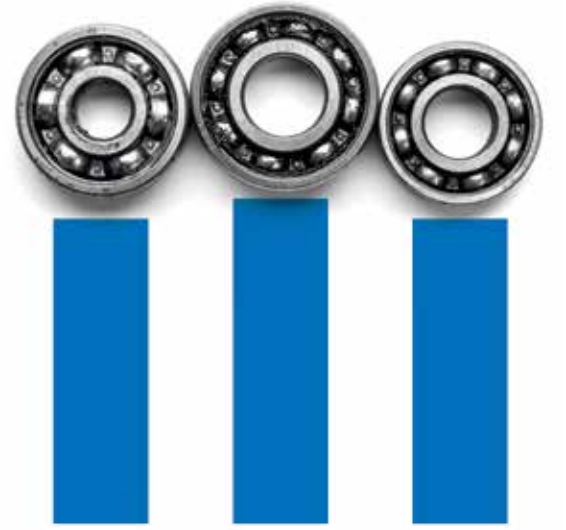
Legal
Update ESN:
COVID-19

Legal Update Employment

Royal Decree 901/2020, of 13 October, governing equality plans and their registration and amending the Royal Decree 713/2010, of 28 May, on the registration and filing of all types of collective bargaining agreements.

Official State Gazette (BOE) of 14 October 2020



The Government has approved two Royal Decrees, 901/2020 and 902/2020. The main goal of Royal Decree 901/2020 is to regulate equality plans, as well as their analysis, and it includes obligations concerning registration, filing and access. As regards Royal Decree 902/2020, its objective is to establish specific measures to give effect to the right to equal treatment and non-discrimination between women and men as regards pay, putting in place mechanisms in order to identify and correct discrimination in this field and to fight against it, encouraging the necessary conditions in this regard.

The main new features of the two Royal Decrees are set out below:

1. **Royal Decree 901/2020, of 13 October:**
   This legislation came into force **3 months** after its publication in the Official State Gazette (BOE) i.e. on 14 January 2021.

❖ **Equality plans**

- All companies, regardless of the number of employees in the workforce, **are obliged to respect the principles of equal treatment and equal opportunities in the field of employment.** With this goal in mind, they must adopt, subject to negotiation, measures aimed at avoiding any type of employment discrimination between women and men, **while also putting into place employment conditions to prevent sexual and gender harassment,** i.e. specific procedures in this regard and a system for handling complaints made by those who have suffered harassment.
- **Companies with 50 or more employees** must prepare an equality plan. Preparation of such a plan is voluntary for all other companies.
- Those companies that comprise a **group of companies** may prepare a single plan for all or part of the companies in the group. The group's equality plan will bear in mind the activity of each of the companies that comprise it and the collective bargaining agreements that apply to it. In addition, it is necessary to show the appropriateness of having a single equality plan for various companies in the same group.

❖ **Calculation of the number of employees in the company**

- To calculate the number of employees, the **whole workforce of the company will be taken into account,** whatever the form of employment contract used, including those with permanent seasonal contracts, those with fixed-term contracts and those employed through temporary employment agencies (ETTs).
- In any event, regardless of the number of hours worked, each person with **a part-time contract** will be included in the calculation as one person.
- To the above must be added fixed-term contracts of whatever type which, **having been in force in the company for the previous 6 months,** are terminated at the time of carrying out the calculation.
- The calculation is carried out on the last day of the months of June and December of each year.
- Having reached the threshold that makes the equality plan obligatory, at whatever moment, the obligation to negotiate, prepare and apply the plan will come into being. This obligation will continue to exist even when the number of employees falls below 50, once the negotiating committee has been set up and until the end of the plan's agreed term or, where applicable, for four years.

- Finally, the negotiation, preparation and implementation of the equality plan will take place in accordance with this legislation, except as regards the provisions of any collective bargaining agreement, whether sectoral or for a given company.

❖ **Negotiation procedure in equality plans**

• Period for the negotiation

– The companies will initiate the negotiation procedure for their equality plans and the prior analysis by setting up a negotiating committee within a **maximum of 3 months** from the moment that the figure of 50 employees has been reached, without prejudice to the improvements that may be established in the collective bargaining agreements.
– If the obligation does not arise as a result of the number of employees, **but rather from the provisions of the collective bargaining agreement,** the companies will initiate the negotiating procedure within the period stipulated in the latter or, where this is silent, **within 3 months** of its publication.
– In any event, the companies must have **negotiated, approved and filed the request for registration of their equality plan within a maximum of one year** from the day after the one on which the period stipulated for commencement of the negotiation procedure ends.

