

Employment Flash – October 2023

Royal Decree on the RED Employment Flexibility and Stabilisation Mechanism

Actualisation of hiring bonuses due to the entry into force of Royal Decree-Law 1/2023

1 - Royal Decree on the RED Employment Flexibility and Stabilisation Mechanism

On 12 July 2023, the **Official State Bulletin published the Royal Decree 608/2023, of 11 July, which implements the RED Mechanism for Employment Flexibility and Stabilisation (in force since 13 July)**, the main purpose of which is to implement article 47.bis of the Workers' Statute ("ET"), regulating the so-called "RED mechanism" which, once activated in certain circumstances and/or for certain sectors, will allow the application of measures to reduce working hours and suspend employment contracts under the conditions set out therein. The Royal Decree also introduces significant amendments in relation to the regulation of collective dismissal procedures (arts. 47 and 51 ET).

The contents of this Royal Decree are summarised below.

1. Activation of the network mechanism

The RED Mechanism can be activated in two ways:

- **Cyclical mode:** when there is a macroeconomic situation that suggests the need to use additional tools for stabilisation.
- **Sectoral:** when lasting changes are observed in a specific sector or sectors requiring retraining of workers and occupational transition processes.

This activation will require the approval of the Council of Ministers and prior notification to the most representative trade union and employers' organisations at state level and will be announced through publication in the Official State Gazette.

2. Applicable measures

Once the RED Mechanism is activated and for the duration of its validity, the affected companies may apply to the competent labour authority for a reduction in working hours or the suspension of employment contracts.

The suspension of an employment contract shall be applicable when the interruption of the employee's activity affects full working days, either continuously or on alternate days, for at least one ordinary working day.

On the other hand, the reduction of working hours refers to the temporary reduction of working time, and this reduction may be calculated on the basis of daily, weekly, monthly or annual working hours. As far as possible, **priority shall be given to the adoption of working time reduction measures rather than to the suspension of contracts.**

It is important to note that during the implementation of a file generated by the RED Mechanism, each worker **can only be affected exclusively by a reduction of working hours or a suspension of his/her contract**, it is NOT possible to combine both measures.

3. Procedure

The new mechanism is articulated through the following procedure, which integrates elements of the normal procedure for suspension of contracts (the so-called "ERTEs") of Art. 47 ET, although here it is a purely administrative procedure, in which the conclusion of the procedure by administrative authorisation has been recovered (instead of the unilateral decision of the company, under judicial control, which remains in force with regard to the ordinary "ERTEs" of Art. 47 ET):

- i. **Notification:** The management of the company must inform the workers or their representatives in a reliable manner of its intention to initiate the procedure, for the purposes of the formation of the representative committee.
- ii. **Formation of the Negotiating Committee:** a negotiating committee shall be formed, which shall be governed by the provisions of Article 41.4 of the Workers' Statute with the particularities of this Royal Decree. The deadline for the constitution of the workers' representative committee shall be five days from the date of the aforementioned communication, unless one of the work centres affected by the procedure lacks legal representation of the workers, in which case the deadline shall be extended to ten days.
- iii. **Formal notification of the opening of the consultation period:** After the previous procedure, the company makes the formal notification of the opening of the consultation period, accompanied by various documentation. The consultation period will have a maximum duration of fifteen days (7 days in companies with less than 50 employees). This "maximum" period may be extended by agreement between the parties.
- iv. **Request for authorisation:** at the same time as the notification of the opening of the consultation period, the company must submit the corresponding request to apply measures to reduce working hours or suspend contracts within the scope of the RED Mechanism, using the electronic platform designated by the labour authority.
- v. **Report of the Labour and Social Security Inspectorate:** the competent labour authority will immediately forward it, together with all the documentation in its possession. At the same time, a report from the Inspectorate will be compulsorily requested. This report will focus on the details of the communication made by the company and will verify whether the company complies with the situation specified in the activation agreement and ensure that the criteria used for the selection of the employees concerned are not discriminatory.
- vi. **End of procedure: two possibilities:**
 - a. With agreement: if the consultation period between the parties ends with an agreement, the labour authority has a **period of seven calendar days from the communication of the agreement between the parties** to issue a resolution authorising the application of the RED Mechanism as agreed.

If it **does NOT issue a resolution** within that period, the application of the RED Mechanism shall be deemed to be **authorised in accordance with** the terms of the agreement between the parties.

