CLIFFORD
CHANCE

Briefing note July 2012

Detailed summary of the changes to employment legislation, following the approval of Law 3/2012, dated 6 July

On 12 February 2012, Royal Decree-Law 3/2012 of 10 February, on urgent measures to reform the employment market (the "**RDL**"), came into effect, bringing with it some very significant changes to Spanish employment legislation. Despite its immediate enforceability, the RDL was put before Spanish Parliament as a Draft Bill, which led to the enactment of Law 3/2012, dated 6 July (published in the Official State Gazette on 7 July) and which entered into force on 8 July ("**Law 3/2012**"), which replaces the previous law and includes certain amendments, new reforms and improved technique.

Below is a detailed and updated summary of the legislation in force on labour reform, adapting the previous Client Briefing we published in February following the approval of the RDL and including the changes to Spanish employment law as a result. Please note that the scope of these changes is very broad and the amendments affect many different issues, therefore further study and detailed analysis will be required.

Contents

1 Main changes in contractual termination matters

1.1 Unfair dismissals

Previously, the strict regulations determined that most contractual terminations were formalised in Spain as "unfair dismissals", entailing high indemnification costs. In this regard, the RDL makes the following changes to Art. 56 of the Workers' Statute ("*Estatuto de los Trabajadores*" ("**ET**")):

a) Removal of salary accrued during the proceedings (the so-called "processing salaries"): "*if a dismissal is declared unfair*" and the employer decides to pay the severance payment, only this severance pay is due; any salary accrued during the proceedings will only be due in the event of reinstatement or if the dismissed employee is an employee representative.

   As a result, the step related to acknowledgement of unfairness and deposit of the indemnification is removed, and the article now states that "*the option to pay indemnification will entail the termination of the employment contract, which will be deemed to occur on the date of effective abandonment of a work post*".

   Law 3/2012 clarifies that the tax exemption on the indemnification due to unfair dismissal, when acknowledged as such by the employer without attending a conciliation hearing, is provisionally admitted, only until the date Law 3/2012 enters into force. The possibility of applying this tax exemption in the event that the unfairness of the dismissal is immediately acknowledged, subsequently disappears.

b) New severance payment: severance pay for unfair dismissal is now 33 days' salary per year's service, up to a maximum of 24 monthly payments. This severance pay will apply to any contracts executed as of the effective date of the RDL; severance pay for existing contracts will apply two calculations: severance pay applicable to the time of service until the effective date of the RDL will be calculated according to former regulations (45 days), and the one applicable to the time of service thereafter will be calculated according to the RDL, with Law 3/2012 establishing that each tranche of indemnification will be rounded off. The resulting amount cannot exceed 720 days' salary, unless calculation of the period prior to the RDL gives a higher number of days, in which case this figure will apply as the maximum severance amount, without exceeding 42 monthly payments.

1.2 New definition of "objective causes" for objective and collective dismissals

The economic causes justifying a company's decision to carry out a collective or objective dismissal (redundancies - Arts. 51 and 52.c) ET) are now defined as follows, after the changes made to Law 3/2012 (changes as a result of the Law 3/2012 are in bold): "*economic causes will be deemed to exist whenever the company's results indicate a negative economic situation, such as existing or expected losses or a persistent decrease in* ***ordinary*** *income or sales. In any case, a decrease will be deemed to be persistent* ***if, during three consecutive quarters, the level of ordinary income or sales in each quarter is less than what was recorded during the same quarter of the previous year***".

The previous requirement to be met by companies is removed, consisting of such negative situations being able to affect their viability or capacity to preserve employment, as well as justification of "the reasonableness of the decision to terminate in order to preserve or strengthen its competitive position". The idea is to reduce the court's margin of discretion, determining that an objective cause will exist upon mere confirmation of "existing or expected losses" or decreased revenues and sales over three quarters.

Likewise, with respect to organisational, productive or technical causes, the previous requirement is removed, consisting of companies having to justify "the reasonableness of the decision to terminate" in order to help prevent negative performance or improve their situation. Another organisational cause is added, one related to changes "in the way in which production is organised".

