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Labour and social security aspects of Royal Decree-law 1/2023, on urgent measures regarding recruitment incentives and the improvement of the social protection of artists

The title of the Royal Decree-law announces two very different objects and, as will be seen, further topics are covered as well. Firstly, it regulates incentives aimed at promoting recruitment, as well as other programmes or measures to promote and maintain stable and quality employment financed by means of reductions in social security contributions, or through other employment support instruments. Secondly, it extends social protection for those who carry out artistic activities. In addition, there are other provisions which affect companies in relation to various areas of social security.

1. Recruitment incentives

This legislation introduces homogeneity to what was a very fragmented and dispersed regulation of active employment policies, constituting a basic technique for promoting recruitment, especially of groups that are disadvantaged in accessing or maintaining employment, which is now extended to the promotion of self-employment and job creation in the social economy. Some incentives have been removed and new ones have been created.

An essential feature of this new comprehensive and unified model of incentives is to prioritise the indefinite hiring of groups with low employability (particularly people with disabilities), making temporary hiring exceptional, limited to favouring the transition from training situations in internships or fixed-term employment contracts to permanent contracts, as well as hiring temporary replacements in situations directly linked to achieving a work-life balance.

The Royal Decree-law delays its entry into force, in general terms, until 1 September 2023, although other periods of validity are stipulated for specific situations.

1.1. Targets of the incentives

Incentivised recruitments are considered to be those carried out with any of the following groups:

- (i) Unemployed persons registered with the public services as priority job seekers in accordance with the Employment Act, or those who meet any of the following criteria: disability, in the terms set out in the same provision; risk or situation of social exclusion; women victims of gender violence or victims of human trafficking, sexual or labour exploitation or in contexts of prostitution; women victims of sexual violence; and victims of terrorism.
- (ii) Temporary workers whose contracts are converted into permanent contracts in the situations provided for, or those with part-time or intermittent permanent contracts that are converted into ordinary or full-time contracts.

1.2. Beneficiaries of the incentives

Companies, the self-employed, worker-owned companies or cooperatives that hire workers or employees, and public and private non-profit organisations registered in the social security system and responsible for the payment of contributions are eligible, if they meet the following requirements:

- (a) Not to have been disqualified from obtaining tax or social security benefits and, in relation to social security, not to have committed a serious or very serious offence for which the statute of limitations has not expired.
- (b) Be up to date with the payment of tax and social security obligations.
- (c) To have an Equality Plan, if obliged to have one by law or due to the corresponding collective bargaining agreement.

The following are **excluded** from the incentives: on the employer side, public administrations or public law entities, or entities dependent thereon, publicly owned special employment centres and job placement companies in which public entities hold a stake, as well as companies that have terminated incentivised contracts due to unfair or collective dismissal during the following twelve months in a number of contracts equal to the number of terminations that have taken place. With regard to those being hired, special employment relationships are excluded (except for family home services or carers in large families and, temporarily, prisoners in penitentiary institutions), as well as family members up to second-degree relatives, workers who in the twelve months prior to being recruited had been employed with a permanent contract in the same company, or with a temporary or training contract in the last six months, whatever the type of contract and the length of the working day and, finally, workers who had been removed from the social security system with a permanent contract for another employer within the previous three months, except in cases of unfair or collective dismissal.

The incentives are incompatible with each other for the same taxable person, and the employer must opt for only one of them. Furthermore, the reductions, in addition to other public support for the same purpose, are limited to 60 per cent of the annual wage cost corresponding to the contract to which the reduction is applied, with the sole exception of workers with disabilities hired by Special Employment Centres.

There is an obligation to **maintain employment for three years** for all incentivised contracts, the non-fulfilment of which would lead to the need to reimburse all amounts not paid, with the corresponding surcharge and interest for late payment, without prejudice to possible administrative infringements. This same duty to reimburse is extended to cases of **company relocation** to states outside the European Union or European Economic Area, a measure that is already in force.

If a **transfer of undertakings** occurs, the new companies retain the incentives and the obligation to maintain employment.

1.3. Circumstances and content of the incentives

The incentives, as employment support measures, take the form of **reductions** to social security contributions (for common contingencies and professional contingencies, as well as for collective contributions), up to a limit of 100 per cent of such contributions, for the recruitment of the following:

- (i) Persons with borderline intellectual disabilities: 128 euros/month for 4 years.
- (ii) Persons reinstated after termination due to permanent incapacity, including those over 55 years of age with permanent incapacity who return to their employer in another category or who regain capacity and are hired by another employer: 138 euros/month for 2 years.
- (iii) Women victims of gender-based violence, sexual violence and human trafficking: 128 euros/month for 4 years.

