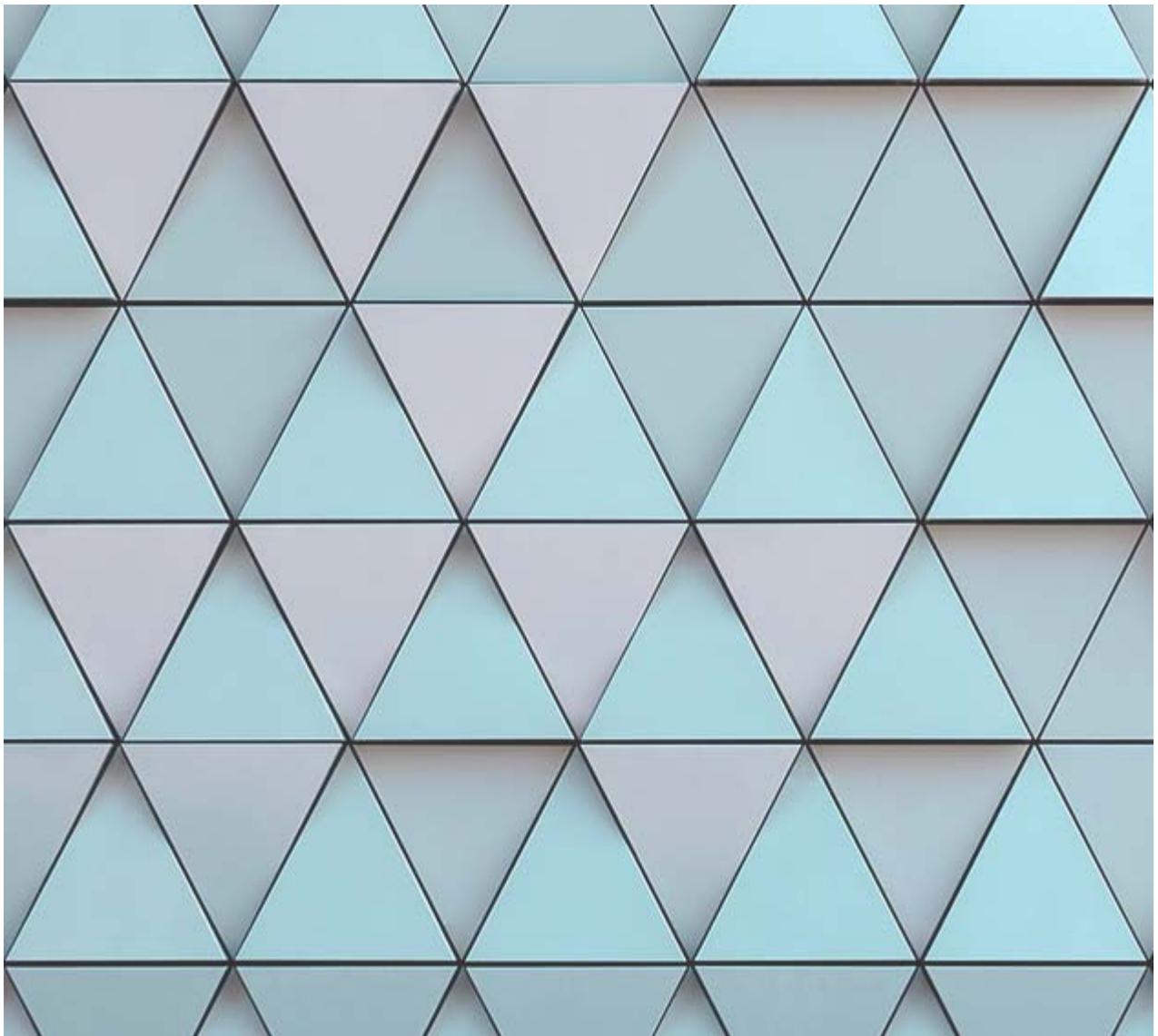




Labor and Employment Newsletter



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UPCOMING NEWS

General State Budget Act for 2023

- Act 31/2022, of December 23, on the General State Budget for 2023 (the "GSBA 2023") introduces the following employment developments affecting companies:

Increase in social security contributions

- As of January 1, 2023, the cap on social security contributions, regardless of the professional category and contribution group, is increased to €4,495.50 per month (€149.85 per day). This increase in the maximum base salaries of 8.6% compared to 2022 will lead to an increase in companies' labor costs of between approximately €100 and €1115 per month with regard to the contributions of employees earning a gross annual salary of nearly €54,000. Employees' contributions will also rise by approximately €23 per month.
- Second, under the GSBA 2023, from January 1, 2023 (until 2032), companies and employees must pay the General Treasury of Social Security an extra contribution of 0.6% (0.5% at the company's expense; 0.1% at the employee's expense), corresponding to the so-called "Intergenerational Equity Mechanism," applicable to the contribution base for common contingencies in the case of employees registered in any of the social security system schemes..

Anti-crisis measures

- Royal Decree-Law 20/2022, of December 27, on measures to respond to the economic and social consequences of the war in Ukraine and measures to support the reconstruction of the island of La Palma and other situations of vulnerability, was published in the Official Gazette of the Spanish State on December 28, 2022.
- On the one hand, the regulation temporarily extends the minimum wage established for 2022 under Royal Decree 152/2022 (at €33.33 per day or €1,000 per month) until the royal decree setting the minimum wage for 2023 is approved.
- On the other hand, it extends until June 30, 2023, the validity of public support measures in the workplace to face the crisis resulting from the invasion of Ukraine, regulated under article 44 of Royal Decree-Law 6/2022 and article 1.10 of Royal Decree-Law 11/2022. As a result, in the following months:
 - companies receiving the direct aid envisaged in the legislation will continue to be unable to justify objective dismissals on the grounds of an increase in energy costs; and

- companies that implement temporary redundancy plans on grounds relating to the invasion of Ukraine and that benefit from government aid will also be unable to use these grounds for laying off employees.

Startups

- > The Official Gazette of the Spanish State dated December 22, 2022, published Act 28/2022, of December 21, promoting the startup ecosystem known as the *Startups Act*, which includes measures of interest for foreign companies wishing to encourage employees to work remotely from Spain as part of their human resources policies to motivate and attract talent.
- > Specifically, to facilitate the entry and tax residence in Spain of highly qualified professionals (the so-called “digital nomads”), an international remote working visa has been created, lasting one year, along with a three-year international remote working residence authorization, extendable for two years. Once they have spent five years in Spain, remote workers can request permanent residency in the country.
- > It extends from two to three years residency authorizations for foreign investors and entrepreneurs wishing to set up their projects in Spain, as well as providing greater flexibility to the procedure for processing these authorizations.

See our [Legal Flash](#) for further information.

Minimum wages

- > *Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union* was published in the Official Journal of the European Union on October 25, 2022, specifying that Member States must use indicative reference values to guide their assessment of adequacy of statutory minimum wages. To that end, they may use indicative reference values commonly used at international level such as 60% of the gross median wage and 50% of the gross average wage, or indicative reference values used at national level, or both.
- > The deadline to transpose this directive is November 15, 2024.

Significant judgments

Obligation to provide spectacles (or similar corrective appliances) for display screen equipment work

Court of Justice of the European Union, December 22, 2022 (Case C-392/21)

Business owners must provide workers with corrective appliances (spectacles or similar) where workers carry out their tasks with display screen equipment if there is a reasonable (yet not exclusive) link between the workers' eyesight and the performance of their tasks.

Video surveillance

Constitutional Court, September 29, 2022 (judgment no. 119/2022)

In this case, the Constitutional Court considers valid the evidence obtained by a visible surveillance camera with a sign, which had been in use for five years, despite the company not having previously or specifically informed its employees of its presence or that it could be used for disciplinary purposes. The judgment considers that the exception relating to the blatant commission of an unlawful act applies, as provided under article 22.4 with regard to article 89.1 of Spanish Act 3/2018, of December 5, on Data Protection and Guarantee of Digital Rights.

The ruling is not free from controversy, as the judgment included one dissenting vote signed by five judges. Therefore, there is no unanimous view on the features necessary to fulfill the duty to inform, which makes it necessary to analyze the details of each case before applying the exception on producing videographic evidence in case of suspicion of the blatant commission of an unlawful labor-related act.