In any event, initial legal interpretations seem to highlight the need to find a certain proportionality between the cause defined by law and the termination dismissal.

1.3 New legal provisions applicable to collective dismissals: new procedure

The need for an administrative authorisation is removed, in relation to collective dismissals based on economic, technical, organisational or production-related causes. In these cases, the company may adopt its decision to terminate without having to obtain this prior authorisation, although this already enforceable decision may be challenged before the labour courts. The new procedure is summarised below:

- The company must begin a consultation period with the employee representatives (there is still a maximum term of 30 calendar days), in order to discuss the possibilities of avoiding or reducing the number of dismissals and mitigating their consequences with ancillary social measures (e.g. outplacement and professional training).
- The consultation period begins with a writ addressed to the employee representatives, a copy of which will be forwarded to the labour authority, to enclose an explanatory report on the reasons for the collective dismissal and data on the number and professional classification of the employees affected and total employees, the period foreseen for dismissal purposes and the criteria followed to designate the affected employees. In addition, Law 3/2012 establishes that said writ must be accompanied by "*all necessary information to support the reasons for the collective dismissal, in the terms set forth by law*".
- The labour authority will ensure that the consultation period is effective, and may issue "*notices and recommendations to the parties*", which will in no event suspend the procedure.
- Law 3/2012 adds that the parties may agree to subject their discrepancies to a mediation or arbitration process, or to seek mediation by a labour authority, who may in any event "*provide assistance*" in the process.
- Companies' obligations continue as regards any special Social Security agreement; collective dismissals affecting more than 50 employees (except for companies undergoing insolvency proceedings) require an outplacement plan through authorised companies, for a minimum term of 6 months.
- Companies with over 100 employees (even in group terms) carrying out a collective dismissal, despite obtaining a profit over the last two years, if such dismissal affects employees over 50 years old, must make a contribution to the Public Treasury. This contribution consists of applying a percentage (between 60% and 100%) of the amounts representing unemployment benefits or subsidies and social contributions in relation to any such employees affected. Law 3/2012 reduces, from 500 to 100, the minimum size of the workforce which entails the contribution obligation and adds, in the calculation of said contribution, unemployment costs due to contracts suspended prior to the dismissal decision.

  Calculation of this contribution will take into account any amounts paid further to contractual termination at the request of the company or group companies for reasons not inherent to the individual employee (except for expiration of a part-time contract), if termination took place during the 3 years prior or subsequent to commencement of collective dismissal proceedings.

- Once the consultation period has elapsed, the company will inform the labour authority of the outcome and will forward a copy of any agreement reached; otherwise, it will send the labour authority and employee representatives the final decision and terms of the collective dismissal adopted.
- Following the foregoing notice, the company "*is allowed to notify*" the dismissal to each affected employee, pursuant to Art. 53.1 ET in relation to objective dismissals (making the relevant severance pay available and providing 15 days' prior notice). A minimum 30-day term is required between the commencement of the consultation and the effective dismissal date.

1.4 New legal provisions applicable to collective dismissals: possibility of challenging the decision in court

A Company's decision to proceed with a collective dismissal may be challenged in court with two new procedures included in the Social Jurisdiction Regulating Act ("*Ley Reguladora de la Jurisdicción Social*" ("**LRJS**")):

a) Collective procedure (new Art. 124 LRJS):

