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01 ROYAL DECREE-LAW 6/2019, OF 1ST MARCH, ON URGENT MEASURES TO GUARANTEE EQUAL TREATMENT AND OPPORTUNITIES FOR WOMEN AND MEN

On 7th March, the Official State Gazette published Royal Decree-Law 6/2019, of 1st March, on urgent measures to guarantee equal treatment and opportunities for women and men, which modifies the Statute of Workers' Rights, among other legal provisions.

The key developments that we consider most significant are as follow:

1. Equality plan

- The deadline for approving the equality plan for companies with between 101 and 150 employees is set at 2 years, or 3 years in the case of companies with between 50 and 100 employees.
- The minimum content of the equality plan must include aspects related to remuneration the prevention of sexual and gender-based harassment
- A Company Equality Plan Registry has been created, reporting to the General Directorate for Employment and the Employment Authorities of the Autonomous Communities, on which companies are under obligation to register their plans (pending regulatory enactment).
- Article 7 of the Social Order Employment Offences and Penalties Act has been amended, with non-compliance with obligations related to equality plans and measures being classified as a serious offence.

2. Salaries

- The company is now obliged to pay the same remuneration for work of the same value, paid directly or indirectly, regardless of whether this remuneration takes the form of a salary or benefits, without any gender discrimination with respect to any of the elements or conditions involved. The work of one person is deemed to have the same value as another person's when the nature of the duties or tasks effectively performed, the educational, professional or training conditions required for the work, the factors strictly related to the performance of the work and the employment conditions under which these activities are performed in reality are equivalent.
- The company is obliged to keep a record of the average values of its workforce's salaries, broken down by sex and distributed by professional groups, categories or job positions that are the same or of the same value. Employees have the right to access these salary records through their "legal representatives".
- In the event that the average remuneration of one sex is higher than the other's in twenty percent of the cases or more, taking into account the whole wage bill or the average of the payments made, the company has to include a justification in the salary records explaining the reasons for the difference that are unrelated to the employees' sex.

3. Contracts

- With respect to training contracts, cases of temporary disability, birth, adoption, guardianship with a view to adoption, fostering, risk during pregnancy or breastfeeding, and gender-based violence, the calculation of the duration of the contract is suspended, as is the case with the trial period.
- In the case of part-time contracts, the absence of any type of discrimination between men and women must be guaranteed, whether it be direct or indirect.
- The termination of the contract at the company's request for failure to pass the trial period shall be deemed null and void in the case of pregnant affiliates or people on maternity leave, except when reasons unrelated to the pregnancy or maternity can be demonstrated.
- The definition of professional groups is amended in line with criteria and systems that, based on a correlational analysis of gender bias, jobs, framework criteria and remuneration, aim to guarantee the absence of discrimination between women and men, whether it be direct or indirect.
- The application of rules of the nullity of dismissals will be stricter in cases related to pregnancy, maternity and employees exercising parent rights or work-life balance rights with respect to their personal or family life.

4. Work-life balance

- Employees can request that the duration and distribution of their working day be adapted, as well as the ordering of their work time and the way they provide their services, in order to achieve a better balance with their personal and family lives. Such adaptations must be reasonable and proportionate in terms of the worker's needs and the organizational and production needs of the company.
- In the collective bargaining process, the terms for exercising the right to request adaptations for work-life balance must be agreed, in line with criteria and systems that guarantee the absence of discrimination between male and female workers, whether it be direct or indirect. In the absence of such terms agreed in the collective bargaining process, if a worker requests an adaptation of their working day, the company will open a negotiation process with the worker, lasting a maximum of thirty days. On completion of this period, the company shall announce in writing that it accepts the requests, present an alternative proposal that enables the worker to meet their work-life balance needs or reject the request. In the latter case, the company must indicate objective reasons on which their decision is based. The worker has the right to request that their working day or contractual modality returns to the previous situation on completion of the agreed period or when their change in circumstance justifies it, even before the end of the agreed period.

5. Paternity leave

- A gradual application schedule is established for the provisions of Sections 4, 5, and 6 of Article 48 of the Statute of Workers' Rights, in line with the text of Royal Decree-Law 6/2019, of 1st March, on urgent measures to guarantee equal treatment and opportunities between women and men with respect to employment and professional activity.

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02 ROYAL DECREE 8/2019, OF 8TH MARCH, ON URGENT MEASURES FOR SOCIAL PROTECTION AND TO COMBAT JOB INSECURITY IN RELATION TO WORKING HOURS

Without a doubt, the most significant amendment with the biggest practical impact on all companies introduced by RD 8/2019, is the reinstatement of the compulsory nature of registering the working hours of all employees.

The Labour and Social Security Inspectorate has decided that registering working hours certainly provides a control system that, with compliance, guarantees job security for all employees who, before now, were under obligation to work overtime. As a result, a framework of legal certainty is created for both workers and companies that, in turn, enables greater control from the Labour Inspectorate.

Companies have the following obligations in relation to registering working hours:

- Companies have to ensure that the daily working hours are recorded, including both the start time and finishing time of each worker.
- The deadline for companies to have a registration system in place for recording daily working hours is 12th May 2019. No particular format has been stipulated regulatorily, so companies are free to choose the registration system for recording daily working hours that they want to implement. However, in this respect, it should be remembered that, depending on the chosen registration system, it may be necessary to obtain the workers' consent in order to comply with the Data Protection Act.
- The absence of the registration system of daily working hours has been introduced as a serious offence by the Social Order Employment Offences and Penalties Act.

