Employment Flash – April 2023

Employment news – Key issues on the reform of the public pension system

Royal Decree-Law 2/2023 of 16 March (BOE of 17 March) ("RDL 2/23") aims to tackle the imbalances in the public social security system, aggravated by the country's demographic evolution, even with foreseeable increases in spending (increasing levels of social protection and reducing the gender gap), basically by increasing revenue, with more and higher contributions. To this end, RDL 2/2023 introduces a series of measures, including the following:

1. Automatic updating of the máximum ceiling for contribution bases and introduction of an Additional Solidarity Contribution (arts. 19.3 and 19 bis LGSS)

The maximum ceiling for the contribution bases shall be updated annually by a percentage equal to that established in the General State Budget Law for the revaluation of contributory pensions.

In addition, in order to strengthen social security income, **an additional solidarity contribution** is also introduced, whereby remuneration subject to Social Security contribution that exceed the amount of the maximum contribution base (until now exempt from contributions) will be subject to an additional solidarity contribution in any settlement of contributions, i.e. without generating rights or having an impact on the benefits of contributors. This new contribution will be the result of applying a contribution rate of between 5.5% and 7% on the part of the remuneration that exceeds the maximum contribution base, with 3 brackets depending on the percentage by which such remuneration exceeds the maximum base (up to 10%, 10-50% and more than 50%). In accordance with DT42 of RDL 2/23, the additional solidarity contribution will come into force on 1 January 2025 (with initial rates of between 0.92% and 1.17%) and will increase progressively until 2045, when the final contribution rates will be applied.

This new contribution will be distributed between company and employee in the same proportion as the RGSS contribution rate for common contingencies.

2. Implementation of the intergenerational equity mechanism; the finalist contribution

With the same aim of increasing social security revenue and coping with the increase in expenditure and the problems posed by demographic trends, a **finalist contribution** has been introduced, applicable to all contributors who pay contributions for retirement contingencies. This finalist contribution **will not count for benefit purposes** either, but will only be used to increase the Social Security Reserve Fund.

The contribution rate will be 1.2% (1% for the company and 0.2% for the employee), although it will be applied **progressively until 2029, starting on 1 January 2023** with an initial rate for 2023 of 0.6% (0.5% for the company and 0.1% for the employee).

3. Updating the formula for calculating the retirement pension

The law updates the formula for the calculation of the retirement pension, so that from 1 January 2026 a dual computation regime will be established, and the contributor will apply the most beneficial pension calculation formula of the following two options:

- Take as a reference the sum of the contribution bases of the last 29 years of career (discarding the 2 worst years, where the contribution bases were lower).

- Take as a reference the contribution bases of the last 25 years.

4. Other relevant measures

Among the many other reforms introduced by the law are the following:

- The gender gap supplement will have an additional increase on the planned revaluation of 10% during the years 2024 and 2025.

- Various reforms are introduced in relation to the management of situations of long-term temporary incapacity (IT), providing that after 365 days of sick leave, it will be the INSS medical inspectorate that issues a medical discharge or a new illness certificate for 180 days, and that in the absence of a medical discharge within the time limit, the employee will be in a situation of extended IT.

- From 1 January 2023, **part-time contracts, irrespective of the length of their working time**, will be taken into account for the purpose of crediting the contribution periods necessary to qualify for various public benefits, including retirement benefits.

- The registration and contribution to the RGSS of interns, both in paid and unpaid internships, is regulated, excluding unemployment and FGS (in addition to the IT benefit in the case of unpaid internships) from their protective coverage, with extensive rebates on their contributions paid by the State. For paid internships, the contribution rules for training contracts will apply, and for unpaid internships, specific rules are established with reference to the minimum contribution base and training days and with quarterly contributions.

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