

The general strike of 29th March 2012: Some urgent comments on relevant labour aspects

The main trade unions in Spain, *Comisiones Obreras* and *Unión General de Trabajadores*, have called a General Strike for Thursday, 29 March 2012, that will affect all companies and public sectors in the country.

In this regard, we feel it would be of interest to summarise some basic aspects related to said event that may have practical consequences for the management of labour relations and human resources in companies. For this purpose, the content of this Client Briefing is similar to the information prepared for the general strike of 29 September 2010, updated where necessary.

Key issues

- 1.- The right to strike
- 2.- Remuneration and contribution
- 3.- Temporary disability and strikes
- 4.- Strikes and the exercise of employer's powers

1 The right to strike

- The right to strike is recognised as a fundamental right, enshrined in Article 28.2 of the Spanish Constitution. Therefore, all those workers who freely wish to do so will be able to exercise their right to strike on 29 March and not render services for their company on that day or for part of that day.
- Those workers who wish to participate in the strike are not obliged to inform the company in advance.
- The basic consequence of the free exercise of the right to strike by workers is that the employment contract is suspended, entailing the cessation of the reciprocal obligations to work and to remunerate said work.

2 Remuneration and contribution

- The exercise of the right to strike implies the loss of the remuneration corresponding to the day on strike or the hours in which the worker participated in the strike.
- The discount applied to the worker's remuneration for the time he/she was on strike includes the salary corresponding to the duration of the strike plus other salary items, such as the proportional parts of the different extraordinary payments, or the part corresponding to the remuneration of the weekly rest period. Regarding the discount to be applied to the different salary supplements and bonuses, there are several judicial decisions confirming the validity of such discounts depending on the nature and specific form of accrual of each item.
- The salary discount must be carried out in relation to the day of the strike, and this must be taken into account when processing the payslips for the month in question, particularly on this occasion as the strike will take place at the end of the month.

- During the strike, both the worker's and the employer's Social Security contribution obligations are suspended. In this regard, the workers will be in a situation of "special registration" with the Social Security for the duration of the strike; the employer will have to make the appropriate changes in its employment data using the Social Security's online document submission system ("*Sistema RED*") within 6 calendar days of the date of the strike.

In the case of a partial strike, contributions will be paid on the remuneration corresponding to the time worked on the day of the strike.

3 Temporary disability and strikes

- In relation to those workers in a situation of temporary disability (*Incapacidad Temporal or IT*), there are two possibilities:
 - If the worker was already in an IT situation when the strike was declared, he/she maintains the right to the IT benefit.
 - If the IT occurs during the strike, the right to receive the IT benefit does not start until the strike has concluded (except in the case of an IT deriving from an occupational accident).

4 Strikes and the exercise of employer's powers

- The employer cannot replace the striking workers with others who were not already working for the company when the strike was called; as such it will not be able to hire workers to cover the absences or use staffing services contracts with Temporary Employment Agencies to that end. Moreover, it is not entitled to use the options of functional or geographical mobility to lessen the consequences of the exercise of the right to strike by its workers.
- Absences due to legal strikes, for the duration of the strike, will not be considered absences from work, for the purposes of the provisions of letter d) of Article 52 of the Workers' Statute.
- The workers may not be penalised for exercising their right to strike. Nevertheless, if in the context of the legitimate exercise of the right to strike, the worker were to commit other labour infringements, these could be penalised. This is the case, for example, if there is verbal or physical offence, or the striking workers prevent workers who wish to render their services freely from entering their place of work, or any other labour infringement independent of the right to strike itself.
- Finally, the employer has the option of temporarily closing the place of work (the *cierre patronal* or lock-out). However, a lock-out can only legitimately be performed in specific cases restricted to strikes where one or more of the following circumstances (which will be interpreted restrictively) arise:

- a) The existence of clear danger of violence to persons or serious damage to property;
- b) The illegal occupation of the place of work or the imminent danger of that occurring;
- c) Absences from or irregularities in the work that seriously hinder the normal production process.

The labour authorities must be notified of the lock-out within 12 hours and it will only last for as long as is strictly necessary to be able to resume activity with due assurances, i.e. when the causes of the lock-out have disappeared.

As for the consequences of the lock-out, they are the same as in the case of a strike: suspension of the employment contract with the loss of the workers' remuneration and suspension of the contribution obligations of both employer and worker.

In the event a lock-out is declared illegal, the employer would be obliged to pay the salaries accruing during the same, as well as paying the corresponding contributions for that period. Administrative penalties may also be imposed.

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