Amendment with respect to employee contracting subsidies within the general regime. With the aim of reducing long-term unemployment, a subsidy has been introduced for companies who contract a person who has been registered at an unemployment office for a total 12 months within the last 18 months. The amount of the subsidy is as follows:

- Contracting men, annual subsidy of €108.33/month (€1,300 per year).
- Contracting women, annual subsidy of €125/month (€1,500 per year).

The application of subsidies will be conditional on the worker remaining employed at the company for a minimum of 3 years. In addition, the company must maintain the level of employment for at least 2 years.

03 COMPILATION OF TAX CASE-LAW AND JURISPRUDENCE

It is not enough for the Tax Agency simply to post the notification on the Enabled E-mail Address, without issuing simultaneous notifications, if this has been the case for previous notifications prior to this procedure.

On 15th June 2018, the Chamber for Contentious Administrative Proceedings of the High Court of Justice of Catalonia issued a ruling that annulled at origin a ruling by the Spanish Tax Administration Agency rejecting an appeal lodged by a company after the deadline on the basis of its late submission, The Chamber's argued that the tax administration's actions breached the "principle of legitimate expectations", in view of the fact that the taxpayer, who had not connected to their Enabled E-mail Address, had displayed an "understandable" attitude as all previous notifications related to the Tax Agency's file were issued with simultaneous notifications through other channels, except in this last case, for the notification of payment.

Annulment of the fine for late submission of Mod. 720, as the three-month deadline had passed.

In a ruling issued on 28th November 2018, the Chamber for Contentious Administrative Proceedings of the High Court of Justice of Castilla-León, annulled a fine of €5,800 (58 data items at €100/data item), not only in view of the claim that is was "disproportionate", which violates the obligation to state reasons and congruence, but also because the strict deadline of three months had passed, as stipulated in an extensive interpretation of Article 209.2 of the General Taxation Act, with reference to a similar ruling of the National High Court, even though the act of declaration that led to the offence did not originate from a procedure initiated by the Tax Administration.

The right to choose the most favourable Autonomous Community inheritance and gift tax regulations, in the case of inheritance proceedings in which the testator or heir is resident outside the European Union.

This principle was already established by the High Court in its ruling n.º 242/2018 of 19th February 2018. It is now the Tax Administration itself, through the General Taxation Directorate, that has ruled on Enquiry V3151 of 11th December 2018 in the same way.

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04 FIFA PARTIALLY UPHOLDS AN APPEAL BY CHELSEA FC AND FINES RSC ANDERLECHT AND THE BELGIAN FOOTBALL ASSOCIATION FOR INTERNATIONAL TRANSFERS OF MINORS

On 8th May, FIFA publicly announced that the Appeal Committee partially upheld the appeal lodged by Chelsea FC against the sanctions imposed by the Disciplinary Committee in February 2019.

In the hearing of the court of the first instance, Chelsea FC was fined a total of 600,000 CHF and banned from registering new players at both a national and international levels for the next two registration periods (applicable to the whole Club, except the women's team and indoor football) for breaching the international transfer rules for minors in 269 cases, among other offences.

The Appeal Committee eventually ruled that the ban should not cover the registration of young players under 16 years old who are not subject to Article 19 of the Regulations on the Status and Transfer of Players, considering that the application of the ban to all minors would not be proportionate as the irregularities at the Club were related to the transfer and initial registration of international minor players. The fine of 600,000 CHF was upheld.

Moreover, on 16th May, the FIFA Disciplinary Committee fined RSC Anderlecht and the Belgian Football Association 200,000 CHF and 230,000 CHF, respectively, for breaching the registration and transfer rules for minors. Apparently, FIFA decided not to ban the Club from registering new players because offences were only detected in 4 cases and in view of the Club's cooperation throughout the investigation.

05 GENERAL ASSEMBLY OF PLG INTERNATIONAL LAWYERS

From 2nd to 5th May, the Hotel Salgados Palace in the Algarve (Portugal) was the venue of the General Assembly of the international law firm group PLG International Lawyers (https://plg.eu.com/es/), of which Pintó Ruiz & Del Valle is a founding member. The event welcomed more than 150 lawyers from the group's firms, including the majority of our professionals. At the Assembly, we celebrated the 31st anniversary of the group, which was founded in 1988 and whose members include more than 1,100 lawyers from 27 different firms, with offices in over 50 cities in 32 countries across 4 continents.

The General Assembly itself took place on Friday 3rd May, with the participation of all the attendees and under the supervision of the group's president, Luís Moreira Cortez, a lawyer from the Portuguese firm Coelho Ribeiro e Associados. The event began with a speech by three of the founders of PLG International Lawyers, including our own president José Juan Pintó Sala, followed by various presentations that analysed the group's activity and the future challenges of the organization.

Moreover, also on Friday, the Board of Directors of the organization held a board meeting, in which it was agreed that the Taiwanese firm Chien Yeh (http://www.chienyeh.com.tw/index_e.aspx) would be admitted as a new member of PLG International Lawyers.

In addition, the General assembly of the group of young lawyers (YPLG) was also held, with was attended by all the lawyers under 35 years old from the different firms.

The event included several working and knowledge sharing sessions, at both a sector and general level, as well as various social activities and competitions, designed to strengthen the professional and personal bonds between the members of the different firms.

In particular, among other awards and accolades received by our firm, our colleague Alberto Donado won the Eloquence Competition between the participating young lawyers.

The next ordinary meeting of PLG International Lawyers will take place in September in Seoul (South Korea), under the supervision of the Korean firm and member of the group Kim Chang & Lee (http://www.kimchanglee.co.kr/), with the participation of all the members of the organization's Board of Directors, including our firm.