• Procedure

A. Commencement:

The equality plans must be negotiated with **the workers' legal representative:**

– A **joint negotiating committee** will be set up with equal representation of the company and the employees.
– In general, the following will **represent the employees:** (i) the works committee, (ii) staff delegates, where these exist, or (iii) the trade union sections where these exist that, overall, have the most committee members.
– The negotiating procedure as regards those aspects not expressly dealt with in this legislation will be the one laid down in **article 89 of the Workers' Statute.**
– In companies with various work centres, **the inter-centre committee** will negotiate if it exists and is empowered to negotiate.

Companies with **no workers' legal representatives:**
– A negotiating committee will be set up, on the one hand, with **the company's representatives,** and, on the other, **the employees' representative, comprising the most represented trade unions and the trade unions represented in the sector** to which the company belongs that are allowed to form part of the negotiating committee under the applicable collective bargaining agreement.
– The negotiating committee will have a **maximum of 6 members** for each party.
– If there is a work centre with a legal representative but others that do not have one, the employees' part of the negotiating committee will comprise, on the one hand, the legal representatives of workers of the centres; and, on the other, the trade union committee set up in accordance with the foregoing. In this case, the negotiating committee will have **a maximum of 13 members** for each of the parties.

Finally, both parties on the negotiating committee should have an equal number of men and women, and their members should have training or experience as regards equality in the field of employment.

B. The process:

– During the negotiation process **minutes will be taken** of each of the meetings.
– The parties will **negotiate in good faith,** with a view to reaching an agreement, that must be agreed to by the company and most of the representatives of the employees on the committee.

C. Purpose:

– In the event of no agreement, the negotiating committee may have recourse to the dispute resolution procedures and regional bodies, if so agreed, subject to intervention of the corresponding joint committee, if this has been provided for therein for such cases.
– The result of the negotiations must be stated **in writing and signed by the negotiating parties** for subsequent presentation to the competent employment authority, for the purposes of registration and filing and publicity.
– Having set up the negotiating committee, in order to prepare the analysis of the situation, the members will be entitled to have access to whatever documentation and information is necessary for the purposes laid down, the company being obliged to facilitate this, treating it as confidential.

❖ **Competences of the negotiating committee**

Royal Decree 901/2020 of 13 October lays down **a series of tasks for the negotiating committee**

(i) Negotiation and preparation of the analysis, as well as negotiation of the measures that will comprise the equality plan.
(ii) Preparation of the report on the results of the analysis.
(iii) Identification of priority measures, in the light of the analysis, its scope of application, the material and human resources required for their implementation, together with the persons and bodies responsible, including a schedule of actions.
(iv) Encourage the implementation of the equality plan in the company.
(v) Definition of the measurement indicators and the instruments for gathering the necessary information in order to carry out the monitoring and evaluation of the degree of compliance with the measures of the equality plan implemented.
(vi) Any other functions that the applicable law and collective bargaining agreement may attribute to it.

❖ **Content of the equality plans**

• **Analysis**

– This analysis will make it possible to obtain the information required to design and establish the evaluable measures that must be taken.
– A summary of the analysis and its main conclusion must be included **in a report that will form part of the equality plan.**

With this objective, the analysis would refer to at least the following matters:

(i) Process of selection and hiring.
(ii) Professional category.
(iii) Training.
(iv) Promotion.
(v) Employment conditions, including the salary audit between women and men in accordance with the provisions of Royal Decree 902/2020, of 13 October, on equal pay for women and men.
(vi) Concurrent exercise of the rights of personal, family and employment life (life-work balance).
(vii) Under-representation of women.
(viii) Pay.
(ix) Prevention of sexual and gender harassment.

– This analysis must **cover** all of a company's positions, levels and work centres and its system of professional classification, including data broken down by gender of the different groups, categories, levels and positions, their assessment, their remuneration, plus all selection, hiring, and promotion processes.

– The **Annex** to the Royal Decree lays down the criteria that will apply in the analysis.