- The employees' legal representatives or the trade union representatives who are "*sufficiently established*" in the collective dismissal situation may file a claim against an employer's decision to adopt a collective dismissal measure, based on the inexistence of legal cause, the non-observance of the consultation period or the failure to provide the necessary documentation, fraud, wilful intent, duress, abuse of the law, or the infringement of fundamental rights and public liberties. If the consultation period ended with an agreement, a claim will also be brought against its signatories.
- The claim must be filed within a 20-day statute of limitations following notification of the decision at the end of the consultation period. The Labour Division of the High Court of Justice in the Autonomous Community that is territorially competent in relation to the company's decision will resolve the issue in a single instance, through summary proceedings. If this decision has effects beyond the scope of an Autonomous Community, the Labour Division of the National Court will examine the issue.
- Law 3/2012 adds that if the employee representatives do not file the above-mentioned claim before the deadline, and if the Labour Authority does not file a claim of its own initiative either, the employer may bring a claim so that its dismissal decision is declared admissible under the law, within 20 days as from the end of the previous term. The employees' legal representatives have legal standing in this process. The filing of the collective claim by the employee representatives or by the employer suspends the deadline of the individual dismissal action.
- Once the claim is granted leave to proceed, the court secretary will demand that the company provide documentation on the consultation period and inform the affected employees that proceedings are underway; the company is summoned to trial, subject to the need to provide any evidence in advance that should be examined before the trial, due to its complexity or amount.
- The judgment, which is subject to an ordinary cassation appeal, will declare that the decision to terminate: (i) "conforms to law", if the causes alleged are ascertained and the legal steps foreseen in Art. 51 ET are met; (ii) "does not conform to law", if the causes alleged are not ascertained; or (iii) is null and void, if no consultation period was provided or if the necessary documentation was not provided (or if the court's authorisation was not obtained in insolvency proceedings) or if the decision infringes fundamental human rights or was adopted in a fraudulent manner, with wilful intent, duress or abuse of the law. In this last case, the judgment will declare that the employees' are entitled to be reinstated to their former job posts.

  The final judgment will have *res iudicata* effects on individual lawsuits to challenge a dismissal, pursuant to Art. 160.3 LRJS (on judgments adopted in collective dismissal proceedings).

b) Individual lawsuits to challenge a dismissal:

These are governed by rules on lawsuits to challenge objective dismissals (redundancies), with certain particularities:

- A collective claim brought by the employee representatives will suspend the lawsuit until it is resolved.
- A dismissal will be null and void and reinstatement will be mandatory in the events foreseen for objective dismissals (Art. 122.2 LRJS, including the protection of any employees upholding work life balance rights), as well as if no consultation period was provided or if the necessary documentation was not provided (or if the court's authorisation was not obtained in insolvency proceedings), or if the permanence priorities were not upheld, as foreseen by law, in the applicable collective bargaining agreement ("**CBA**") or agreement reached in the consultation period.
- Consequently, if the existence of "objective causes" is not ascertained, subject to the aforementioned situations, this will entail an unfair dismissal declaration, termination of the contract and payment of the statutory severance pay foreseen for unfair dismissals.

1.5 Changes in dismissal proceedings based on "non-economic objective causes"

In the event of contractual termination due to non-adaptation to technical changes (Art. 52.b) ET), the company must previously provide the employee with an adaptation course, at least two months' long; if a contract is terminated for absenteeism (Art. 52.d) ET), there is no longer a requirement as to the total level of absenteeism at the work centre. Law 3/2012 adds that absenteeism cannot be included in the calculation if it is due to "medical treatment for cancer or a serious illness" and that, if the contractual termination is as a result of absenteeism during 20 % or more of the working days during two consecutive months, it will also be necessary for the absences to amount to at least 5% of the working days during the previous 12 months.

1.6 Collective dismissals and individual objective dismissals in the Public Sector

The termination of contracts of staff at the service of Public Sector entities may be based on Arts. 51 and 52.c) ET, on the grounds of insufficient budgetary resources or other causes specifically defined in the RDL.

1.7 Transitional regime

All collective dismissal proceedings underway at the effective date of the RDL will be governed by the regulations in force at their commencement date; those subject to an administrative resolution adopted prior to this effective date will be governed by regulations in force at the resolution date.

