

Employment Flash - July 2024

1 - High Court of Justice of Castilla-La Mancha ruling no. 949/2024, dated May 24, 2024.

The High Court of Justice of Castilla-La Mancha has issued ruling no. 949/2024, dated May 24, of great interest, confirming the appropriateness of dismissal due to acquired ineptitude, after being declared unfit for his job due to physical limitations that arose after a period of temporary disability.

The worker, after a process of temporary disability due to common illness, is evaluated by the external prevention service, which determines his unfitness to continue performing the essential functions of his position. The company proceeds to formalize the objective dismissal under art. 52 a) ET, due to the worker's acquired lack of aptitude, it not being possible to adapt his position nor there being available positions suitable for the worker.

The worker claims discrimination and violation of fundamental rights, arguing that the dismissal occurred in a context of temporary disability and without considering possible relocations that would allow his continuity in the company or in other companies of the group.

The High Court confirms the appropriateness of the dismissal for objective reasons. The court argues that there are no indications of discrimination or violation of fundamental rights, highlighting that the business decision was based on a medical report that qualified the worker as unfit, without him having questioned his work aptitude or proposed reasonable adjustments for his reintegration and there being no existence of other positions in the company compatible with the worker's skills.

This ruling underscores the **importance of the adequacy between the worker's capabilities and the demands of the job, as well as the legitimacy of dismissal due to acquired ineptitude when it is not possible to relocate the employee or adapt the position to his conditions.** Furthermore, it reaffirms the need for dismissal decisions to be duly justified and based on objective criteria, especially in cases involving the worker's health conditions.

The ruling of the High Court of Justice of Castilla-La Mancha constitutes a relevant precedent in Spanish labor jurisprudence, clearly outlining the limits and conditions under which dismissal due to acquired ineptitude is considered appropriate, thus strengthening the legal framework that protects both the rights of workers and the organizational needs of companies.

2 - High Court of Justice of Catalonia ruling no. 20/2024, dated June 6, 2024.

The ruling of the High Court of Justice of Catalonia of June 6, 2024, addresses a collective conflict related to paid leave to be granted due to serious accidents or illness, hospitalization, or surgical intervention of relatives, in accordance with article 37.3 b) of the Workers' Statute (ET), with the plaintiff party demanding recognition of the right to a five-day paid leave for serious illness, hospitalization, or surgical intervention of relatives, only requiring initial proof of the causative event but without the need to justify the persistence of the cause on a day-to-day basis.

The Court reasons that article 37.3 b) of the ET establishes the right to five days of paid leave for accidents or serious illness, hospitalization, or surgical intervention of close relatives, requiring prior notice and justification, and that the granting of the leave is conditioned on the justification of the cause. That is, the worker must prove the occurrence of one of the legally provided causes and reasonably justify it after enjoying the leave. Jurisprudence allows for a flexible interpretation of the

justifying causes, meaning that it is not necessary for the relative to remain hospitalized for the right to leave to be maintained, as long as the need for care persists and even admitting that the leave may be taken on non-consecutive days, but in any case, the law does not support that the leave necessarily extends to its maximum duration.

As the paid leave is causal in nature, it is linked to the cause that justifies it, so that its duration must correspond to the actual need for care, and thus the worker can only enjoy the paid leave while the justifying cause persists, even if this does not reach the maximum of five days.

3 - National Court of Justice, Social Chamber ruling no. 69/2024, dated June 17, 2024.

The ruling resolves a collective conflict that arose between the CCOO and UGT unions and the Spanish Chemical Industry Business Federation, regarding the interpretation and application of the salary review and guarantee clause contained in the Collective Bargaining Agreement (“CBA”) of the Chemical Industry. The plaintiff party demanded that the 10.3% increase established by the Negotiating Commission for the years 2021, 2022, and 2023, be applied in full to the gross salary mass (GSM) of the year 2023, so that this percentage applies to all staff in service as of December 31, 2023, regardless of the date of joining the companies.

The employers, in contrast, argued that the increase should be applied partially or not at all to staff hired between 2021 and 2023 if they had salaries higher than those established by the CBA: Thus, for staff hired in 2021, a salary review of 4.8% corresponding to the years 2022 and 2023 would apply; for staff hired in 2022, a review of 1.1% corresponding to the year 2023 would apply, and staff hired in 2023 would not have the right to a salary review if they had a salary higher than the one established in the CBA.