❖ **Minimum content of the equality plans**

(i) Description of the parties that agree them.
(ii) Personal, territorial and temporal scope.
(iii) Analytical report on the company's situation or that of each of the companies in the group.
(iv) Results of the pay audit.
(v) Definition of the qualitative and quantitative targets in the equality plan.
(vi) Description of specific measures, implementation period and their priority.
(vii) Identification of measures and resources, both material and human, necessary for the implementation, monitoring and assessment of each of the measures and targets.
(viii) Timeline for the implementation, monitoring and assessment of the measures in the equality plan.
(ix) Monitoring, assessment and periodical review system.
(x) Composition and functioning of the joint committee and body entrusted with the monitoring, assessment and periodical review of the equality plans.
(xi) Procedure for modification, including the procedure for resolving possible discrepancies that may arise in the application, monitoring, assessment or review.

❖ **Term**

The term of the equality plans will be fixed by the negotiating parties but in any event **may not be more than 4 years.**

❖ **Monitoring and review**

The measures contained in the equality plan could be reviewed at any time throughout its term in order to **add, reorient, improve, correct, intensify, moderate or, even, cease to apply any measure.**
A specific body to monitor compliance with the plan must be included in the equality plan with the composition and attributions that are decided therein. Representatives of the

company and the workers must participate on an equal basis in this committee, having equal numbers of women and men.

In addition, the Royal Decree provides that the equality plans must be **reviewed** on certain occasions, for example:

- When it is shown that **they do not comply with the legal and regulatory requirements or they are insufficient following action taken by the Employment and Social Security Inspectorate.**
- In cases of **merger, absorption, transfer or change of corporate status of the company.**
- In the event of any incident **that significantly modifies the company's workforce,** its working methods, organisation or pay systems, including the non-application of the collective bargaining agreement and material modifications of employment conditions or the matters examined in the analysis of the situation used as the basis for the plan's preparation.
- When **a court ruling finds the company liable of direct or indirect discrimination on the grounds of gender** or when it determines that the equality plan does not comply with the statutory or regulatory requirements.

Finally, the equality plans in force when the Royal Decree becomes law must be adjusted within the time allowed for their review and, in any event, within a maximum of 12 months therefrom, after a negotiating process has taken place.

❖ **Coverage of the equality plans**

Equality plans will cover all a company's employees. In addition, the measures that are contained in a given equality plan will apply **to employees supplied by temporary work agencies during the periods when such temporary services are provided.**

❖ **Register of equality plans**

Equality plans must be registered in the register of collective bargaining agreements. To carry out the registration, the statistical sheet of the equality plan must be completed.

Royal Decree 902/2020, of 13 October, on equal pay for women and men.

Official State Gazette (BOE) of 14 October 2020

This legislation will come into force **6 months** after its publication in the BOE, i.e. on 14 April 2020.

❖ **Introduction:**

Principle of pay transparency

- The objective is **to identify any discrimination, whether direct or indirect,** particularly due to incorrect valuations of job positions, which occurs when there are two jobs of equal value but one has a lower salary without there being any possible objective justification for this.
- This principle of pay transparency will be applied through the instruments described in the Royal Decree: (i) pay registers, (ii) the pay audit, (iii) the system for valuing jobs in the professional classification contained in the company and in the applicable collective bargaining agreement and the employees' right to information.

Obligation of equal pay for equal work

- Moreover, **the obligation of equal pay for equal work** is established. This principle binds all companies, regardless of the number of employees, and all collective bargaining agreements.

❖ **Pay transparency instruments**

• **Pay register**

- All companies must keep a pay register for their whole workforce, **including management and senior executives.**
- The purpose is to guarantee **transparency in the setting of salaries,** in a faithful and up-to-date manner, and to ensure adequate access to information about pay kept by companies, irrespective of their size, through the preparation of documentation showing average disaggregated data.
- This register will include: (i) the average value of salaries, (ii) salary supplements and (iii) non-salary payments of the workforce broken down by gender. In addition, it must establish the arithmetic mean and the average of what is actually received for each of the salary items in each professional group, professional category, level, position or any other applicable system of classification.

As regards the request for access to the register:

– **If there is a workers' legal representative:** All employees may access the full content of this register through their representatives.

– **If there is no workers' legal representative:** If the company does not have any workers' legal representative, the workers themselves will have access to the register, in which case the information provided by the company will be limited to the percentage differences in the average remuneration of men and women, that will also have to be broken down on the basis of the type of remuneration and the classification system applicable.