1.8 Regulatory implementation

According to Law 3/2012, the Government will adopt, within one month, new regulations on: collective dismissal proceedings, the suspension of employment contracts and the shortening of work schedules, and will implement new regulations on the matter so as to replace the ones currently in force, specifying that it will regulate "*those aspects regarding the consultation period, the information to be provided to the employee representatives during said period, the actions of the labour authority to ensure its effectiveness, as well as the outplacement plans and the outplacement programme assumed by the employer*."

2 Main changes as regards the suspension of employment contracts or shortening of working schedules

2.1 Suspension of employment contracts or shortening of working schedules for economic, technical, organisational or production-related causes

In line with the change made in collective dismissal matters, the need for an administrative authorisation is also removed in ERTEs ("*Expedientes de Regulación Temporal de Empleo*" i.e. Provisional Employment Restructuring Proceedings), both for the suspension of employment contracts and the shortening of working schedules. There will still be an administrative procedure whereby the start of the ERTE is notified to the labour authority, the Labour Inspection issues a report in this regard and a 15-day consultation period is held with the employee representatives. When the consultation period concludes with an agreement having been reached, it is assumed that reasons exist to justify the dismissal and that it can only be challenged for fraud, wilful intent, duress or abuse of the law.

As we stated before, an administrative authorisation is no longer necessary, and regardless of whether or not an agreement is reached with the employee representatives, following the consultation period, the company will inform the employees and labour authority of its decision, and the labour authority will duly notify the unemployment benefit management entity. As of this date, the company's decision will be effective.

An employee may bring a claim against the company's decision before the labour courts. If a certain threshold number of affected employees is met (according to the thresholds applicable to collective dismissals), collective dismissal proceedings may commence, which will suspend any individual actions until a decision has been issued. The judgment will declare the dismissal as being either justified, unjustified or null and void.

Law 3/2012 adds the definition of the economic, technical, organisational or production-related causes which justify the suspension (omitted in the RDL), reproducing the definition contained in Art. 51 ET for dismissals, while limiting the "persistent decrease" in ordinary income or sales to two consecutive quarters and also adding the comparison with the same quarter of the previous year.

2.2 Social Security rebates if employment contracts are suspended or working hours shortened

This rebates will apply to any collective dismissal applications made during 2012 and 2013. Companies will be entitled to a rebate of 50% of their Social Security employer contribution for common contingencies, accrued by any employees subject to a contractual suspension or provisional shortening of their working schedule, up to a maximum of 240 days per employee. To obtain this, the company must maintain the affected staff employed for at least one year following the end of the suspension or shorter working schedule (unless the termination is justified, e.g. fair disciplinary dismissal, resignation, death, etc.).

2.3 Restored right to unemployment benefits

If, following a contractual suspension or shorter working schedule, a dismissal takes place for economic, technical, organisational or production-related causes, or as part of insolvency proceedings, the affected employees will be entitled to a return of any unemployment benefit days used during the previous contractual suspension or shorter working schedule, up to a maximum of 180 days.

This return is only foreseen for any suspension or shorter working schedule occurring in 2012, and if the dismissal occurs between 12 February 2012 and 31 December 2013.

3 Main changes as regards a company's internal flexibility

3.1 Professional classification

There is no longer a distinction between professional group and professional category, and now only professional groups exist. The idea is to increase an employee's multi-task capacity, specifying that it will be agreed to assign the employee to a professional group and that his/her services will consist of all or some of the tasks inherent to such professional group.

Further to the foregoing, all references to a professional category in functional mobility provisions are removed.

3.2 Work time

The law has assigned companies the right to irregularly distribute 10% of their working schedule over the year, in the absence of an agreement on the matter with the employee representatives. Previously, it was only possible to irregularly distribute a working schedule if foreseen in the CBA or if there was an agreement on the matter; now, up to 10% of an annual working schedule may be irregularly distributed, even if there is no agreement (the RDL established 5%).

The employee will be entitled to know, at least 5 days in advance, the date and time when he/she is to render his/her services as a result of the irregular distribution of the workday.

Lastly, Law 3/2012 adds a reference to the use of continuous workdays, flexible working hours and other ways to organise work time which permit employees to better balance the personal, family and work aspects of their life with their company's production goals.

