Labour jurisdiction

On 11 October 2011 the Official State Gazette published new Law 36/2011, dated 10 October, governing the Labour Jurisdiction (the "**Law**" or the "**LRJS**"), due to enter into force on 11 December 2011, derogating the existing Labour Procedure Law.

## **AIMS**

One of the main aims of the LRJS consists of having all matters that may be considered labour-related, either directly or by virtue of a close connection, heard by the labour courts, which specialise in these areas.

In particular, the Law intends to unify all matters related to occupational accidents, health and safety, appeals to administrative acts in the labour sphere and violation of rights (excluding criminal cases) in the labour jurisdiction.

Moreover, the LRJS introduces multiple technical improvements, assimilating case law criteria and consolidated procedural practice, seeking to speed up procedural formalities and adapt to the new judicial structure ("*nueva oficina judicial*") and the use of new technologies.

## **MAIN NEW DEVELOPMENTS**

Following the order used in the articles of the Law, the main changes it contains can be summarised as follows:

### **1. Concentration of matters addressed to the labour jurisdiction (Articles 2 and 3).**

The matters addressed to the labour courts are extended and they are to hear new and more varied cases in relation to certain matters. Summing up the new aspects, we can say that the labour courts will hear cases on the following matters:

- Appeals to administrative decisions issued by the labour authorities in collective redundancy procedures; those handed down in the exercise of the power to impose sanctions in labour and trade union matters or other administrative acts in relation to labour and in relation to labour and trade union matters.
- Appeals to decisions that exhaust the administrative channels in relation to Social Security, including those handed down in the exercise of the power to impose sanctions, with the exception of those expressly excluded under Article 3.f

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of the LRJS (acts regarding categorisation, settlement of quotas and collection management acts related to the General Treasury of the Social Security).

- Actions by employees, their successors, or by economically dependent self-employed workers (TRADE) against the employer or other responsible parties in relation to damages caused in the sphere of the rendering of services or occupational accidents or professional illness, including direct action against the insurer.
- Fulfilment of legal and collective bargaining obligations on the prevention of occupational risks against the employer or other responsible parties and appeals to actions by the public administration in this area in relation to its personnel, including public servants and statutory staff.
- On actions regarding the protection of fundamental rights and public freedoms (including the prohibition of discrimination and harassment) against the employer or related third parties, if the alleged infringement is directly related to the rendering of labour services (such as the harassment by a worker of a third company).
- Appeals to arbitration decisions of a labour nature.
- With regard to Social Security benefits and the attribution of legal responsibilities to employers or third parties in relation to such benefits and disputes over the assessment, recognition and classification of degrees of disability.
- On the benefits in Law 39/2006 on the promotion of personal autonomy and the care of dependent persons, although its entry into force is delayed until the approval of a new law, the draft bill of which is to be approved by the Government within three years (Final Provision 7).
- With regard to labour mediation, in conflicts that arise between workers and public employment services, authorised placement agencies and other collaborating entities and between the latter entities and the corresponding public employment service.

In relation to the above, the Law clarifies that the following are excluded from the labour jurisdiction:

- Appeals to administrative acts of the Social Security system regarding categorisation, settlement of quotas and collection management and related acts of the General Treasury of the Social Security, for which the jurisdiction of the Contentious-Administrative courts is maintained.
- Determining the essential services and minimum percentages of personnel on strike.
- Matters between the employers and third parties obliged to coordinate occupational health and safety activities or the organisation of occupational health and safety services.

## 2. The parties to proceedings (Articles 16-24)

- The *locus standi* of entities without legal personality and asset groupings or separate assets acting as employers is extended.
- The entitlement to appear in proceedings is facilitated for employees representatives or trade union representatives when, due to the protection exercised, the plea does not directly and individually affect a certain group of workers.
- Trade unions with sufficient presence in the sphere of the conflict are entitled to bring actions to defend collective interests, and they will be able to act in collective conflict processes defending the rights and interests of several workers and, in particular, defending the right to equal treatment of men and women.
- Trade unions are exempted from the obligation to make deposits or allocate funds in order to file a claim and will have the benefit of free legal aid when exercising a collective interest in the defence of workers or Social Security beneficiaries.
- Public servants or statutory staff, when acting as public employees, will be entitled to free legal aid, in the same terms as ordinary employees.

- The intervention of the Salary Guarantee Fund (FGS) in the process is stepped up and it will be summoned in those claims which may give rise to the responsibility of the same, or where it is a party in the processing of arbitration proceedings. It will be possible to challenge arbitration decisions, judicial or out-of-court conciliations, acquiescence and settlements approved by the courts, from which salary guarantee obligations may derive.