– The reference time period will, in general, be **the calendar year.** Despite this, possible modifications may be made as necessary in the event that there is a substantial change to any item of the salary register.

– In addition, the document where the register is kept may have the format established in the official webpages of the Employment and Social Economy Ministry and the Equality Ministry.

– Finally, the workers' legal representatives must be consulted, at least **10 days in advance,** prior to the preparation of the register.

• Pay audit

– Companies that prepare equality plans must include a pay audit prior to the negotiation of the plan.
– The purpose of this audit is to obtain the information required to check **whether the company's pay system, in a transversal and complete manner, effectively complies with the principle of equal pay for women and men.**
– It will be in force **for the same time as the equality plan** of which it forms part, except where a shorter period of time is laid down in the latter.
– In addition, the companies that carry out a pay audit will have a pay register that must reflect the average pay of the employees doing the same work in the company and the corresponding justification in the event that the average pay of one gender is at least 25% higher than the other.

Content of the pay audit:

- The pay audit involves **the following obligations for the company:**

A. Carrying out of the analysis of the situation regarding pay in the company. The analysis requires:
   (i) Evaluation of job positions, in relation to both pay and promotion systems; and
   (ii) Taking into account other factors giving rise to differences in pay, as well as the possible inequalities in the use of measures taken by the company as regards reconciling work and family life, or the difficulties that employees may have in being promoted.
B. Establishment of a plan of action for the rectification of pay inequality.

❖ **Administrative and judicial protection**

Administrative and judicial actions, both individual and collective, may be brought in relation to issues concerning information on pay (or the lack of such information) pursuant to the amended text of the Employment Infringements and Sanctions Act, which may lead to sanctions being applied in the event that discrimination is shown to exist.

Royal Decree-Law 30/2020, of 29 September, on social measures to protect employment.

Official State Gazette, 30 September 2020

The principal new features of the Royal Decree-Law 30/2020 (the "Royal Decree") can be summarised as follows:

❖ **New rules are introduced for Temporary Collective Redundancy Schemes (ERTEs) as a result of impeded or limited economic activity:**

- ERTES due to an activity being impeded: From 1 October, those companies and entities in **any sector or activity** that are **impeded** from engaging in the activity as regards any of their works centres due to any health restrictions **adopted, as from 1 October 2020, by Spanish or foreign authorities,** subject to an ERTE being authorised on the grounds of force majeure **(the duration of which will be limited to that of the new measures of impediment mentioned),** could benefit from:

  o 100% reduction in social security contributions, from the date of closure until 31 January 2021 when they have less than 50 employees or those treated as employees.
  o 90% reduction in social security contributions, from the date of closure until 31 January 2021 when they have 50 or more employees or those treated as employees.

- ERTES due to limitations placed on the activity: As from 1 October those companies and entities **in any sector or activity** that find that **the normal performance of their activity is limited as a result of decisions or measures adopted by Spanish authorities,** after an ERTE is authorised on force majeure grounds due to the limitations placed on their activity, may benefit from:
  - Companies with less than 50 employees:
    - October 2020: 100%
    - November 2020: 90%
    - December 2020: 85%
    - January 2021: 80%
  - Companies with 50 or more employees:
    - October 2020: 90%
    - November 2020: 90%
    - December 2020: 75%
    - January 2021: 70%
- These exemptions will apply to those employees whose activities are suspended for the periods and percentages of days affected by the suspension and with respect to the contributions to be paid by the company and joint contributions for certain items. If the ERTE is abandoned, this will mean the end of these exemptions from the date that this takes place.

❖ As regards **ERTEs on economic, technical, organisational or production (ETOP) grounds** linked to COVID-19 that commence after this Royal Decree-Law comes into force, article 23 of the RD 8/2020 will apply, with the following specific features:

- They may be commenced while an ERTE on the grounds of force majeure is in force, and will have retroactive effect from the date on which the latter ends.
- ERTEs on ETOP grounds that are in force when this Royal Decree-Law comes into force will continue to be applicable on the terms foreseen in the final communication and until the term referred therein.
- Finally, an ERTE that ends while this Royal Decree-Law is in force may be extended, provided that it is in the consultation period

❖ Once again, as with Royal Decree 24/2020, **certain special features are set out as regards fiscal transparency and the distribution of dividends:**

- Companies with their tax residence in countries or territories defined as tax havens cannot use ERTEs on force majeure or ETOP grounds.
- Companies and legal entities that carry out ERTEs on force majeure or ETOP grounds and that use the public resources set aside for this purpose cannot distribute dividends for the tax year in which the ERTE is implemented, unless they have previously paid the amount corresponding to the exemption from payment of social security contributions.
- The limitation on distributing dividends will not apply to those entities that, on 29 February 2020, had less than 50 employees.