3.3 Newly defined causes to justify companies' decisions in relation to geographical mobility or a material change in working conditions (Arts. 40 and 41 ET) and removal of administrative intervention in geographical mobility processes

There is a new definition applicable in both cases, with a broader and more flexible interpretation of the existence of economic, technical, organisational or production-related causes: "*those related to competitiveness, productivity or the company's technical or working organisation*" (or "*contracts related to the company's activity*" in relation to geographical mobility). This overrules previous definitions, which had generated certain judicial controversy as to their interpretation *("(…) causes will be deemed to exist whenever the adoption of the measures proposed helps improve the company's situation through a more adequate organisation of its resources, encouraging its competitive market position or providing a better response to demand*"- Art. 40 ET-, or "*helps prevent the company's negative performance or improve its situation or prospects*…"- Art. 41 ET).

In collective geographical mobility proceedings, the Labour Authority is no longer entitled to defer the transfer's effectiveness for up to 6 months.

Law 3/2012 adds that employees with disabilities who require treatment in relation to their disability outside of their municipality, will have preference when filling a vacant post, in their same professional category, at a work centre located in a municipality in which they can more easily access their treatment.

3.4 Scope and regime in proceedings involving a material modification of employment conditions (Art. 41 ET)

The most outstanding novelty is the extension of matters that may be subject to a material modification, given that an express reference is made to the "*salary amount*". This has opened the door to a possible adjustment of the remuneration currently being paid to the employees, although any change in salaries foreseen in a CBA must follow the procedure established in Art. 82.3 ET.

Furthermore, it is expressly foreseen (as new legislation) that a material modification may affect the working conditions established in both an employment contract or collective agreements or covenants, and there is now a different distinction between individual or collective modifications: collective modifications will be those affecting a certain number of employees (applying the thresholds previously applied to collective dismissals), which is why individual modifications may be made even if these affect conditions collectively established.

An attempt is made to speed up the implementation of any modifications proposed, by reducing the prior notice in the event of an individual modification from 30 to 15 days. For collective modifications, once the consultation period has ended without

an agreement being reached, the modifications will be effective within 7 days following notification to the employee (as opposed to the previously applicable prior notice of 30 days).

Finally, an extension is made of specific situations in which, if the material modification is detrimental to the employee, he/she will be entitled to terminate the employment contract with a right to indemnification, by including modifications in the remuneration system, salary amount and tasks, where this possibility was previously not contemplated. However, there are fewer possibilities of terminating an employment contract due to these modifications, pursuant to Art. 50 ET (i.e. with indemnification equivalent to an unfair dismissal). Thus, this termination will only apply if the material modification does not follow the steps foreseen in Art. 41 ET and the employee's dignity is harmed. Before the RDL, termination could be requested in the event of a material modification that followed the necessary legal steps, if it was detrimental to the employee's professional career.

3.5 Non-application or modification of working conditions established in a CBA

A specific procedure is envisaged to not apply the employment conditions foreseen in a CBA in relation to working schedule; working hours and work time distribution; work in shifts; remuneration system and salary amount; working system and performance; tasks and voluntary improvements over Social Security protection. However, Law 3/2012 specifies that the failure to apply the conditions of the CBA cannot affect the obligations regarding the elimination of discrimination due to gender or any other aspect, in the company's Equal Opportunities Plan.

This requires the existence of economic, technical, organisational or production-related causes, which are defined in the same terms as those indicated as possible reasons for contract suspensions. A consultation period must be held with the employee representatives and if an agreement is reached, the justification of the causes will be presumed. In the absence of an agreement, the dispute may be presented to the CBA Joint Committee, which must reach a decision within a maximum of 7 days. If the Joint Committee does not reach an agreement, the procedures foreseen to resolve disputes must be used, as these are established in inter-professional agreements, or if these do not apply or a decision is not reached, the National Consultation Commission for Collective Bargaining Agreements will resolve the matter within a maximum of 25 days.

