Labour Flash - January 2025

1.- Organic Law 1/2025, of 2 January, on measures for the efficiency of the Public Justice Service: Reform of the LRJS and reference to administrative conciliations for the purposes of dismissals and personal income tax.

The reform of the Social Jurisdiction Act (LRJS) and the amendments to the Income Tax Act (IRPF) relating to severance payments, introduced by Organic Law 1/2025 of 2 January on measures to improve the efficiency of the Public Judiciary, bring about significant changes, among which we highlight the following:

- Anticipation in the presentation of evidence: It is established that the documentary or expert evidence of the parties must be transmitted between the parties or presented in advance, 10 days before the trial. The obligation to produce evidence in advance is therefore general and does not allow it to be produced after the deadline has expired, unless the evidence could not have been obtained in advance, is of a later date or the party proves its knowledge of it at a later date or the impossibility of preparing it at an earlier date.

- Exemption of severance payments from income tax: It is clarified that severance payments for dismissal or termination of the employee agreed upon in conciliation proceedings are exempt from personal income tax up to the legal limit (180,000 euros).

- Reform of the social justice system with the aim of speeding up court proceedings.

    - Oral judgments: The possibility of issuing an oral judgment at the end of a trial will be extended in order to speed up the processing and resolution of cases. This oral judgment will be documented in the audiovisual support of the act, guaranteeing its registration and the possibility of appeal in the usual conditions.

    - Conciliation procedure: In order to speed up the procedure, it is possible to hold a separate hearing prior to the trial, at the request of a party or ex officio by the LAJ in case of a possible settlement. This preliminary hearing would take place ten days after the admission of the claim and at least thirty days before the trial.

    - Extension of the time limit for requesting the preparation of evidence: the time limit will be extended from 5 to 10 days.

    - Access to the Supreme Court: new criterion of objective appeal: The criterion of objective appeal is introduced as a new requirement for access to the Supreme Court in cassation appeals for the unification of doctrine, bringing this route in line with that of other jurisdictions. This criterion allows only cases of great legal and social importance to be reviewed.

- Applicability: the above amendments will apply to proceedings instituted after the entry into force of the Law (3 April 2025), and the amendments relating to appeals in cassation will apply to appeals against decisions handed down since that date.

- Amendments to the Workers' Statute.

    - The conditions for the application of the reason for the termination of the contract at the will of the worker (art. 50 ET), consisting in the non-payment of wages or in persistent delays, are specified.

    - The cases of nullity applicable to the termination of contracts of persons who have requested the adaptation of the working day in article 34.8 ET are reinstated.

2.- Reform of the LGSS and the Workers' Statute (ET) on partial, flexible and active retirement, agreed in Royal Decree-Law 11/2024, of 23 December, to improve the compatibility of retirement pensions with work.

The aforementioned Royal Decree-Law reforms various issues related to retirement, concerning the supplement for delayed retirement age, the so-called "active retirement", or partial retirement, and in relation to the latter, the regime of relief contracts in the ET is modified. The main aspects of these reforms are summarised below:

Amendments to the General Social Security Law (LGSS):

- **Article 210 LGSS:** The previous regulation on the financial supplement for those who retire at an age higher than that applicable in each case for ordinary retirement (provided they have fulfilled the minimum contribution period) is modified. This supplement is calculated as an additional percentage of 4% for each full year of delay, and from the second year onwards it is calculated for periods of more than six months and less than one year, corresponding to an additional 2%. Various payment options for the supplement are introduced (monthly payments, a lump sum or a combination of both). The supplement will be compatible with active retirement but does not apply to partial retirement or flexible retirement.

- **Article 214 LGSS:** Active retirement pension. A new regulation on "active retirement" is established, modifying the amount of the pension in cases of compatibility with employment or self-employment, going from 50% of the amount initially recognised without such compatibility to a variable percentage, between 45% and 100%, depending on the years by which access to retirement is delayed with respect to the ordinary age of access to retirement. The applicable percentage is increased by 5% for each 12 months of uninterrupted active retirement. Contributions made during active retirement shall not increase the percentage applicable to the regulatory base of the pension already recognised.

- **Article 215 LGSS:** Partial retirement pension. The conditions for access to partial retirement are made more flexible and the two possibilities of access to partial retirement are regulated in a differentiated manner:

    1 Partial retirement once the age and other requirements for access to ordinary retirement have been met, without the need for a relief contract. The margin for reducing working hours is extended (between 25 and 75%).

    2 Partial retirement before reaching the ordinary retirement age, with the simultaneous conclusion of a relief contract. This requires a maximum of 3 years younger than the aforementioned ordinary retirement age. In anticipation of more than two years, the reduction in working hours during the first year will be between 20% and 33%. The relief worker's contribution base must not be less than 65% of the average of the partial retiree's bases in the last six months. Relief contracts will be indefinite and full-time, and must be maintained for at least two years after partial retirement.

Amendments to Art. 12 of the Workers' Statute (part-time contract and relief contract):

- A new regulation is introduced for the relief contract, which will be indefinite and full-time and must be entered into when early partial retirement is agreed. The contract must in any case remain in force until two years after the partial retirement is terminated (with mandatory replacement in the event of termination of the relief worker's contract before this period) and in the event of non-compliance with this obligation, the employer is liable for the reimbursement of the pension received by the part-time pensioner. The job of the relief worker may be the same or different from the job of the person being replaced, although there must be a correspondence between their respective contribution bases (according to LGSS).