- (iv) Young unemployed persons hired on a temporary basis to cover for workers (or self-employed persons) whose contracts are suspended due to parental leave, or in the case of disabled persons, due to temporary disability: 366 euros/month, during the substitution period.
- (v) Change of role due to risks during pregnancy or breastfeeding or in cases of occupational disease: 138 euros/month, for the duration of the situation.
- (vi) People in a situation of social exclusion: 128 euros/month for 4 years, extendable under certain conditions to 147 euros/month for 1 year.
- (vii) Long-term unemployed: 110 euros/month for 3 years.
- (viii) Victims of terrorism: 128 euros/month for 4 years.
- (ix) Work-linked training: 91 euros/month for the duration of the contract, in addition to a further 28 euros/month for the worker's contributions. Work-linked training qualifies for a reduction in employer social security contributions to finance the costs of the training received by the contracted worker, in the maximum amount resulting from multiplying the economic module established by regulation by a number of hours equivalent to 35 per cent of the working day during the first year of the contract and 15 per cent during the second year. In addition, there is a reduction for costs derived from tutoring, with a maximum amount of 1.5 euros/student/tutoring hour, with a maximum of 40 hours per month per student; for companies with less than five employees, the additional reduction will be a maximum amount of 2 euros.
- (x) Conversion of training contracts into permanent contracts: 128 euros/month for 3 years (147 euros/month for women).
- (xi) Conversion of relief contracts into permanent contracts: 55 euros/month for 3 years (73 euros/month for women).
- (xii) Research personnel with a pre-doctoral contract: 115 euros/month.
- (xiii) Worker-members of cooperatives and worker-owned companies: 73 euros/month for 3 years, increased to 147 euros/month during the first year for people under 30 years of age, or 35 years of age with a disability of at least 33 per cent.
- (xiv) Conversion of temporary agricultural contracts into intermittent permanent contracts: 55 euros/month for 3 years (73 euros/month for women), only updatable if the conversion takes place in the two years following the entry into force of the Royal Decree-law.
- (xv) Extension during the months of February, March and November of each year of intermittent permanent contracts in the tourism, commerce and hospitality sectors: 262 euros/month during this extension.
- (xvi) Persons employed in certain sectors of activity and geographical areas: 262 euros/month for the duration of these contracts.
- (xvii) Recruitment on a permanent basis of young people with low qualifications who are beneficiaries of the National Youth Guarantee System: 275 euros/month for 3 years, extendable to successive years if financial availability exists.
- (xviii) Hiring by job placement companies of people in a situation of social exclusion: reductions can amount to 147 euros/month for the entire duration of the contract, or for 3 years in the case of permanent contracts, for people under 30 years of age or under 35 years of age with a degree of disability equal to or greater than 33 per cent.

For **part-time contracts**, incentives are only granted if the working day is not less than 50 per cent of the comparable full-time working day, with the sole exception of people with disabilities, as a measure to adapt employment to their abilities, situations where working hours are reduced to allow a work-life balance, or reductions due to the exercise of the right to strike, with the amounts being reduced in proportion to the established working day.

Without prejudice to the above, by redrafting some of the provisions of the **Self-Employed Workers' Statute**, certain incentives for this group have been included. Firstly, a 50 per cent reduction in the contribution for common contingencies has been established for the self-employed in relation to certain activities in Ceuta and Melilla; secondly, for the self-employed included in the first contribution group of the Special Scheme for the Self-Employed or the Special Scheme for Sea Workers, including worker-members of cooperatives included in these schemes, during the time off for childbirth and childcare, risks during pregnancy or risks during breastfeeding, the right to a 100 per cent reduction in the contribution for common contingencies has been recognised, excluding temporary incapacity.

Similarly, incentives have also been included in relation to the hiring of workers in the social economy, in an amount consistent with the terms that are legally established, allowing these workers to capitalise the amount of the contributory unemployment benefit to access cooperatives or worker-owned companies or to set up an entity of this type. At the same time, the regulation of social security contribution reductions is expected for female worker-members of cooperatives, during periods of leave for childbirth and childcare and risks during pregnancy or breastfeeding.

In addition, it has been established that reductions in contributions may be made compatible with the reductions provided for under the Royal Decree-law, up to a limit of 100 per cent of the employer's social security contribution.

Other recruitment incentives or employment support measures for certain vulnerable or low employability groups, or for certain territorial or sectoral areas, may be possible if, as a result of the evaluations provided for, they are deemed appropriate. The Royal Decree-law also recognises the possible removal of existing incentives if an evaluation or analysis of them shows them to be inoperative.