Further regulatory development of this procedure is expected. Law 3/2012 also adds the obligation to notify the labour authorities in the event of the non-application of the conditions agreed.

3.6 Trade union sections

In consultation proceedings further to geographical mobility situations and material modifications in collective employment conditions, it is established that the trade union sections will act as spokesman with the company, if so agreed, as long as these represent the majority members of the works council or employee representatives. As a result, the role of trade union sections in consultation periods is reinforced.

4 Main changes in collective negotiation matters

The CBA applicable to the company will prevail over all agreements for the sector (whether state, autonomous or provincial) in the following matters: base salary and bonuses, overtime, provisions and remuneration applicable to work in shifts, working hours and work time distribution, adaptation of the professional classification system and types of contract, work-home life balance measures and other matters foreseen in inter-professional agreements. Thus, a company CBA can be negotiated at any time while CBAs at higher levels are in force.

The *ultractividad* or so-called "applicability extension of CBAs" has been reduced to 1 year. In other words, one year after the CBA has terminated, it will cease to apply, unless otherwise agreed, and unless a new one has been signed or an arbitration award has been decided. In other words, once a year elapse since notice of termination was given to the previous CBA, if a new one is not agreed or an arbitral award delivered, the former will no longer apply (unless otherwise agreed).

In the case of CBAs already terminated when Law 3/2012 came into force, this 1-year term will begin as of the entry into force of the Law (i.e. 8 July 2012).

On the other hand, any state or autonomous inter-professional agreements must foresee an arbitration procedure in order to resolve any negotiation differences, and must indicate whether the arbitration is mandatory or voluntary. If not specifically determined, it will be considered mandatory.

5 Main changes as regards the promotion of indefinite employment contracts

5.1 Indefinite employment contract to support "entrepreneurs" (small companies)

In order to encourage stable employment and boost entrepreneurial initiatives, the RDL created a new type of contract (indefinite and full-time) for companies with fewer than 50 employees, characterised by having a one-year trial period.

Law 3/2012 adds that this type of new contract will be maintained until the unemployment rate in Spain falls below 15%, and that no trial period can be established when the employee has already carried out the same tasks previously at the company, under any type of employment contract.

In order to encourage youth employment, a company will be entitled to a 3,000-euro tax deduction on its full tax amount due, if the first employee hired is under the age of 30. Law 3/2012 redrafts Art. 43 of Spanish Corporate Tax Law.

In addition, companies hiring unemployed persons who have been receiving unemployment benefits for at least 3 months at the time they are hired, may deduct (subject to certain rules), from their tax amount due, 50% of the lesser of the following amounts: (i) the amount of the unemployment benefit outstanding in favour of the employee at the time he/she was hired; or (ii) the amount corresponding to 12 monthly payments of the unemployment benefit acknowledged. In turn, the employee may allow his/her monthly salary to co-exist with 25% of this unemployment benefit.

The hiring of unemployed members of certain groups (young people between 16-30 years old or individuals more than 45 years old registered under a job search programme during at least 12 months of the 18 months preceding the contract) will also entail a right to rebates on the company's Social Security contributions over 3 years.

These incentives will be subject to maintaining the job posts for 3 years, except for contractual termination causes foreseen by law, and subject to maintaining the same level of employment at the company that was reached with the contract to support "entrepreneurs", for at least 1 year as from the date of the contract's signature.

This type of contract will not be available to companies which, in the 6 months prior to the contractual execution date, have resolved to carry out dismissals declared unfair by a court judgment. This restriction will only affect those dismissals occurring after Law 3/2012 enters into force, and to cover those work posts in the same professional category as those affected by the dismissal and for the same work centre.

5.2 Changes in the legal regime applicable to part-time employment contracts

Part-time employees may work overtime. The amount of overtime possible will be as foreseen by law, in proportion to the work day agreed, and the remuneration received will be taken into account when determining the taxable base, both for common and professional contingencies, according to the rules contained in section seven of Final Provision Five of Law 3/2012.

