

JANUARY 2023 – SILVIA BARDAJÍ | Lawyer at Pérez-Llorca

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

On 11 January 2023, Royal Decree-law 1/2023, of 10 January, on urgent measures regarding recruitment incentives and the improvement of the social protection of artists, was published, and will come into force between 1 July and 1 September 2023.

OBJECTIVES

- 1 Guarantee access to unemployment benefits for artists, adjusting to the intermittent nature of work in the sector
- 2 Ensure compatibility between the state pension and artistic activity (both for employees and the self-employed)
- 3 Reduce the monthly self-employed contribution base for low-income artists
- 4 Promote the development of the Artist's Statute through the creation of a working group

DEVELOPMENTS

- Imminent creation by the government of a working group to produce the Artist's Statute, taking into account the intermittent nature of the sector.
- The contribution base for artists included in the Special Social Security Scheme for the Self-Employed in 2023 whose annual income is equal to or less than €3,000 is set at €526.14 per month.
- Compatibility between receiving a full state pension and artistic activity, both as a self-employed person and as an employee;
- Inclusion of self-employed artists in the Special Social Security Scheme for the Self-Employed;
- Creation of special unemployment benefits for artists working in the performing, audiovisual and musical arts, as well as for those working in technical and auxiliary roles in the sector;
- Artists receiving a non-contributory benefit can maintain and combine the receipt of a state pension with income from an artistic activity that does not exceed the threshold of the minimum interprofessional wage.

PENSIONS

- One of the main developments is the creation of Article 249 ter of the General Social Security Law to recognise the compatibility of receiving the full state pension with artistic activity, whether self-employed or employed.
- There is no obligation other than to apply for registration and pay contributions to the corresponding scheme for occupational contingencies.
- Employees have a special solidarity contribution of 9% of the contribution base for common contingencies, which does not count for the purposes of benefits.

UNEMPLOYMENT BENEFITS

- It is aimed at those who are not entitled to contributory unemployment benefit, unless they have suspended it and can prove activity and contributions in the artistic sector in the last 18 months prior to unemployment;
- Those who can prove that they have paid contributions to the General Social Security Scheme, due to having provided artistic services or for annual regularisations, for at least 180 days in the last six years prior to unemployment, are also eligible.
- It affects artists involved in the performing, audiovisual and musical arts, as well as technicians and assistants in these sectors;
- The benefit will last for 120 days;
- The amount paid will be equal to 80% of the monthly Public Index of Multiple Purpose Income (IPREM, due to its acronym in Spanish) 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, in which case it will be 100% of the IPREM.

To which artists do the retirement measures apply?

- Dramatic arts
- Dubbing
- Choreography
- Variety arts
- Audiovisual arts
- Musicals
- Singing
- Dance
- Extras*
- Stunt performer*
- Artistic direction**
- Cinema
- Orchestra
- Puppetry
- Magic
- Scriptwriters**

Those who carry out technical and ancillary roles that are necessary to develop these sectors and in any event:

- All those who are recognised as performers according to the Consolidated Text of the Law on Intellectual Property (actors, singers, musicians, dancers, dubbing artists, etc.);
- All those recognised as artists according to the collective bargaining agreements applicable to the performing arts;
- All those recognised as artists under Royal Decree 1435/1985, of 1 August, regulating the special employment relationship of artists in public performances.

* The inclusion of extras and stunt performers as performers from an IP law perspective would be questionable, but the legislature has opted for a pragmatic approach to meet the needs of the sector.

** Once again, a practical approach to the labour conceptualisation of the "artist" has been adopted in order to address the intermittent nature of the activity, given that roles such as a scriptwriter would fall under Book I of the Consolidated Text of the Law on Intellectual Property as an author, and not as an artist.