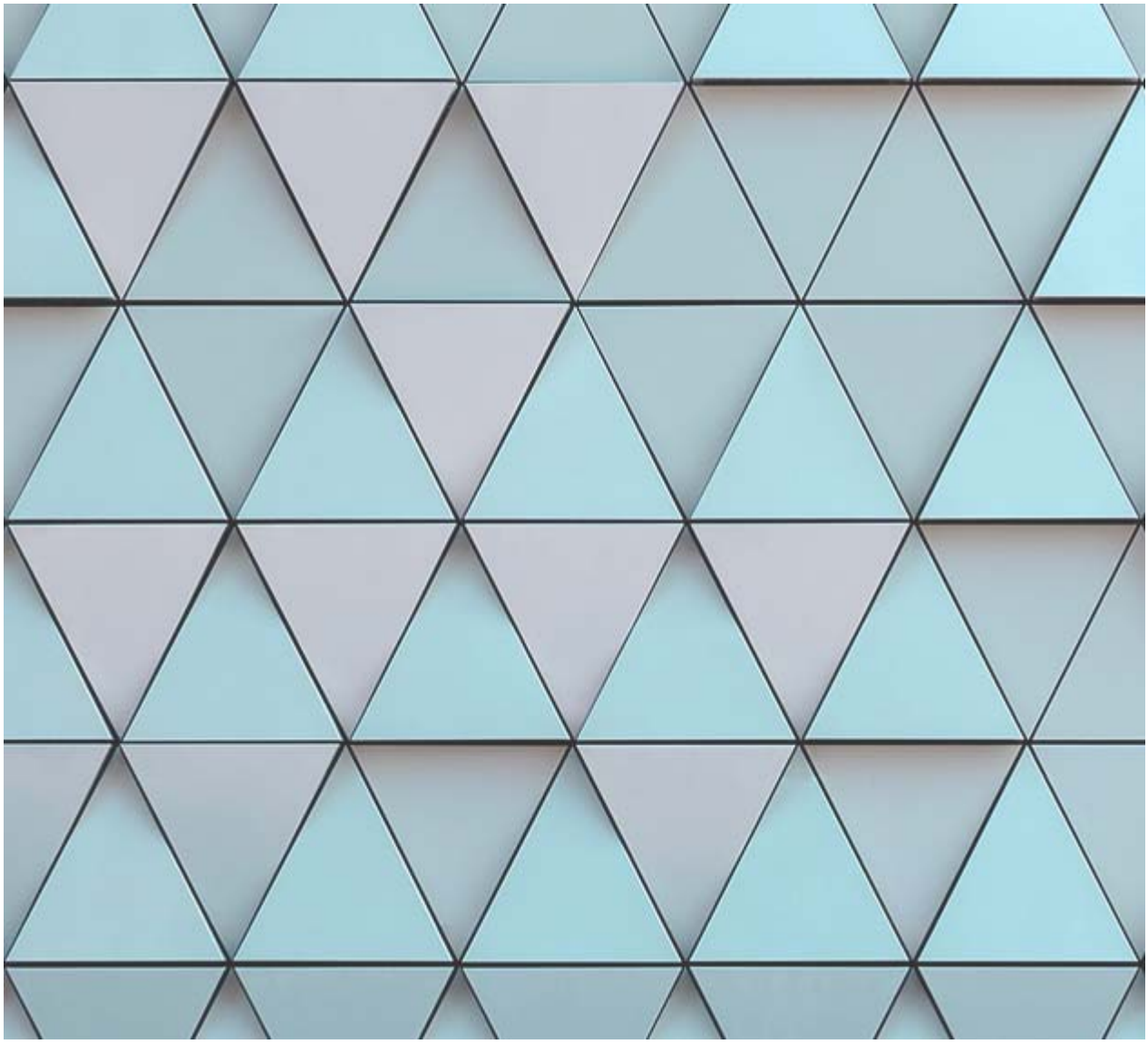
CUATRECASAS

Labor and Employment Newsletter



Second quarter 2022 | July 30, 2022

Contents

SPAIN BOOSTS PENSION PLANS

Act 12/2022, of June 30 (published in the *Official Gazette of the Spanish State of July 1*), promoting occupational pension plans, which amends the revised Spanish Pension Plans and Funds Regulation Act, significantly modifies the legal framework of company supplementary social welfare systems to encourage widespread private savings to supplement retirement pensions, as well as improving tax incentives for contributions to social welfare systems:

- it introduces two new investment mechanisms, namely public-sector occupational pension funds (which must be created by pension management companies and welfare mutual insurance societies) and simplified occupational pension plans (to invest in those funds);
- it imposes the obligation on companies to negotiate and, if applicable, reach agreements with workers' legal representatives on social welfare systems, as determined under labor law;
- it reduces the seniority previously required to be able to benefit from an existing pension scheme (to one month as opposed to the previously required two years) and it allows the possibility of agreeing to include employees in the scheme under an agreement or in the collective agreement;
- it provides that contributions must continue to be paid if employees work reduced hours, and in case of suspension of the employment relationship with the right to return to the same job; and
- it regulates incentives related to employers' social security contributions for companies that make contributions to occupational pension plans.

Act 12/2022 entered into force on July 2, 2022. **Please see this *Legal Flash* for further information on these recently approved developments**.

EQUALITY: JOB ASSESSMENT TOOL

The Spanish Ministry of Labor and Social Economy, together with the Women Institute, has published the *Job Assessment Tool and user guide*. It is a voluntary tool available to companies, allowing them to assess job positions in accordance with article 28.1 of the Workers Statute ("WS") and Royal Decree 902/2020, of October 13.