In addition, during the duration of the measure, the company may propose an extension of the measure to the workers' representatives with whom it has carried

out the consultation period. However, this extension may **not exceed the limit set in the activation agreement**. The need for the extension will be discussed in a consultation period lasting a maximum of **five days** but may be extended if there is an explicit agreement in the negotiating committee, and the labour authority will be notified prior to its entry into force.

- b. Without agreement: a **decision** will be issued within **7 calendar days** of the company's communication of the final decision, accepting or rejecting the company's application. If after this period there is **NO** express pronouncement, it will be understood to be **authorised**.

4. Social security contribution benefits

Companies will enjoy the exemptions from Social Security contributions established in the forty-fourth additional provision of the General Social Security Law during the implementation of these measures, provided that they comply with the requirements and conditions specified in that provision.

5. Training actions linked to windfall profits for companies

During reductions in working hours or suspensions of employment contracts, companies will carry out training programmes for each of the employees concerned, with the aim of strengthening their professional skills and improving their employment opportunities. Some exemptions will be associated with the implementation of these training initiatives.

6. Limits on overtime, recruitment and outsourcing

During the effective implementation of the RED Mechanism, overtime, the introduction of new outsourcing of activities and the conclusion of new contracts, whether direct or indirect, are prohibited.

However, this prohibition shall not apply in cases where employees under contract suspension or reduced working hours who are serving at the workplace affected by the new hires or outsourcing are unable to carry out the assigned tasks due to valid and justified reasons, such as training or qualification. Before taking this decision, the company must inform the workers' legal representatives.

Training contracts may be concluded in specific cases.

7. Relevant amendments to the regulations on collective redundancies

The following amendments to the Regulation on collective dismissal procedures and the suspension of contracts and reduction of working hours, approved by Royal Decree 1483/2012 of 29 October, should be highlighted:

- Companies planning to **close one or more of their workplaces**, if this entails the definitive termination of the activity and the loss of employment of **50 or more employees**, are **obliged to give prior notification** to the competent labour authority. This notification must be made at least **six months before the start of the consultation** period. In the event that it is not possible to comply with this notice period, the notification must be made as soon as possible, providing a justification of the reasons why the deadline could not be respected.

In addition, a copy of this notification must be sent to the most representative trade union organisations and to those representing the sector to which the company belongs, both nationally and in the autonomous community where the workplaces to be closed are located.

- The provisions relating to the legal regime for **Temporary Redundancy Proceedings (ERTE) are similarly aligned with those mentioned above in relation to RED Mechanisms.**

This includes a redefinition of suspension or reduction measures, as indicated in point 2 above, aspects such as the possibility to withdraw and reapply measures to employees, the restriction that employees are not affected by a combination of measures and the prioritisation of reduction measures over suspensions.

Access to exemptions from social security contributions during ERTes is regulated, adding that these are conditional on the requirement to fulfil a commitment to maintain employment.

In addition, the restrictions in the RED mechanism on prohibition of overtime, outsourcing or new hiring apply to "ordinary" ERTes.

2 - Actualisation of hiring bonuses due to the entry into force of Royal Decree-Law 1/2023

On 1st of September of 2023, various regulations of Royal Decree-Law 1/2023 of 10 January on measures regarding incentives for employment contracts came into force. This text responds to the need to unify, simplify and make hiring incentives more effective, as they are currently contained in different regulations. This is why we offer a summary of the main measures with incentives or premiums for hiring.

Bonus	Targeted staff	Requirements	Amount	Duration
INDEFINITE HIRING OF PERSONS WITH LIMITED INTELLECTUAL CAPACITY	Staff with limited intellectual capacity.	<p>To be considered as persons with limited intellectual capacity according to the provisions of <u>article 2 of Royal Decree 368/2021</u>, for which the following requirements must be met:</p> <ul style="list-style-type: none"> • Be registered with the Public Employment Services as a non-occupational jobseeker. • Officially accredit, according to the current scales for the assessment of the situation of disability, at least 20 percent of intellectual disability, without reaching 33 percent. 	Bonus on the contribution of 128 euros/month.	4 years.
INDEFINITE HIRING OF READMITTED WORKERS	<p>a) Persons who, regardless of age, have left the company due to total or absolute permanent disability.</p> <p>b) Over 55 years of age, in certain cases.</p>	<p>For staff falling under (a): the following requirements must be met (provided for in Article 2.1 and 2.2 of Royal Decree 1451/1983):</p> <ul style="list-style-type: none"> • To have been terminated as employees of the Company. • The cause of the termination is due to having been recognised: (i) total or absolute permanent incapacity; or (ii) permanent disability. • If the cause of termination is due to a recognised total or absolute permanent incapacity, and after having received occupational rehabilitation benefits, the worker has regained full working capacity. 	Bonus on the contribution of 138 euros/month.	2 years.