### **3. Joinders of actions, trials and appeals (Articles 25-34)**

- In claims regarding occupational accidents and professional illnesses, all pleas for losses and damages derived from a single event may be joined.
- The claimant may include pleas derived from a single administrative act or decision, or several that are directly related to each other, in his/her claim.
- A worker may include the claim for final settlement payment in his/her dismissal action, although the judge may decide that they be processed separately after the hearing, in cases where the items claimed are particularly complex.
- Claims for differences in remuneration derived from professional classification claims may be joined to the latter.
- If a TRADE brings an action for dismissal alleging the existence of a labour relationship, the main dismissal action and the one brought against the termination of the relationship by the client may be joined in a single claim if the first one is rejected.
- In relation to Social Security benefits or regarding benefit surcharges, a joinder of proceedings will be ordered even if the parties or the procedural position they hold are not the same, when a single administrative act (or several directly related acts) are challenged and the same applies to the challenge of a single administrative act in other matters falling within the remit of the labour jurisdiction.
- Set rules are established on joint treatment and joint resolution in the joinder of dismissal and contract termination actions via Article 50 of the Workers' Statute.

### **4. Regulation of procedural acts (Articles 42-48)**

- The days of the month of August are working days for the purposes of proceedings regarding the challenge of administrative decisions on collective redundancy procedures, appeals to medical discharges and precautionary or interim measures.
- Decisions with a term for its appeal will state any local or regional holidays that may affect it.
- Provision is made for the replacement of physical delivery of proceedings documents by electronic access or delivery in electronic format.

### **5. Procedural decisions (Articles 49-52)**

- The cases in which oral judgments are possible are simplified, including trials or types of proceedings in which appeals to a higher court are not possible.

### **6. Notifications (Articles 53-62)**

- The location details supplied for notification purposes will be fully valid and unsuccessful notifications made pursuant to the same will be valid until alternative details are supplied. The parties and their representatives will be responsible for ensuring such details are up to date.

## 7. Rules designed to avoid proceedings (Articles 63-68)

- Processes for the annulment of arbitration decisions and appeals to conciliation, mediation and settlement agreements will be excepted from the mandatory previous conciliation or mediation, in addition to those that were already excepted.
- Judicial appeals and court appeals for the annulment of arbitration decisions will be processed according to the formalities established for ordinary proceedings. Said actions will be based on overreliance on arbitration, having decided on aspects not submitted to arbitration or which cannot be subject thereto, a vital procedural defect or infringement of mandatory legislation.
- Should one of the parties fail to appear (without justified cause) at the conciliation or mediation hearing, said party would not be fined but would instead be ordered to pay the costs of the hearing, up to a maximum of €600, if the judgment essentially coincides with the plaintiff's petition.

## 8. Exhaustion of administrative channels (Articles 69-73)

- The requirement of first exhausting the administrative channels, is added to the requirement of an administrative claim being made in advance, due to the extension of the matters addressed to the labour jurisdiction.
- Regarding fundamental rights and freedoms, in terms of administrative acts in exercise of labour and union powers held, there is no requirement to exhaust administrative channels. The term allowed for bringing claims will be 20 days as from the date of notification of the act or the term established in the decision.
- Regarding Social Security, proceedings to challenge medical discharges due to the exhaustion of the term of the benefits will be excepted from the obligation to bring a prior claim. In all other proceedings to challenge medical discharges, the prior claim must be brought within a term of 11 days.

## 9. Procedural duties of the parties (Articles 74-75)

- A fine of between €180 and €6,000 (up to a maximum of 1/3 of the amount claimed) will be imposed for cases in which the court or judge finds the existence of bad faith or vexatious litigation, subject to hearing the affected party during a term of 3 days.
- The breach of obligations in terms of collaborating with the process and complying with judicial decisions will entail distraint for the parties and financial penalties for third parties or others involved.

## 10. Preparatory acts, prior examination and securing of evidence and interim measures (Articles 76-79)

- With regard to preparatory acts and interim measures, the party intending to bring the claim may request the disclosure of the identity of the members, participants or managers of an entity without legal personality, and the disclosure of who the businessperson or members of the business group or unit are, as well as the persons involved in the causing of harm and the risk insurance, if applicable.
- A party intending to bring proceedings to defend collective interests may request the disclosure of the identity of the group of parties involved when they have not been identified but where this can easily be done.
- When the prior discovery of documents is to take place, preference is given to electronic format and the discovery of documents may be requested by the parties during the trial, 5 days in advance of the hearing, provided it does not give rise to suspension of the same.
- The Law refers to several provisions set out in the Civil Procedure Act (LEC): Article 256 (preliminary proceeding), Articles 293 to 298 (advance examination) and Articles 721 to 747 (interim measures).