Total ordinary working hours, overtime and additional working hours (which continue) cannot exceed the legal maximum of part-time work.

5.3 Working from home or "telecommuting"

Art. 13 ET is amended, and "home-based employment contracts" are now known as "telecommuting" contracts, i.e. employment activities are principally provided at the employee's home or at a place freely chosen by the same, as an alternative to on-site employment at the company's work centre (although the employee must be ascribed to a specific centre in order to be able to exercise his/her collective representation rights).

Remote employees will enjoy the same rights as on-site employees (except for those inherent to the employee's presence at the work centre) and must be informed of any vacancies available for on-site posts at their work centres.

5.4 Bonus for indefinite employment contracts

A right to a yearly 500-euro deduction on the company's Social Security contributions over 3 years (700 euros/year for women) is established for companies employing fewer than 50 employees and that transform any training contracts (at the conclusion of their initial term or an extension), relief contracts and substitution contracts (due to early retirement) into indefinite employment contracts.

5.5 Limit on successive temporary employment contracts

As of 31 December 2012 (not 31 August 3013, as established in Royal Decree-Law 10/2011), it is again prohibited to hire employees using successive temporary contracts for more than two years according to Art. 15.5 ET, but Law 3/2012 excludes from the calculation the time elapsed between 31 August 2011 and 31 December 2012, whether or not the employees provided his/her services during that period, while it does include in the calculation, in all cases, the periods of service occurring, respectively, before or after these dates.

6 Measures to encourage employability

6.1 Employment agencies

Temporary employment agencies ("**ETTs**") may act as placement agencies, as long as they obtain the necessary authorisation from the relevant bodies of the Autonomous Communities or from the General State Administration, in the case of Ceuta and Melilla. In order to facilitate the granting of this authorisation, the principle of positive administrative silence will expressly apply, if no express decision in this regard has been issued within 3 months as from the date of request for authorisation.

Further to placement agency regulations, temporary employment agencies must guarantee the employees that their services are cost-free. Furthermore, Law 3/2012 establishes the obligation of ETTs to inform employees and their client companies as to whether they are acting for and on behalf of in each case as an ETT or as a placement agency.

6.2 Professional training

Employees are acknowledged a right to receive professional training in order to adapt to any changes in their work post; any time spent will be calculated as effective work time. Furthermore, the RDL introduces a remunerated 20-hour leave per year for "*work-related training for the employee, in relation to the company's activities*", cumulative up to 5 years, for employees with more than 1 year's seniority. This right will be deemed fulfilled when the employee may participate in professional training courses offered at the company's own initiative or established in the applicable CBA.

Each employee will have a personal training "account" to record any training received throughout his/her professional career. Any incentives to replace employees taking part in training activities with unemployed persons obtaining unemployment benefits will apply to all companies, irrespective of the size of their workforce.

6.3 Changes in provisions applicable to training and apprenticeship contracts

The following changes are relevant:

- Law 3/2012 expressly sets forth that these types of contracts can be used by employees who are receiving professional training through the education system.
- The maximum age is 30 years, until unemployment rates fall below 15%. This maximum age will apply, among others, to groups at risk of social exclusion, as established in Law 44/2007, of 13 December.
- Their maximum term is extended from 2 to 3 years. This term may be modified in a CBA, depending on the organisational or production-related needs of the company, maintaining a minimum term of 6 months and a maximum term of 3 years. Law 3/2012 establishes the possibility of extending the contract twice, provided that the term of each extension is not less than 6 months and that the total term of the contract does not exceed the maximums established by law or the CBA. The training or apprenticeship to be received must be justified at the end of the contract.
- Law 3/2012 established that, once the training or apprenticeship contract has expired, the employee cannot be hired again under this type of contract by the same company nor by any other company, unless the purpose of the training inherent to the new contract is to allow the employee to obtain a different professional qualification or title.
- It is also possible for the employee to be trained at the company itself, if it has adequate facilities and staff, and the effective work time co-existing with the training received, during the second and third years of the contract, is extended from 75% to 85%.
- In order to incentivise this type of contract, the employer's Social Security rate is reduced by 100% (with companies employing less than 250 employees) or 75% (for all other companies), throughout the term of the contract, if the contract is executed with unemployed employees registered at an employment office. There is also a reduction in Social Security employer rates if these contracts are converted into indefinite contracts (1,500 euros/year, 1,800 euros for women, over three years). Law 3/2012 establishes that these reductions also apply to training contracts signed prior to 31 August 2011, which have been transformed into indefinite contracts as of 1 January 2012. However, this Law states that said reductions do not apply to contracts signed with hands-on training facilities, technical/vocational schools and job search workshops ("*Escuelas Taller, Casa de Oficios, Talleres de Empleo"*).