❖ The employment safeguard commitment contained in Additional Provision Six of Royal Decree-Law 8/2020 and article 6 of Royal Decree-Law 24/2020 **will remain in force for the terms and periods laid down therein.**

- It should be recalled that the employment safeguard commitment was extended to a period of 6 months from the date of recommencement of the activity.
- Moreover, the companies that benefit from the exemptions on social security contributions (foreseen in this Royal Decree) **will be subject to a new employment safeguard commitment of six months.**
- Finally, if the company was affected by a previously acquired employment safeguard commitment, the commitment period pursuant to this Royal Decree will start to run from when the previously acquired commitment ends.

❖ Articles 2 and 5 of Royal Decree-Law 9/2020 of 27 March are extended until 31 January 2021:

- The force majeure and ETOP grounds which are used as grounds for the measures on the suspension of contracts and reduced working day contained in articles 22 and 23 of Royal Decree-Law 8/2020, of 17 March **cannot be used to justify the extinction of the employment contract or dismissal.**
- As regards temporary contracts, including those of a training, substitution and provisional nature that are affected by ERTEs on force majeure or ETOP grounds as a result of COVID-10, **suspension of the contract will mean the clock will stop as regards calculating both the duration of these contracts and the reference periods** while the suspension exists.

❖ While an ERTE regulated in this Royal Decree is in force, **no overtime is possible, and no outsourcing of the activity may take place.**

- During an ERTE, in general there cannot be any overtime or new employees contracted (directly or indirectly) and/or outsourcing of the activity.
- Exceptionally, after information has been provided to the workers' legal representatives, new workers may be hired and/or outsourcing may take place provided that the employees affected by the ERTE cannot carry out these duties for objective and justified reasons (eg training and/or skills).

- Breach of this prohibition may lead to the imposition of sanctions by the Employment and Social Security Inspectorate.

❖ **Extraordinary measures in relation to unemployment protection.** Some of the measures foreseen in article 25 of the Royal Decree-Law 8/2020 are maintained.

- The recognition of the right to contributory unemployment benefit until 31 January 2021 for employees affected by an ERTE is maintained, even where they have not paid the contributions required for the minimum period stipulated.
- The amount of the benefit will be 70% of the statutory base until 31 January 2021.
- The companies affected by the extensions to ERTEs on force majeure or ETOP grounds, on the date on which the new rule comes into force, must submit a new collective request for unemployment benefit before 20 October 2020.
- Unlike the situation in existence prior to this Royal Decree, from 30 September 2020, **the period during which contributory unemployment benefit is paid will be taken into account when calculating the maximum periods for which this benefit may be paid by law.** However, the unemployment benefit of workers affected by an ERTE will not be included in this calculation, when they become newly entitled to such benefit, before 1 January 2022, as a result of the termination of a fixed-term contract, an individual or collective dismissal, on ETOP grounds, or a dismissal on any ground that is declared unlawful.

❖ **Extraordinary benefit for persons with permanent seasonal contracts or that carry out permanent and periodical work** that is repeated on certain dates.

- The right to extraordinary unemployment benefit is recognised for employees with permanent seasonal contracts or that carry out permanent and periodical work that is repeated on certain dates, who have been affected during the whole or part of the last period in which they should have been employed by an ERTE.
- In addition, a new extraordinary benefit is laid down for persons with permanent seasonal contracts or that carry out permanent and periodical work that is repeated on certain dates so that, once their unemployment benefit is exhausted, they receive an extraordinary benefit, provided that they continue to be unemployed and do not receive any type of welfare assistance.

❖ Employees included in ERTEs who **do not receive unemployment benefit.**

- Those affected by an ERTE, or whose employers may be benefitting from the exemptions foreseen in this Royal Decree, will be deemed to be in a situation where they are treated as registered and paying social security contributions during the periods in which these measures are in force.