- Workers and beneficiaries of Social Security benefits, trade unions holding the collective representation of their interests and the representative associations of the TRADE, will be except from the obligation to present sureties, guarantees and indemnification in relation to any interim measures adopted.
- Provision is made for confirming employer's insurance or pre-trial attachment in cases such as those involving claims derived from occupational accidents and professional illnesses, or proceedings on decisions by the labour authority on the suspension of works due to a risk to the health and safety of workers or responsibilities derived from the absence of medical check-ups. Interim measures are also envisaged to safeguard the dignity and physical integrity of the worker, in cases of contract termination at the worker's request.

#### 11. Ordinary proceedings: the claim (Articles 80-82)

- The claimant will supply an email address for communication purposes and if he/she appoints a lawyer, the claim will be signed by the same, thus being considered his/her representative with full powers.
- The court clerk decides whether to grant leave for the claim to proceed, setting a date for the trial or notifying any defects or omissions for remedy, and if the clerk considers there is a lack of jurisdiction or competence, he/she will notify the judge so that the latter adopts the corresponding decision.
- If the claim does not attach the conciliation certificate or related documentation if not been held in time, the clerk may decide to grant leave to proceed and set the trial date, notwithstanding the option of ordering the relevant remedy.
- At least 10 days will elapse between the summons and the setting of the date of the hearing.
- The court clerk may set the same date for trials involving the same interested parties that cannot be joined.
- Acting *ex officio* or at the request of a party, the parties may be ordered to supply any documentary or expert evidence to the other party, or provide it for advance examination, preferably in electronic format, 5 days prior to the trial, where, due to the volume or complexity of the same, it is appropriate to arrange examination prior to the date on which the evidence is to be examined proper.

#### 12. Ordinary proceedings: conciliation and trial (Articles 83-86)

- In the event several proceedings are set for the same date, and it is impossible for the representatives or defence to be replaced, after the applicant has notified the other professionals, an attempt will be made to hold the proceedings on the same date and, failing that, a new date will be set, with the necessary interim measures being adopted in order to avoid future clashes.
- Judicial conciliation before the court clerk may be challenged by the parties within 30 days on the grounds that invalidate the contracts, or by injured third parties due to the illegality or harmful nature of the same.
- A counterclaim will not be necessary for offsetting debts, provided they are mature and enforceable, if, when the allegation is made, the defendant seeks to be acquitted only of the plea to which the main claim refers and does not file pleas that require a counterclaim decision.
- Special conditions are envisaged for full or partial acquiescence during the trial, establishing that it may be approved by the judge by means of a decision that may be issued orally.
- The possibility is established for a judge or court, after examining the evidence and before issuing conclusions, to promote the possibility of an agreement and, if no agreement is reached at that stage, the trial will continue.
- In general, the processing of other proceedings before the labour courts will not entail the suspension of the trial. However, if both parties so request, the proceedings may be suspended until

there is a final decision in separate proceedings, when the latter is deciding on a matter that is the main object of the first proceedings.

### 13. Ordinary proceedings: examining evidence at the hearing (Articles 87-96)

- The judge may instruct the parties to make new allegations during the trial on matters to be resolved *ex officio*, that derive from the applicable legal grounds or require a statement. Likewise, if the trial has concluded, a term of 3 days may be granted for said allegations to be made, preferably via electronic means.
- If the documentary or expert evidence examined is unusually voluminous or complex, the parties may be granted the possibility of making supplementary written conclusions within 3 days following the trial.
- The parties may request the examination of evidence that requires the issue of summons 5 days in advance of the trial date.
- Detailed rules are established in relation to the examination of evidence that may affect a person's privacy or other fundamental rights or public freedoms.
- With regard to a questioning of the parties: (a) if the legal representative of the legal person was not involved in the facts, he/she must have the person aware of the same attend the trial; and (b) the testimony of persons involved in the facts on behalf of the employer, such as administrators, managers or directors, may only be questioned in their capacity as persons aware of the facts and *in lieu* of or on a supplementary basis to the questioning of the legal representative, although in certain cases the judge may order that they declare as witnesses.
- Testimony of persons related to the parties as witnesses, with an interest in the defence of the employer's decisions or similar claims against the employer, will only be allowed in the absence of other means of evidence and if the direct testimony given in person is of particular relevance.
- Regulations are set out regarding evidence consisting of expert reports, that the judge may request regarding the matter disputed in the lawsuit, mentioning trials involving occupational accidents and professional illnesses, in which the judge may gather information from the Labour Inspectorate and the Social Security authority and other public bodies responsible for health and safety at work.
- In relation to the burden of proof, new rules are introduced with regard to occupational accidents, and the parties responsible for ensuring safety will have to prove that they adopted the measure to prevent or avoid risk.
- Terms are set for the performance of final procedural measures following the trial.

