

KEY ASPECTS OF ROYAL DECREE 5/2022, OF 22 MARCH, ON THE SPECIAL EMPLOYMENT RELATIONSHIP FOR ARTISTS

Royal Decree 5/2022, of 22 March¹ (the “RD”), amends the previous Royal Decree 1435/1985², on the special relationship of persons engaged in artistic activities, with the intention of adapting to the new artistic and cultural reality, responding to the needs arising due to the **intermittent** and **temporary nature** of employment in the sector, and including within the scope of protection the entire group that this relationship encompasses. It is scheduled to enter into force on **31 March 2022**.

1. What is meant by the special employment relationship of artists? Who does it affect?

A special employment relationship for artists is defined as an employment relationship between an organiser of public entertainment (including public sector entities) (the “**employer**”) and those engaged in the provision of an artistic activity (i.e. **performing arts, audiovisual and musical arts**) (the “**worker**” or “**artist**”) within the organisational and management scope of that organiser, always in return for payment.

This includes **personnel who carry out technical and auxiliary activities³ necessary for the artistic activity, considering as necessary those activities linked to such artistic activity and of an essential nature for its execution, as long as these activities are not carried out in a structural or permanent manner by the company.**

The concept of artistic activity includes activities carried out directly in front of the public or disseminated through any technical medium, including, among others, theatres, cinemas,

radio, television, bullrings, sports facilities, circuses, function rooms, night clubs, **as well as those carried out in a digital environment⁴ which means that the place of performance is no longer relevant.** Finally, private artistic performances are excluded.

2. Who has capacity to contract?

Unlike in most sectors, where hiring minors is prohibited, in this area it is exceptionally permitted for minors under 16 years of age to contract with the employer, as long as it does not present dangers to their health. They must have written and specific authorisation issued by the labour authority, which must be requested by the legal representatives of the minor⁵, indicating the specific performance or show. This exception does not apply to auxiliary and technical staff.

3. How should the contract be formalised?

Contracts must be in writing, regardless of their type and duration. **The employer must also inform the worker of any essential elements of**

* The text in grey in this Legal Briefing denotes the situation as previously established by Royal Decree 1435/1985, and the text in blue denotes the developments introduced by the RD.

**In all matters not regulated in this RD, the Workers' Statute and other applicable labour legislation must be observed.

¹ Royal Decree-Law 5/2022, of 22 March, adapting the special employment relationship of persons engaged in artistic activities, as well as the technical and auxiliary activities necessary for their development, and improving the working conditions of the sector.

² Royal Decree 1435/1985 of 1 August 1985 regulating the special employment relationship of artists in public performances.

³ Technical and ancillary activities include, among others, activities such as preparation, set-up and technical assistance for the event, as well as make-up, hairdressing and costume design.

⁴ The digital environment includes the internet, streaming, podcasts, etc.

⁵ The consent of the minor must be obtained if he or she has sufficient capacity of judgement.

the contract and its execution that are not included in the written employment contract.

4. What are the existing types of employment contracts?

The contract can be permanent or for a fixed term, with the possibility of extension. A **fixed-term artistic employment contract may only be entered into to cover the temporary needs of the company**, including contracts for one or several performances, for a certain period of time, for a season, for the time the act is running, or **for the duration of the different phases of production**. It will only be possible to extend temporary contracts when the temporary need of the company that justified such contracts being entered into persists.

This temporary nature will be deemed to be established when its temporary cause, the specific circumstances justifying it, and its connection with the planned duration are precisely specified. In the event that the temporary nature of the contract cannot be justified, it will be understood that the contract has been entered into for an indefinite period of time, and those persons without social security registration or affected by successive temporary contracts will also be considered to have permanent contracts.

5. Is it possible to arrange a probation period?

A probation period may be agreed for contracts of more than 10 days. The duration of the probation period can be a maximum of five days for contracts of more than two months and a maximum of 15 days for contracts of more than six months.

6. What rights and obligations do artists have vis-à-vis the employer?

One of the main rights available to artists is the right of effective occupation. This right means that the artist may not be excluded (i) from rehearsals or preparatory activities for the artistic activity, (ii) from the main activity in front of the public, and (iii) from participation in recordings.

On the other hand, in terms of obligations, artists are obliged to carry out the artistic activities on the appointed date, and with the level of diligence corresponding to their artistic skills, always following the instructions of the employer.

Likewise, the artist may sign a full commitment agreement with the employer, which must be reflected in the contract and be financially compensated, and this compensation may be included in the artist's remuneration. In the event that the artist breaches this agreement, the artist must pay the employer the corresponding compensation (which can be determined by contract or by the competent judicial body).

These rights and obligations will not apply to technical and auxiliary staff.

7. What is the artist's working day? What rest periods and holidays are they entitled to?

The artist's working day includes the actual performance of the artistic activity in front of an audience, as well as the time under the employer's instructions for rehearsals and the recording of performances. This working day excludes the obligation to carry out free rehearsals.

Furthermore, the weekly rest period of one and a half days may not coincide with the days on which the performance takes place. This day and a half may be uninterrupted, divided or accumulated in rest periods of up to 4 weeks, depending on what has been agreed in the collective bargaining agreement, and always respecting a minimum uninterrupted rest period of 24 hours. Whenever a public holiday cannot be taken because it coincides with the performance of the artistic activity in front of the public, this rest period will be moved to another day.

Finally, artists are entitled to 30 calendar days of annual leave. In this respect, where the artist does not perform on all working days, the remuneration of rest periods will be reduced proportionately.

8. On what grounds can the contract be terminated?

The termination of a fixed-term contract will occur upon (i) the completion and (ii) the expiry of the term or its extensions.

On termination of the contract, the artist is entitled to receive compensation equal to the proportional part of 12 days' salary per year of service, which increases to 20 days when the duration of the contract, including its extensions, exceeds 18 months.

The employer must also give notice of the termination of the contract to the artist. The notice period will be the period agreed upon in the contract or, failing that, 10 days (contracts of more than 3 months), 15 days (contracts of more than 6 months), and 1 month (contracts of more than 1 year). Failure to comply with this

obligation will result in the employer needing to pay the worker for the days of notice not observed.

9. What is the competent jurisdiction in the event of a dispute?

The labour courts have jurisdiction.

10. Is there any exemption from social security contributions?

In this area, temporary artistic contracts are exempt from the additional contribution for contracts lasting less than 30 days, in line with the intermittent nature of this activity. In addition, a commitment has been made to develop a reduced contribution for self-employed artists with an annual income of less than €3,000.

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The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 1 April 2022 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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