

Labor and Employment

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NEW DEVELOPMENTS IN SPAIN

- 1. New regulation on remote working**
- 2. Obligations to guarantee equality and equal pay plans**
- 3. Extension of previous ERTE and new regulation of ERTE due to constraints or activity restrictions**
- 4. Relevant court decisions**
 - > Terminations due to COVID crisis: nullity or unfairness?**
 - > Tech platform employees: employees or contractors?**



1. NEW REGULATION ON REMOTE WORKING

Due to the recent regulation on remote working, companies with flexible workplace policies should undertake the following actions:

> Ascertain whether their flexible work policy covers remote working or telework

Companies must ascertain whether the remote working option offered in the framework of their flexible work policy (irrespective of the measures adopted owing to COVID-19) exceeds 30% of the working time over a three-month period.

If it does, it will be subject to the new regulation on remote working, which provides that remote workers must have the same rights they would if they were working onsite, regulates the right of access to remote working and its reversibility, establishes the expenses to be assumed by companies, and prevents the company from making unilateral changes to working conditions of remote workers.

> Determine how long they have to adjust to the new regulation

When remote working that already existed in the company is regulated in an **individual agreement**, the parties will have three months (until January 13, 2021) to adapt the content of that agreement.

In turn, when it is regulated under a collective agreement that already existed, the term to apply the new regulation could be extended as follows:

- **Until the applicable collective agreement** ceases to be in force, if it has an agreed length.
- **Up to three years** if the company agrees with the workers' legal representatives the length of the collective agreement in force, if this is not determined.

- If there is no collective agreement, as there is no fixed term or agreement, companies must make adjustments **within one year** from the date Royal Decree Law 28/2020 was published, i.e., by September 23, 2021.

> Implement a strategy for telework arising from COVID-19

Regarding telework carried out because of COVID-19, it is advisable to adopt a strategy regarding the obligation to compensate expenses and give employees the necessary means and resources, the scope of which must be defined on a collective negotiation basis.

> Use collective bargaining

Collective agreements are key to defining how remote working applies in each company because the new rules allow for them to regulate relevant aspects of this working system.

> Optimize the individual written agreement entered into with employees

Individual agreements are the best way to take advantage of the possibilities of remote working. The agreement must be signed and comply with a minimum content

For more details, see our [*Legal Flash: "10 key issues of the new remote working and teleworking regulation in Spain and extension of work-life balance rights"*](#)

2. OBLIGATIONS TO GUARANTEE EQUALITY AND EQUAL PAY PLANS

Royal Decrees [*901/2020*](#) and [*902/2020*](#) reinforce companies' obligations regarding equality plans and equal pay.

Companies operating in Spain should consider taking certain steps:

> Take advantage of the time they have left to fulfill these obligations



Companies have a limited time to implement the measures imposed under these laws, as obligations concerning the negotiation, content and register of equality plans enter into force on January 14, 2021, and the obligation to carry out a salary audit is required from March, 2021.

To fulfill these obligations, companies must design a strategy and define actions to be carried out, and also take the opportunity to align their strategic objectives, such as negotiating and approving solid diversity plans.

› Plan ahead and conduct an internal salary review

Salary information will be accessible through several means, which will force companies to self-diagnose their salary situation.

Access will be available through the following:

- A **record of the salaries of the workforce**, including management and senior positions, which will be made fully available to the workers' legal representatives, and partially available to employees if they do not have legal representation. Remuneration discrepancies between men and women exceeding 25% must be justified.
- The equality plan, which will include a report on the results of the remuneration audit, which companies with over 50 employees must conduct. The equality plans register is public.

› Place greater value on these obligations, as fulfilling them may accrue benefits

Fulfilling negotiation obligations and gaining the agreed approval of an equality plan, besides improving companies' reputation, may lead to awards and acknowledgments in this field, and open up public sector procurement to companies. Non-compliance may result in **administrative penalties** of up to €187,515 and lead to **discrimination claims**.

For more details, see our [*Legal Flash: "New challenges for companies operating in Spain: equal pay and reinforcement of equality plans"*](#)

3. EXTENSION OF PREVIOUS ERTE AND REGULATION OF ERTE DUE TO CONSTRAINTS OR ACTIVITY RESTRICTIONS

Temporary redundancy plans ("ERTE") have been extended until January 31, 2021, and a new type of ERTE owing to constraints or restrictions to activity has been regulated.

Companies must weigh up the pros and cons of each type of ERTE to decide which one fits best their circumstances, assess other internal flexibility measures, and prepare for potential terminations based on current restrictions.

For more details, see our [*Legal Flash: "New extension of temporary redundancy plans in Spain due to COVID-19 until January 31, 2021"*](#)

4. RELEVANT COURT DECISIONS

› Nullity or unfairness of terminations due to the COVID-19 crisis

Spanish judges have started resolving labor disputes regarding lay-offs on the grounds of the COVID-19 crisis. However, there is a division of opinion, as two judgments have declared their nullity due to the termination restrictions approved by the Spanish government, while three other judgments have declared the terminations unfair, in which case dismissed employees are entitled to statutory severance compensation.

In this context, regarding the challenge of a dismissal occurring before the pandemic, the Superior Court of Justice of Catalonia has ruled that terminations carried out by employers for business reasons without specifying any cause in the letter of dismissal are unfair and not null and void. This judgement reinforces the unfairness



of dismissals despite the termination restrictions due to the pandemic.

> Tech platform workers

The Spanish Supreme Court has ruled that workers providing delivery services for a tech platform must be classified as employees. This ruling is significant as it has been issued by the full Supreme Court, assembled specifically for this purpose in view of the contradictory rulings being handed down by judges and high courts, and it unifies doctrine on this matter. The government is planning to regulate this kind of relationship to equalize it with an employment one.

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