### 14. Ordinary proceedings: judgment and other matters (Articles 97-100)

- The hearing procedure in the event of the imposition of a monetary penalty due to an unjustified failure to attend conciliation is regulated.
- The employer will pay the plaintiff the salaries for the time necessary to attend conciliation and trial, unless it is not necessary that he/she attend in person and it is mandatory to appoint a representative, or where he/she has acted in bad faith or engaged in vexatious litigation.

### 15. Monitory proceedings (Article 101)

- In individual claims against employers not in insolvency, with regard to due amounts, derived from the labour relationship (as well as those brought against Social Security management or collaborating entities), and that do not exceed €6,000, the worker may bring the monitory proceedings. After presenting the data that accredits the existence of the labour relationship and the amounts owed, the employer will be instructed to pay or respond in writing stating its grounds for challenging the same, with the FGS being notified of the same. If no agreement is reached, the proceedings will become ordinary proceedings.

## 16. Other types of proceedings (Articles 102-185)

- A general rule is established on the transformation of proceedings to the appropriate type, ruling out, where possible, acquittals due to inappropriate proceedings and referral to subsequent proceedings.
- In cases of dismissal, the following main new developments should be noted:
  - It includes the possibility, previously only envisaged for lesser penalties, of authorising an alternative penalty measure, in order to favour the resumption of the relationship instead of an indemnification as compensation for loss of the job.
  - Recognition of the unfairness of a dismissal, made in a letter of dismissal or at any point thereafter, is binding on the employer, who will not be able to change this classification or the amount recognised, except in the event of a material error.
  - In the event of a judgment of unfair dismissal, if readmission is not possible, the judge may issue a judgment that take the indemnification option for granted.
- The scope of the collective conflict process is extended to generic collectives liable to be considered individually. In such cases, the judgment, if it upholds the claim, will contain the specific data necessary for a subsequent individualisation of the persons affected by the object of the conflict.
- With regard to the challenge of administrative acts in labour matters, a new type of proceedings is established, based on a contentious-labour claim similar to the contentious-administrative appeal previously used in said jurisdiction, which serves as a channel for challenging administrative acts in labour matters.
- With regard to the protection of fundamental rights and public freedoms, the requirement of the specification of the fundamental right or freedom infringed is introduced, both in the claim and in the judgment. The scope of the type of proceedings is also extended in order to cover any possible violation of such fundamental rights and freedoms with regard to labour relations, be they generic or specifically employment, except when necessary to follow a certain special type of proceedings.

## 17. Means of appeal (Articles 186-236)

- The party favoured by the decision is granted the entitlement to appeal and a procedure is established for the possible challenge of the judgment by the appellee, when it wishes to allege grounds other than those applied by the appellant.
- With regard to the appeal to a higher court, the amounts with regard to whether or not the appeal is appropriate are updated and access to this appeal is made general in cases of the premature conclusion of proceedings, provided a protest has been filed in due time and form and a party was deprived of its right to a proper defence.
- The possibility of filing and challenging a cassation appeal before the court that issued the appealed judgment is established, with the processed appeal being sent to the Supreme Court without a prior citation.
- The scope of a cassation appeal for the unification of doctrine is extended: judgments of the Constitutional Court or the Court of Justice of the European Union may be cited as contradictory doctrine, among others, and the Public Prosecutor's Office is empowered to raise the matter at the request of business associations or trade unions and public entities, in order to defend the legality and without the need for there to be a contradiction of judgments.

## 18. Enforcement of Judgments (Articles 237-305)

- This area has been adapted to the particular requirements of the new judicial structure ("*nueva oficina judicial*"), granting the court clerks specific powers.

- One new development worth highlighting is that enforceable instruments in labour matters constituted without the intervention of the courts are considered equal to those constituted with court intervention.
- The possibility is established for the extension of enforcement of certain judgments handed down in collective conflict proceedings, covering individualised enforcement of statements when the affected parties and the possibility of settlement can be determined in the enforcement.
- The subsidiary application of the regulations of civil procedure is envisaged regarding future sentences and the possibility of reaching settlement agreements on enforcement.

#### 19. Transitional and Final Provisions

- Transitional Provision 1 establishes that proceedings initiated as of when the Law enters into force will be regulated by the provisions of the same, and those that began prior to the same will be regulated by the preceding rules until the judgment, with the new Law applying to appeals.
- Transitional Provision 4 establishes that the labour courts will hear appeals to administrative acts issued as of the entry into force of the Law.
- Final Provision 4 envisages, generally speaking, the supplementary application of the LEC, and the Law on the Contentious-Administrative Jurisdiction to cases involving a challenge of administrative acts for which the labour courts are responsible.
- Final Provision 5 gives the Government a term of 6 months to approve a system for assessing damages due to occupational accidents and professional illnesses, by means of a table of indemnifications to be updated annually, for the objective compensation of said damages unless greater damages can be proven.

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This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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