The National Court fully upheld the claim, based on the following considerations:

Literal and Systematic Interpretation of the CBA (articles. 29, 33 and 38 of the agreement), understanding that the CBA does not explicitly contemplate the distinctions proposed by the employers.

Equality of Treatment: The interpretation postulated by the employers would establish a regime of different salary conditions based on the date of entry into the company, giving different treatment to those hired from 2021 compared to those hired before that date and with the same reference salary conditions.

Prohibition of Compensation or Absorption: The amounts received by the staff above the guaranteed salary form part of the personal supplement and therefore are integrated into the salary mass of each exercise, forming part of the 2023 salary mass that should be updated according to art.38 of the CBA, expressly prohibiting the CBA that the salary update be subject to any compensation or absorption. The compensation and absorption with any salary concept cannot be applied to the disputed salary review.

With this ruling, the National Court sets an important precedent regarding future interpretations of salary review clauses in other collective bargaining agreements.

It should be added that the employer party involved in the proceeding will not appeal the ruling, which thus becomes final.

4. High Court of Justice of Catalonia ruling no. 2096/2024, dated April 10, 2024.

The ruling declares an objective dismissal to be unfair, understanding that the notification made by "certified email" sent by a private courier company does not comply with the formal requirements established in article 55.1 of the Workers' Statute, with the inherent consequences of such declaration, given that it was not proven that the worker had accepted the email address used by the company as an address to receive notifications, nor that this was a suitable address for the receipt of the notification, nor was it proven that the staff was informed that communication via email was a possible valid channel of communication.

The Chamber affirms that the company has the burden of proving that the means used to communicate the dismissal to the plaintiff is correct and adequate for her to be aware of the reasons justifying it, when it is the worker herself who alleges that she has not been notified in a legal manner.

In this ruling, it is also mentioned that the notification of dismissal made via WhatsApp cannot be considered to comply with the regulatory provision contained in article 55.1 of the Workers' Statute. Furthermore, it is noted that this form of communication may conflict with fundamental rights such as the right to privacy, the right to secrecy of communications, or the right to data protection. Moreover, it is indicated that it cannot be required to the worker, outside of working hours, to have the device turned on, with an internet connection, due to the right to digital disconnection.

5.- Brief summary of the new Regulation (EU) 2014/1689 of the European Parliament and of the Council of June 13, 2024.

The Regulation (EU) 2014/1689 of the European Parliament and the Council of June 13, 2024, aims to establish a uniform legal framework for the development, market introduction, commissioning, and use of AI systems, ensuring a high level of health, safety, and fundamental rights protection. The regulation does not preclude the adoption of more favourable European or national standards aimed at protecting workers' rights.

The Regulation prohibits AI systems that may pose a threat to safety, fundamental rights, or democracy. Systems classified as high-risk are so classified because of their capacity to significantly affect safety and fundamental rights. However, these are not outright banned, although they must comply with strict requirements before and after their marketing.

Additionally, the Regulation governs the activities of AI system providers that are put into service or marketed within the EU or whose output is used in the EU. It also covers the activities of importers and distributors of these systems, manufacturers of products that introduce an AI system into the market or put it into service together with their product under their own name or brand.

The regulation lists a series of prohibited practices (effective from February 2, 2025): those aimed at inferring the emotions of an individual in workplaces and educational centers; or biometric categorization systems, which seek to classify individuals based on their political opinions, religious beliefs, race, among others.

From August 1, 2024, high-risk systems must meet specified requirements concerning risk management, data governance, technical documentation, registration, transparency, or human oversight. Employers are also required to inform their affected employees, as well as the representatives of the workers, that they will be exposed to the use of AI. These high-risk systems must be registered in a specific European database, accessible to the public.

AI systems that interact with humans must fulfill certain transparency-related obligations. There is also a duty to inform users that they are interacting with an AI.

Regarding the supervision of AI systems, the Regulation establishes a shared surveillance system between the Member States and the European Commission. The latter is tasked with supervising general-purpose AI models and coordinating with the authorities of each State through the EU AI Office. National authorities are responsible for establishing a market surveillance authority to enforce the regulations at the national level.