7 Other relevant changes

7.1 Changes in relation to a balance between work and family life

If an employee is enjoying a shorter working schedule, CBAs may establish criteria for the specification of these shorter working hours, according to the employees' rights to a balance between work and family life and the company's productive and organisational needs; a prior notice may be foreseen (apart from the legal 15-day notice) in which the employee, except in the event of force majeure, must specify the beginning and end of any breast-feeding leave or shorter working schedule.

Art. 38.3 ET (vacation) is added: if a vacation period coincides with a provisional disability for contingencies other than those foreseen (pregnancy, birth, breast-feeding, leave of the mother or father) preventing an employee from enjoying them, in whole or in part, during the relevant calendar year, the employee may do so when his/her disability ends and as long as no more than 18 months have transpired since the end of the year in which they arose.

7.2 Rules applicable to credit entities

Any entities held or financed by the FROB ("*Fondo de Reestructuración Ordenada Bancaria"*, the Fund for Orderly Bank Restructuring) cannot pay severance payment for contractual termination over the lower of the following amounts: (a) twice the maximum remuneration of executives in entities in which the FROB holds a majority stake (300,000 euros/year) or which receive financial aid from the FROB (600,000 euros/Year); or (b) two years of the fixed remuneration established.

In turn, any credit entity executives who have been sanctioned further to Law 26/1988, of 29 July, on Disciplinary Measures and Intervention of Financial Entities, will not be entitled to any severance pay whatsoever for termination of their employment contract.

7.3 Service and senior executive contracts in the public state sector

Termination due to company's decision of service and senior executive contracts executed with non-civil servant staff that provide their services in the public state sector will only give rise to severance pay not exceeding seven days of their fixed annual salary in cash per year of service, up to a maximum of six monthly payments.

7.4 Capitalization of unemployment benefits

As regards payment of unemployment benefit through capitalization in a single payment, the maximum limit is increased up to 100% when the beneficiaries are individuals under 30 (men) or 35 (women).

7.5 Wage Guarantee Fund (*Fondo de Garantía Salarial*, "FGS")

Law 3/2012 amends the procedure for the assumption by the Wage Guarantee Fund of part of the indemnification cost due to contractual terminations in companies with fewer than 25 employees. Thus, the FGS will directly pay the employee, in objective dismissal situations, collective dismissals or dismissals agreed in insolvency situations, the part of the indemnification equivalent to 8 days of salary per year of service. Previously, the FGS would pay the employer this amount, but now, following the enactment of Law 3/2012, this is paid directly to the employee. The Law maintains, however, that this compensation will not be paid in the event of unfair dismissal.

7.6 Nullity of CBA clauses on compulsory retirement

Law 3/2012 introduces new legislation whereby any clauses on compulsory retirement established in the CBAs will be deemed null and without effect. According to Transitional Provision Fifteen of the Law, this measure will apply to all Collective Bargaining Agreements signed after this Law enters into force (8 July 2012). For those CBA signed prior to 8 July 2012, the nullity of such clauses will apply: (a) when the term of the CBA expires, if this was before 8 July 2012, or (b) as of 8 July 2012, if the initial term of the CBA has already expired on that date.

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