❖ **Compatibility of unemployment benefit with part-time work.**

- When an employee works under a part-time contract not affected by any suspension measure at the same time as receiving unemployment benefit pursuant to an ERTE, the latter benefit will not be reduced in proportion to the time worked.
- Those persons in receipt of unemployment benefit who have seen the amount of their benefit reduced (as a result of having one or more part-time jobs not affected by ERTEs), will be entitled to receive financial compensation equal to the amount that they have ceased to receive.

❖ The Royal Decree establishes other measures related to **social security exemptions,** which are incompatible with the exemptions mentioned above.

- Exemptions for companies belonging to **sectors with a high level of Collective Redundancy Schemes and a reduced level of recovery of the activity** (i) that are in ERTEs which are extended automatically until 31 January 2021, in accordance with the provisions of this Royal Decree-Law 30/2020, and (ii) their activity comes within one of the codes of the National Classification of Economic Activities ("CNAE") laid down in the Annex to this Royal Decree.
- Companies for which ERTEs on force majeure grounds are automatically extended and that are considered to belong to sectors with a high number of ERTEs and a low level of recovery of the activity.
- Companies that switch from an ERTE on force majeure grounds to one on ETOP grounds during the term of this Royal Decree, where their activity comes within one of the codes of the National Classification of Economic Activities -CNAE-09- foreseen in the Annex of the new Royal Decree-Law at the time of its entry into force (i.e. extraction of iron minerals, air transport, wholesale trade in skins and leather, Horeca, the performing arts, retail IT trade, etc.).
- Companies defined as dependent on all or part of the value chain that switch from a force majeure ERTE to one on ETOP grounds.

  Companies will be deemed to be part of the value chain or indirectly dependent on the latter in the following situations: (i) at least 50% of their turnover in 2019 was

generated through transactions carried out directly with those included in any of the CNAE codes referred to in the Annex to the Royal Decree; or (ii) their genuine activity depends indirectly on that actually carried out by the companies whose activity comes within the CNAE codes in question.

The abovementioned companies will be exempt, with respect to employees affected by an ERTE who recommence their work after 1 October 2020 or that have restarted after the entry into force of Royal Decree-Law 18/2020, of 12 May, and those employees whose activities have been suspended between 1 October 2020 and 31 January 2021, as regards the percentages and conditions stated below:

- 85% of the employer's contribution for the months of October, November and December 2020 and January 2021, when the company has less than 50 workers (registered or treated as if they were registered for social security purposes) as at 29 February 2020.
- 75% of the employer's contribution for the months of October, November and December 2020 and January 2021, when the company has less than 50 workers (registered or treated as if they were registered for social security purposes) as at 29 February 2020.

Royal Decree-Law 28/2020, of 22 September, on teleworking

Official State Gazette of 23 September 2020

The Royal Decree-Law 28/2020 (the "**Royal Decree**") regulates relations in situations where a person works remotely for another, whether an individual or legal entity, called an employer or entrepreneur, on a regular basis. Teleworking will be deemed to be regular when, during the reference period of three months, it accounts for a minimum of thirty per cent of the working day, or the equivalent proportionate percentage depending on the duration of the employment contract.

The Royal Decree came into force on 13 October 2020.

In addition, if a company has an internal policy on teleworking, this will apply until it expires, at which point the Royal Decree will start to apply. If the policy in question does not stipulate that it will last for a given period, the Royal Decree will apply one year after its entry into force, that is, 13 October 2021. The most relevant points of the Royal Decree are:

- Teleworking agreements for **minors, placements and training contracts** and apprenticeships must guarantee that at least fifty percent of the work be done in-person.
- **Equality and non-discrimination.** There can be no unjustified differences that affect the employees working remotely compared with those working in-person. Therefore, those working remotely will have the same rights as those working in-person, except for the inherent rights to work in-person. In addition, remote workers cannot be affected any downgrading of their employment conditions, as regards salary, working hours, training, professional promotion... etc.
- The decision to work remotely will be **voluntary** and **reversible** and will require the signature of the teleworking agreement governed by the Royal Decree. Therefore, the employee's refusal to work remotely, a request to return to work at the work centre or their difficulties in adequately working remotely will not be grounds that justify the termination of the employment relationship or any significant modification of the working conditions.
- The teleworking agreement must be signed in **writing** before the worker starts teleworking within a maximum of 3 months from the entry into force of the Royal Decree, on 13 October 2020. The company, within 10 days from the formal execution, must delivery a copy to the **workers' legal representative** and, subsequently, this copy will be sent to the employment office. The **amendments** to the contract or teleworking agreement must be agreed between the employer and the employee, in writing, and notified to the workers' legal representative.
- The agreement must contain the following minimum obligatory content:
  - Inventory of resources, equipment and tools required to be able to work remotely.
  - List of the expenses that the employee may incur and the compensation that must be paid by the company.
  - Working hours of the employee.
  - Percentage and distribution between in-person work and teleworking.
  - Work centre to which the employee is attached.
  - Place from where the employee has chosen to telework.
  - Length of the notice periods for reverting to in-person work.
  - The company's means of controlling the activity.
  - Procedure to be followed in the event of technical difficulties.
  - Instructions regarding data protection matters.
  - Instructions regarding information security.
  - Duration of the teleworking agreement.