- In the case of partial retirement on reaching the ordinary retirement age, this is not compulsory, but a relief contract may also be arranged, which in this case may be indefinite or for a fixed term, for as long as the partial retirement is maintained (with a minimum of one year). The relief worker may occupy the same or a different job as the partial retiree, and both may have the same or different working hours.

- It shall be possible to accumulate the working time of the partial retiree in any period of time to be agreed individually or collectively.

- Relief contracts signed prior to the entry into force of the Royal Decree-Law are governed by the regulations in force at the time they were signed.

3.- Sentence 1350/2024, of 19 December, of the Supreme Court.

This judgment analyses the possible collision between Article 56 of the Workers' Statute (ET) and Article 10 of ILO Convention 158 (International Labour Organization), as well as Article 24 of the revised European Social Charter (ratified by Spain on 29 April 2021, BOE of 11 June).

The Social Division of the Supreme Court considers that the aforementioned article 56 ET provides a response in accordance and in line with the principles on "adequate compensation" in ILO Convention 158, so that the system for calculating compensation for dismissal in Spain does not conflict with the provisions of the aforementioned Convention, and the courts are not empowered to fix additional compensation in the event that the resulting amounts are meagre, depending on the circumstances of the case and the damage caused to the dismissed worker.

The Supreme Court points out that Article 56 of the ET establishes fixed amounts of compensation, which provide legal certainty and guarantee equal treatment for all dismissed workers, and that the Constitutional Court has concluded that such a fixed compensation regime makes it possible to determine adequate compensation without the application of the civil damages regime in the labour field of dismissal.

The Social Division of the Supreme Court considers that ILO Convention 158 refers the determination of what constitutes "adequate compensation" to national legislation and thus allows States to regulate severance pay autonomously on the basis of that general criterion. It also points out that Spain has a system based on the length of service and salary remuneration which is in line with international standards and with the Convention itself.

Thus, Art. 56 of the ET develops the term "adequate" for the purposes of compensation, a legal formula that does not conflict with Art. 10 of ILO Convention No. 158.

The Social Division of the Supreme Court definitively rejects the possibility for judges to award additional compensation based on specific/individual circumstances of workers.

4.- STS 5709/2024, of 21 November, which declares that it is not obligatory to include salary data that could lead to identify the salary of an individual in the salary register.

The main question of the ruling focuses on the proper interpretation of Article 28.2 of the Workers' Statute (ET), as well as Article 5 of Royal Decree 902/2020 of 13 October on equal pay for men and women. Specifically, it examines the obligation to include in the salary register information that makes it possible to know or deduct the individualised salaries of employees.

In this respect, there was an important previous ruling: **the National Court** affirmed that the regulation *"does not directly or indirectly exclude the inclusion of the data of those positions in which there are only persons of the same sex or in such a number as to prevent the calculation of the mean and median, applying, where appropriate, the methods necessary to guarantee the confidentiality of such data",* based on the interpretation of the AEPD guide. It therefore ruled that the company should complete and share the remuneration register, even in cases where the individual salary of specific persons could be inferred.

However, the **Social Division of the Supreme Court** departs from the above criterion. It recalls that art. 28 ET requires "*recording average values - and not individual values - of pay disaggregated by sex*" in order to see whether such average values reveal inequality on grounds of sex. Thus, it adds that "*what is important is the comparison between women and men and not the individualised remuneration of each worker*", and that Royal Decree 901/2022 develops the legal provision by indicating that these are arithmetic averages and medians, and not individual values. The judgement concludes that *"at present, there is no regulation with the force of law that clearly obliges the inclusion in the salary register of data that makes it possible to identify the individualised remuneration of a worker. If the law wants to allow such a result, in addition to having to be unequivocal from the legal provision, the rule should establish the guarantees to prevent disclosure referred to in the General Data Protection Regulation, as well as the additional security measures referred to in Article 8.1 LOPDGDD",* adding that *"The implementation of Directive 2023/970 could be a good opportunity to do so".*

Its conclusions are based on:

- Article 28.3 ET and RD 902/2020 which require the remuneration register to contain arithmetic and median averages.
- Directive (EU) 2023/970, with various references to "average" pay levels.
- General Data Protection Regulation and the Organic Law on Data Protection and Guarantee of Digital Rights (LOPDGSS), which requires the protection of the processing of personal data, including salary data.
- Data minimisation principle: which requires that only personal data that is adequate, relevant and limited to what is necessary for the purposes should be processed.
- The guide on data protection in employment relations, published by the AEPD in 2021, is also referred to, and although it is not a legal provision, it serves as an interpretative criterion in this area.

Equipo laboral de Simmons España:

Eduardo Peñacoba
Country Head & Partner
T +34 91 426 2646
93 424 9865
E eduardo.penacoba@
simmons-simmons.com

Carmen Torres
Partner
T +34 91 426 2589
E carmen.torres@
simmons-simmons.com

Juan Calvente
Of Counsel
T +34 91 426 6100
E juan.calvente@
simmons-simmons.com

Jesus Gimeno
Of Counsel
T +34 91 426 2661
E jesus.gimeno@
simmons-simmons.com

Cecilia Castro
Supervising Associate
T +34 91 426 2647
E cecilia.castro@
simmons-simmons.com

Álvaro Zaldívar
Managing Associate
T +4 91 426 2655
E alvaro.zaldivar@
simmons-simmons.com

Jorge Carrasco
Associate
T +34 91 426 2719
E jorge.carrasco@
simmons-simmons.com

María Martín-Marquina
Associate
T +34 91 426 2996
E maria.martin-marquina@
simmons-simmons.com

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