		<ul style="list-style-type: none"> • If the cause of termination is due to a recognised permanent disability, and after having received occupational rehabilitation benefits, the worker will continue to be affected by partial permanent disability. <p>For staff covered by subparagraphs (b) and (c):</p> <ul style="list-style-type: none"> • Over 55 years of age, in one of the following situations: <ul style="list-style-type: none"> i. With permanent incapacity and who return to their employer in another category. ii. With the capacity recovered and with the possibility of being hired by another company. <p>*Reinstatement does not correspond to a worker's right to return to work.</p>		
<p>INDEFINITE HIRING OF WOMEN VICTIMS OF VIOLENCE</p>	<ul style="list-style-type: none"> a) Women victims of gender violence. b) Women victims of sexual violence. c) Women victims of human trafficking. d) Women victims of sexual or labour exploitation. e) Women in contexts of prostitution. 	<p>On the basis of article 6 e), f) and g) of Royal Decree-Law <u>1/2023</u>, to have accredited the condition of:</p> <p>a) Victims of gender-based violence, through any of the following:</p> <ul style="list-style-type: none"> i. Conviction or protection order (or any other court decision granting a precautionary measure in favour of the victim). ii. Report of the Public Prosecutor's Office. iii. Report from social services or specialised services. 	<p>Bonus on the contribution of 128 euros/month.</p>	<p>4 years.</p>

		<p>b) Women victims of human trafficking, sexual or labor exploitation and women in contexts of prostitution: report of a commissioned public service.</p> <p>c) Women victims of sexual violence: report from the competent authority in each case.</p>		
<p>FIXED-TERM CONTRACTS WITH UNEMPLOYED PERSONS TO REPLACE WORKERS</p>	<p>Fixed-term contracts concluded with unemployed persons:</p> <p>a) Under 30 years of age, to replace workers who are receiving economic benefits for risk during pregnancy or risk during breastfeeding.</p> <p>b) Under 30 years of age, to replace workers who are receiving economic benefits for the birth and care of a minor or who are co-responsible for the care of the infant.</p> <p>c) For the replacement of self-employed persons, working partners or</p>		<p>Bonus on the contribution of 366 euros/month.</p>	<p>Period in which the replacement contract and the respective benefit or situation of temporary incapacity overlap.</p>

	<p>working partners of cooperative societies, in the cases and under the terms established above.</p> <p>d) Unemployed people with disabilities to replace disabled workers whose employment contract has been suspended due to temporary incapacity.</p>			
<p>INDEFINITE RECRUITMENT OF YOUNG PEOPLE WITH LOW QUALIFICATIONS</p>	<p>*ONLY IN THE FIRST YEAR OF VALIDITY OF ROYAL DECREE-LAW 1/2023.</p> <p>Young people under 30 with low qualifications</p>	<ul style="list-style-type: none"> • Have not attained the studies corresponding to the Bachelor's Degree or Intermediate Level Training Cycle of the Professional Training system. • Registration in the file of the National Youth Guarantee System. 	<p>Bonus on the contribution of 275 euros/month.</p>	<p>3 years.</p>
<p>WORKERS REPLACED DURING CHILDBIRTH AND CHILDCARE, RISK DURING PREGNANCY AND RISK DURING BREASTFEEDING</p>	<p>Employed persons replaced during the receipt of cash benefits for:</p> <ul style="list-style-type: none"> • Birth and care of a child. • Co-responsible care of the child or infant. • Risk during pregnancy or breastfeeding. 		<p>Bonus on the contribution of 366 euros/month.</p>	<p>Period in which the replacement contract and the respective benefit overlap.</p>

