

RESTRICTIONS ON TEMPORARY EMPLOYMENT CONTRACTS FOR OUTSOURCING COMPANIES

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The Spanish Supreme Court changes its doctrine: it is not possible to enter into temporary employment contracts for specific works or services to cover the activities companies carry out in the performance of outsourcing contracts, when the undertaking of these contracts is the contracting company's ordinary activity (Supreme Court Judgment, Plenary Session of the Fourth Chamber, December 29, 2020, RCUUD 240/2018).

Companies affected by this judgment

Directly, companies whose ordinary activities involve offering services to third parties, e.g. sectors such as cleaning, surveillance and security, contact centers, construction, installation and maintenance.

It also indirectly affects companies that outsource these services, due to the impact of the new doctrine on their price.

Companies that do not provide outsourcing services as their ordinary activity can, however, use temporary contracts for specific works to provide the service set out under an outsourcing contract if the service can be clearly defined and identified in relation to the company's ordinary or usual volume of activity, and is a prominent non-permanent element in relation to its activity.

Consequences of the new doctrine

The courts or the labor inspectorate may consider temporary contracts for specific works or services based on outsourcing contracts or administrative concessions as indefinite employment contracts (including those entered into before the judgment), since there are no grounds for their temporary nature.

Therefore, when the outsourcing contract ends, if the company does not intend to continue the employment contract, it cannot not be terminated on the grounds of completion of the works, which would entail a severance compensation of 12 days' salary per year worked. Instead, the employment contract would have to be terminated for objective reasons (by individual or collective dismissal, depending on the number of persons affected) based on the loss of the outsourcing contract. In this case, the severance compensation amounts to 20 days' salary for each year of service up to a maximum of 12 months' salary.

Alternatives available to contractors

Based on the consideration that these contracts are indefinite, the judgment itself offers the following alternatives to meet the variability of the demand requirements:

- › Workdays and working hours may be set out in the employment contract (e.g., part time and how the hours can be distributed, and permanent seasonal arrangements).
- › Employment conditions may be adapted.
- › The company may resort to individual or collective dismissal for objective reasons if its activity is affected.

It is important to bear in mind that collective bargaining agreements (sector specific, at state, infra state or company level) can identify work or tasks within companies' normal activity that may be covered by contracts for specific works or services.

It is now essential to assess the impact of the judgment and analyze all available alternatives to reconcile the temporary nature of outsourcing contracts with the indefinite nature of the employment contracts.

If you require more information or have any questions, please contact Cuatrecasas.

Kind regards,

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