The regulation outlines the responsibilities of both providers and users of AI systems. Providers, especially those offering systems classified as high-risk, are obligated to ensure their systems comply with safety and transparency requirements. Users, on the other hand, are responsible for using the tools appropriately, in accordance with the provider's instructions.

Finally, Member States must establish a sanctions regime applicable from August 2, 2025. The Regulation imposes penalties for non-compliance with prohibited practices, with fines of up to 35 million euros, and if the offender is a company, the fine will reach 7% of its global turnover, based on the previous fiscal year.

Other punishable offenses would include: non-compliance with the obligations established for providers, authorized representatives, importers, with fines of up to 15 million euros, and if it involves a company, up to 3% of the turnover of the previous fiscal year; or the provision of misleading or inaccurate information to the competent authorities, with sanctions of up to 7.5 million euros, or if the offender is a company, 1% of its global turnover of the previous fiscal year. Finally, the Commission could sanction providers of general-purpose AI systems when it considers that they have negligently or deliberately breached provisions of the Regulation, with fines of up to 3% of their turnover or up to 15 million euros, opting for the higher figure of these two.

Regarding control bodies, the European Commission has established the European AI Committee, while at the national level, Member States must establish a notifying authority and a supervisory authority, both of which are in turn overseen by the European Data Protection Supervisor.

6.- Brief overview of the planned tightening of contribution years requirements for access to partial retirement.

The Spanish government is proposing significant reforms to the partial retirement system, in a context where the retirement age will gradually increase to reach 67 years by 2027. Given this scenario, many workers over 60 opt for partial retirement, which allows for a reduction in working hours without penalties to the pension. Currently, there are two main modalities: partial retirement with a relief contract, accessible from the age of 62 years and six months or 64 years, depending on the years contributed, and partial retirement without a relief contract, for those who reach the ordinary legal retirement age.

The proposed new model seeks to tighten the conditions for access to partial retirement, especially for the modality with a relief contract. Among the proposals are:

- Restricting access to partial retirement with a relief contract to a maximum of two years before the ordinary legal retirement age, which will be 66 years and 6 months for those who have contributed less than 38 years, and 65 years for those who have contributed 38 years or more.
- Making it mandatory to have a full-time permanent contract with the worker who occupies the position of the partially retired (relief worker).
- Establishing that the contribution base of the relief worker be, at a minimum, 75% of that of the partially retired worker.

- Eliminating the possibility of accumulating working hours for the partially retired.
- Requiring that the worker who accesses partial retirement has contributed during the six years prior to the application, including two years of registration as an employed worker.

Furthermore, it is considered to review the minimum contribution period necessary to access this modality, currently set at 33 years, although unions fear that this period could increase significantly, making access to partial retirement more difficult. Both UGT and CCOO have expressed their rejection of these proposals, arguing that they would complicate access to partial retirement and particularly affect women, who tend to have shorter career paths. The discussion on these reforms continues, with the unions seeking to recover more favourable conditions established in previous reforms and the government trying to find a balance that ensures the sustainability of the pension system.

Employment team of Simmons & Simmons Madrid



Eduardo Peñacoba
Partner
T +34 91 426 2646
93 424 9865
E eduardo.penacoba



Carmen Torres
Partner
T +34 91 426 2589
E carmen.torres



Juan Calvente
Of Counsel
T +34 91 426 6100
E juan.calvente



Jesus Gimeno
Of Counsel
T +34 91 426 2661
E jesus.gimeno



Cecilia Castro
Supervising Associate
T +34 91 426 2647
E cecilia.castro



Álvaro Zaldívar
Managing Associate
T +34 91 426 2661
E alvaro.zaldivar



Jorge Carrasco
Associate
T +34 91 426 2719
E jorge.carrasco



María Martín-Marquina
Associate
T +34 91 426 2719
E maria.martin-marquina



Paulo Portela
Paralegal
T +34 91 426 2996
E paulo.portela



Inés Guerra
Paralegal
T +34 91 426 2996
E ines.guerra

Recent acknowledgments of Simmons & Simmons Spain Employment team within the most prominent legal directories:



Chambers & Partners 2024
Employment Elite
Promoted to Band 3



Legal 500 2024
Employment
Promoted to Tier 3