Objective dismissal in breach of the “prohibition against dismissal” is not null

Supreme Court (plenary session), Labor Division, October 19, 2022 (judgment no. 841/2022)

The Supreme Court has rejected the nullity of the dismissal carried out in breach of the prohibition against dismissal in force during the pandemic, considering that only dismissals legally qualifying as such are null, e.g., dismissal due to an infringement of fundamental rights or if the collective dismissal procedure is breached.

Moreover, it declares that if the problem justifying the termination of the employment contract is structural, it may also be possible to qualify the dismissal as fair or lawful. Therefore, dismissals that go against this type of mandate will not necessarily be considered unfair. Rather, it may be possible to prove the structural nature of the grounds for termination and have the dismissal declared fair.

The same doctrine was applied by the Supreme Court, Labor Division, December 13, 2022 (judgment no. 955/2022, [appeal no. 3594/2021](#)).

Validity of remote working agreements

Court of Appeals, Labor Division, November 10, 2022 (appeal no. 269/2022)

The Court of Appeals has declared valid an individual remote working agreement under which the company is entitled to modify days worked remotely and those worked onsite, as long as the remote working percentage agreed is not amended because remote working days that were in fact worked onsite are replaced or changed to another date.

Upcoming new developments

What it does consider null is the clause under which no expenses will be reimbursed because, if any expenses are incurred, they will be compensated by the amount saved by working remotely. Given their impact on labor relations, we highlight the following matters, which are currently underway, have been published or will be published shortly:

- During the last quarter of 2022, the first judicial decisions were issued declaring the nullity of dismissals in situations of temporary incapacity, following the entry into force on July 14, 2022, of [Comprehensive Law 15/2022, of July 12, for equal treatment and nondiscrimination](#), making it advisable to keep track of any new rulings that may be handed down.
- From April 1, 2023, workers will no longer be obliged to submit temporary incapacity notifications to the company, which will be directly informed by the Spanish Institute of Social Security ([Royal Decree 1060/2022, Official Gazette of the Spanish State of January 5, 2023](#)).
- [Draft bill](#) transposing EU Directive 2019/1937, on Whistleblowing, which is currently undergoing parliamentary processing and is expected to be approved and published shortly. Once it enters into force, companies with over 249 workers will have three months to implement an internal whistleblowing reporting channel. The deadline for companies with between 50 and 249 workers is December 1, 2023.
- [Draft bill](#) for the full and effective equality of transgender people and for the guarantee of LGBTI rights, which has been approved by the Congress and is still undergoing parliamentary processing.
- [Draft bill on employment](#), the aim of which is to improve the conditions to build inclusive labor markets that guarantee equal opportunities and non-discrimination on accessing employment, and to create high quality jobs and a more efficient labor market, providing specialized attention to the employment of priority categories, such as victims of gender violence, transgender people and people with disabilities, among others.
- [Draft bill](#) transposing Directives 2019/1152 and 2019/1158 (transparency and work-life balance). The draft bill amends the Workers Statute in terms of information given to workers on automated systems and part-time employment contracts; it opens up further possibilities to request a change of position if there is a vacancy; it provides that there must be objective grounds to distribute work hours irregularly; and it extends the rights to

work-life balance and cases where dismissal would constitute objective nullity if the worker is on parental leave or adjusting working hours.

- > *Draft bill on the protection of human rights, sustainability and due diligence in transnational business*, which aims to prevent human rights violations and damage to the environment resulting from business activity carried out in countries with inadequate regulatory frameworks, thus providing the Spanish legal system with an effective regulatory framework, both in terms of prevention and penalties, which puts the business sector on an equal footing in terms of obligations, while correcting unfair competition practices between companies and facilitating the access of the affected persons and communities to justice before the Spanish courts.
- > *Proposal for a regulation* of the European Parliament and of the Council laying down harmonized rules on artificial intelligence.
- > *Proposal for a Directive on corporate sustainability due diligence*, imposing obligations on large companies (based on the number of employees and net turnover) concerning the adverse human rights and environmental impacts of their operations, and those of their subsidiaries and business partners.

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



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