- Rights of employees who work remotely:
  - Rights related to their professional careers: Employees who work remotely will have the same rights as those who work in-person in relation to **training and professional promotion.** The company must take the measures required to guarantee this right and inform employees in writing of the possibilities of promotion.
  - Rights to resources being maintained and expenses: The employees will be entitled to be provided all the **resources, equipment and tools necessary** to perform their activity. In addition, they will also be entitled to **be reimbursed all expenses** since the company must cover both direct and indirect expenses. By collective bargaining agreement or similar agreement between the company and the workers' legal representative, it will be possible to establish different mechanisms in order to determine these expenses.
  - Right to **flexible working hours:** employees may alter the times when they work, in accordance with the legislation on working hours and rest time.
  - Right to have **a record kept of time worked:** The company continues to be obliged to record faithfully the hours worked by its employees.
  - **Priority for in-person jobs:** Those working remotely have priority as regards in-person positions and the company must inform them of any vacancies that arise.
  - Right to **occupational risk prevention:** The company must have a preventive policy, which covers psychosocial risks, and apply the measures necessary in order to avoid workplace harassment. If the worker does not authorise access to the place where they work, they must provide the information, that will be given to the occupational risk prevention service, regarding the place where the work will be performed.
  - Right to **privacy and data protection:** Any control mechanisms that may exist must be appropriate, necessary and proportionate.
  - Right to **disconnect:** This refers to the duty to limit the use of technological communication resources for business and employment purposes during rest periods. Through a collective bargaining agreement or similar agreement with an employer, adequate resources and measures will be laid down to guarantee the effective exercise of this right to disconnect when working remotely.
  - **Collective rights:** Employees who work remotely will be entitled to exercise their collective rights with the same content and scope as the rest of the workers in the centre.
- Duties of remote employees: Employees must comply with their employers' instructions on data protection and information security. In addition, they must comply with the conditions and instructions on use and conservation established by the company in relation to IT equipment or tools.
- Monitoring and control by the company: The employer can adopt the monitoring and control measures that it considers most adequate in order to verify compliance with employees' employment obligations and rights, while respecting their dignity and protecting their data.
- Collective bargaining agreements or similar agreements may identify, for specific positions, those jobs capable of being carried out remotely, the conditions of access and performance of the activity, the maximum duration of the teleworking day, the minimum hours in-person in a teleworking job, the exercise of the right to revert to in-person work, a lower percentage for the purposes of defining remote working as "regular", an in-person percentage of work for training contracts different from those foreseen (provided that they are not entered into with minors) or other exceptional circumstances.
- **Additional provision one** provides that the current legislation will also apply to teleworking situations in existence when this Royal Decree came into force that were governed by certain agreements or collective bargaining agreements from the moment that these agreements expire. If they did not contain a specific term, this legislation will take effect one year after it is published in the Official State Gazette (BOE), except where the signatories of these agreements expressly agree to a longer period, of up to three years. Moreover, this Royal Decree cannot cause the loss of compensation, absorption or more favourable rights or conditions that were enjoyed by those working remotely prior to the publication of this legislation.
- Finally, **additional provision three** establishes that the ordinary employment legislation will continue to apply to teleworking implemented exceptionally as a result of the extraordinary measures taken to combat COVID-19. However, employers must provide the resources, equipment, tools and consumables that are required to be able to work remotely and also to maintain these items, and collective bargaining agreements will establish the method of compensating the expenses incurred as a result of teleworking.

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