1.4. Other instruments to support employment

In addition to social security reductions, the Royal Decree-law incorporates other possible ways of incentivising employment, the content of which is yet to be determined:

- (i) Measures negotiated in collective bargaining agreements, such as maintaining or increasing employment, converting training or relief contracts into permanent contracts, or converting part-time or intermittent permanent employment into full-time or ordinary permanent employment, as well as other positive action measures.
- (ii) Possibility for the Government to regulate measures to reserve or indicate preferences in employment to facilitate the placement of job-seeking workers.
- (iii) A commitment has been made to measures relating to technical support and advice, aimed especially at small and medium-sized enterprises, to encourage the voluntary implementation of equality plans in companies.

- (iv) Possible promotion of local or district employment agreements with the participation of the main economic social actors in this area, as a basis for an active policy of local or district development and the creation of stable, quality employment that also contributes to the sustainable development of the territory concerned, promotes gender equality and equal opportunities, combats discrimination in the labour market and fosters knowledge exchange networks that promote the integrated development of socially responsible territories.

2. Measures relating to artists and self-employed workers in the cultural sector

In order to take into account the specific nature of artistic activity and to facilitate any creation of this type, the Royal Decree-law introduces the **compatibility of artistic activity as a self-employed or employed person with the receipt of the full amount of the state pension**, with no obligation other than to apply for registration and pay contributions to the corresponding scheme for professional contingencies. In any case, in the case of employment, a special solidarity contribution of 9 per cent of the contribution base for common contingencies distributed between the company and the worker has been set, which is not computable for the purposes of benefits. This compatibility and its effects extend to pensions under the Special Scheme for the Self-Employed, although the contribution will be exclusively paid by the self-employed person. It also applies to non-contributory pensioners, if the income from artistic activity does not exceed the threshold of the minimum interprofessional wage on an annual basis. The state pension is not compatible if the person is included in another scheme of the social security system or is in any form of early or partial retirement.

With the same purpose of adapting to the intermittent nature of the sector, which makes it difficult to demonstrate the requirements applicable in the general regime and leads to alternating periods of employment with other periods of activity, a **special unemployment benefit** has been regulated for those included in the special employment relationship for artists, which is extended to those who carry out technical and auxiliary activities necessary for the development of artistic activity. A permanent benefit has been established for those who are not entitled to contributory unemployment benefit, unless they have suspended it, and can demonstrate the activity and contributions in the artistic sector required for this special unemployment benefit, in which case they can opt to receive the special benefit generated by the new contributions made and terminate the contributory benefit. The duration of this unemployment benefit is 120 days, in an amount equal to 80 per cent of the monthly Public Index of Multiple Purpose Income (using the Spanish acronym, IPREM) in force at any given time, unless the daily average of the contribution bases of the last 60 days of actual provision of artistic services is greater than 60 euros, in which case it will be 100 per cent of the IPREM.

Other references of interest have been included. Firstly, the contribution base applicable during 2023 to low-income artists (earning less than 3,000 euros per year) included in the Special Scheme for the Self-Employed has been amended, resulting in an effective contribution reduced to 161 euros/month, by setting a contribution base for this year equivalent to 526.14 euros. Secondly, the Royal Decree-law provides for the creation of a working group to study the adoption of specific measures to adapt social security for employed and self-employed artists, as well as for other self-employed workers in the cultural sector, taking into account the intermittent nature of artistic and cultural activity, as well as a commission to promote the evaluation and recognition as occupational illnesses of those contracted due to the specific nature of work in the sector. In addition, self-employed artists have been expressly incorporated into the Special Scheme for the Self-Employed.

The measures relating to artists generally enter into force on 1 April 2023.

3. Other measures relating to social security

Part of the Royal Decree-law introduces other, not minor, amendments to the General Social Security Law, including the following:

- (i) Ex officio review and possible correction of registrations, removals and variations of data already accepted by the social security authorities, if found not to be in accordance with the law, directly annulling, without the need to resort to judicial proceedings, its previous acts; without detriment to the right to effective judicial protection that can always be exercised before the administrative courts (already in force).
- (ii) Contributions in cases of reductions of working hours or suspensions of the contract due to temporary workforce restructuring plans (using the Spanish acronym, ERTes), the RED Mechanism or resolutions adopted as part of insolvency proceedings: there is an obligation for the company to pay the contributions corresponding to the employer's contribution and, if entitlement to unemployment benefits arises, the rules on the calculation of the contribution bases are set; in addition, the calculation of the average of the contribution bases of workers registered at the company in the month prior to or the same month as the start of each situation uses the contribution bases in the company concerned corresponding to the month immediately prior to the start of the situation, or to the month of the start of the situation, respectively.
- (iii) New requirement to benefit from the exemptions provided for with regard to contributions in the application of the RED Mechanism of the cyclical modality when carrying out training actions.
- (iv) Introduction of the obligation for companies to notify the liquidation procedure within a maximum period of six months, in relation to the financial contributions owed by companies with profits that carry out collective redundancies affecting workers aged 50 or over (does not affect procedures already initiated prior to the entry into force of the Royal Decree-law).

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