Job assessment is necessary to ensure compliance with companies' obligations, namely (i) to have a remuneration registry reflecting the salaries paid to employees occupying job positions of equal value, and (ii) to conduct a remuneration audit as an integral part of the diagnosis of equality plans implemented in companies with 50 or more employees.

Other job assessment tools are available on the market to comply with the principle of equal pay for work of equal value, making it advisable for companies to determine which is the most suitable in each specific case.

PRACTICAL GUIDE ON INFORMATION ABOUT THE USE OF ALGORITHMS IN THE WORKPLACE

To bring together in a single document information-related obligations and rights of workers and workers' legal representatives, the Ministry of Labor and Social Economy has published a ***practical guide and tool on companies' obligation to report the use of algorithms in the workplace***.

In this document, the Ministry sets out companies' obligations with regard to the information they must provide to workers and their legal representatives in compliance with article 64.4.d WS and article 22 of the General Data Protection Regulations. It also analyzes companies' obligations to negotiate the algorithm, audit and impact assessment from a data protection viewpoint.

The guide includes a voluntary tool in the form of a questionnaire, aiming to define and systematize the main obligations companies must comply with when using algorithms and automated decision-making systems in the workplace.

SIGNIFICANT JUDGMENTS

Is the Labor Infringements and Sanctions Act the only parameter used to quantify compensation for moral damages?

Supreme Court, Fourth Chamber, April 20, 2022 (judgment no. 356/2022)

Courts and lawyers have traditionally used penalty amounts imposed under the Labor Infringements and Sanctions Act to quantify compensation for moral damages arising from violation of workers' fundamental rights. According to the Supreme Court, to correctly quantify this compensation, it is necessary to take into account subjective circumstances such as seniority, the persistence of the infringement, intensity, repercussions on the personal or social situation, recidivism, its multi-offensive nature, the context, and any potential attempt to prevent the defense and protection of the violated right.

Collective redundancy thresholds: must the successive 90-day termination periods be consecutive?

Supreme Court, Fourth Chamber, May 12, 2022 (judgment no. 345/2022)

To ascertain whether the thresholds to initiate a collective dismissal procedure have been reached, it is not necessary to monitor how many contracts have been terminated from the date of the first dismissal based on objective grounds until the date of the dismissal brought to trial, if there are intervals without termination exceeding 90 days.

The Supreme Court considers that the terminations must take place in successive 90-day periods, and that the calculation cannot start from the dismissal that has taken place before a 90-day cycle.

Is it valid to subject the payment of a bonus to the worker being registered with the company at the time of payment?

Supreme Court, Fourth Chamber, April 5, 2022 (judgment no. 308/20222)

In the case of a results-driven commercial bonus under the corresponding collective bargaining agreement, it is not valid to subject the payment of variable remuneration to the worker being registered with the company at the time of payment, but the employee was with the company at the end of the accrual period, and the bonus did not mention that it rewards worker's permanence or loyalty. This judgment is in contrast to another judgment from the plenary of the Supreme Court on the validity of these types of clauses.

Can companies ask applicants for criminal record information during their recruitment process?

Supreme Court, Fourth Chamber, (judgment no. 345/2022)

Job applicants—in the private security sector in this case—are not required to provide criminal record information, unless this requirement is authorized by law and it is within the limits and guarantees established under that law, regardless of whether the applicants give their consent.

Can the parties to an equality plan alter the statutory workers' legal representation rules for its negotiation?

Court of Appeals, Labor Division, June 2, 2022 (judgment no. 80/2022)

In negotiating equality plans of company groups, the set up of the negotiating body must comply with the provisions of article 87 WS regarding the negotiation of industry collective agreements; and the labor union representation percentages cannot be reduced for them to be considered spokespersons, whether through the

collective agreement or through business practice. Collective bargaining cannot alter statutory rules on negotiation bodies, as they are imperative and a necessary absolute right.

Can a time registration system be automatic and preset by default?

Court of Appeals, Labor Division, April 19, 2022 (judgment no. 57/2022)

The daily working hours registration though an app requires the approval of the worker. A system that registers a timetable preset by default by the company, without taking into account the real hours worked and without the worker's intervention, does not comply with *article 34.9 WS*, based on the interpretation of the *Ministry Guide* and the *Labor and Social Security Inspectorate's Criterion 101/2019 on time registration*.

UPCOMING NEWS

Given their impact on labor relations, we highlight the following developments, which are currently underway or will be published shortly:

- The *Bill for equal treatment and no discrimination*, has been approved by Parliament and published in the Spanish Official Gazette on July, 14. This comprehensive law significantly amends discrimination factors such as age and illness, highlights discrimination factors, and sets detection and prevention tools; promotes salary audits beyond the gender perspective, and sets new reporting obligations towards workers, among others.

- The *draft bill* regulating the protection of persons who report regulatory breaches and the fight against corruption, transposing *Directive (EU) 2019/1937*, known as the *Whistleblowing Directive*. Its transposition deadline was December 17, 2021. Under this bill, companies with more than 50 employees are obliged to implement an internal whistleblowing reporting channel allowing for anonymous reports. The bill has yet to be approved by the Council of Ministers for it to be submitted for parliamentary processing.

For additional information, please contact our *Knowledge and Innovation Group* lawyers or your regular contact person at Cuatrecasas.