	<p>Working members or worker-members of cooperative societies, replaced during rest periods by:</p> <ul style="list-style-type: none"> • Birth and care of the child. • Co-responsible exercise of infant care. 			
<p>CHANGES OF JOB DUE TO RISKS RELATED TO PREGNANCY, BREASTFEEDING OR OCCUPATIONAL ILLNESS</p>	<ul style="list-style-type: none"> • Women who, due to risk during pregnancy or breastfeeding, in accordance with Article 26 of Law 31/1995, are assigned to a different job or function compatible with their condition. • Workers who suffer from an occupational disease and who undergo a change of job or performance. 	<p>For the risk of pregnancy and breastfeeding:</p> <ul style="list-style-type: none"> • Accreditation by means of the risk assessment results report. <p>For the situation of occupational disease:</p> <ul style="list-style-type: none"> • Certificate from the disability assessment team of the National Institute of Social Security. 	<p>Bonus on the contribution of 138 euro/month.</p>	<p>Time spent in the new job or function.</p>
<p>INDEFINITE-TERM CONTRACTING OF PEOPLE IN A SITUATION OF SOCIAL EXCLUSION</p>	<p>Working people in a situation of social exclusion.</p>	<p>Be included in any of the groups listed in article 2.1 of Law <u>44/2007, of 13 December</u>, as well as any other group that, due to their characteristics and socio-economic situation, has this condition accredited by the social services or competent bodies.</p>	<p>Bonus on the contribution of 128 euros/month.</p>	<p>4 years.</p>
<p>INDEFINITE-TERM CONTRACTING OF PEOPLE IN A SITUATION OF SOCIAL EXCLUSION</p>	<p>Working people in a situation of social exclusion.</p>	<ul style="list-style-type: none"> • Contracted worker. • After the end of an employment contract with an insertion company. 	<p>Bonus on the contribution of 147 euros/month.</p>	<p>12 months.</p> <p>*Once this period is over, up to the limit of 4 years, it will</p>

		<ul style="list-style-type: none"> • During the previous 12 months, he/she has not subsequently worked for another employer for a period of more than 30 days for more than 30 days after leaving the integration company. • Is hired on a permanent basis by an employer who does not have the status of an insertion company or special employment centre. 	.	<p>be regulated by the other case of people in a situation of social exclusion.</p>
<p>INDEFINITE-TERM CONTRACTING OF LONG-TERM UNEMPLOYED PERSONS</p>	<p>Unemployed persons.</p> <p>Unemployed women.</p> <p>Over 45 unemployed.</p>	<p>Unemployed persons registered at the employment office (at least 12 months in the 18 months prior to recruitment).</p>	<p>General situation:</p> <p>Bonus on the contribution of 110 euros/month.</p> <p>Women and over 45:</p> <p>Bonus on the contribution of 128 euros/month.</p>	<p>3 years.</p>
<p>INDEFINITE HIRING OF PEOPLE WHO ARE VICTIMS OF TERRORISM</p>	<p>Victims of terrorism.</p>	<ul style="list-style-type: none"> • Persons who have suffered physical and/or psychological harm as a result of terrorist activity. • Be a spouse or a person who has lived together in a similar relationship for at least two years. • Being a child of both the injured and the deceased. • Have an acknowledgement from the Ministry of the Interior or a final court decision. 	<p>Bonus on the contribution of 128 euros/month.</p>	<p>4 years.</p>

ALTERNANCE TRAINING CONTRACT	Work-linked training contracts.	*It does not apply to work-linked training contracts in the framework of mixed public employment-training programmes.	Bonus on the contribution of 91 euros/month . In Social Security contributions and joint collection concepts: Bonus on the contribution of 28 euros/month .	During its term and extensions.
TRANSFORMATION OF TRAINING OR RELIEF CONTRACTS INTO OPEN-ENDED CONTRACTS	<ul style="list-style-type: none"> • Training contracts. • Relief contracts. 	Proof of the conditions determining the application of the aforementioned contribution rebates with the notification of the worker's registration in the corresponding Social Security scheme.	<ul style="list-style-type: none"> • Training contracts: Bonus in the contribution of 128 euros/month and 147 euros/month for women. • Relief contracts: Bonus in the contribution of 55 euros/month and 73 euros/month for women. 	3 years.
TEMPORARY CONTRACTS WITH AGRICULTURAL EMPLOYEES	Transformation of temporary contracts into fixed-discontinuous open-ended contracts.	Transformation corresponds to temporary contracts signed with agricultural workers included in the Special System for Agricultural Workers.	Bonus in the contribution of 55 euros/month and 73 euros/month for women.	3 years.
PERMANENT-DISCONTINUOUS CONTRACTS IN THE TOURISM, COMMERCE AND HOTEL AND CATERING SECTORS	Enterprises, excluding those belonging to the public sector, engaged in activities within the tourism sectors.	Generate productive activity in the months of February, March and November of each year and that initiate and/or maintain the employment of workers with permanent-discontinuous contracts during these months.	Bonus in the contribution of 262 euros/month .	During the months of activity.

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