



# Key employment-related developments introduced by RD-Law 5/2023 of 28 June 2023

Legal Alert



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30 June 2023 saw the entry into force of the majority of the provisions of **Royal Decree-Law 5/2023 of 28 June 2023** (Official State Gazette of 29/06/2023), adopting or extending certain economic and social measures, and transposing EU Directives on the structural modification of commercial companies, a work-life balance for parents and carers, and the implementation and observance of EU law (hereinafter “RD-Law 5/2023” or the “RD-Law”). [Access to the spanish version.](#)

The main employment-related developments ushered in by the new RD-Law 5/2023 -yet to be ratified or repealed by the legislative body- are explained below.

Book II, Title I (article 127 et seq.) of RD-Law 5/2023 sets out a series of amendments affecting certain articles of the 2015 Revised Workers’ Statute (WS).

These amendments set out to transpose Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers [hereinafter “Directive (EU) 2019/1158”] into Spanish employment legislation.

The following statements from the Preamble to RD-Law 5/2023 are of particular note:

*“Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 reaffirms and represents the principles of gender equality and work-life balance”.*

*“It is also the outcome of the progress made by the European Union itself as regards the content and scope of work-life balance-related rights, this being the third directive adopted on the subject”.*

*“It is nonetheless the approval of Directive (EU) 2019/1158 which has paved the way for the achievement of a balance in respect of family responsibilities to take centre stage. The title itself is illustrative of the new content, which goes beyond the establishment of leave and attaches special importance to the adaptation of working conditions by emphatically introducing the element of joint responsibility.”*

*“Directive (EU) 2019/1158 adequately addresses the dual focus on family and work responsibilities within the framework of, and in accordance with, certain specific requirements, such as more equal employment relations and the effective implementation of the principle of non-discrimination on grounds of sex. It provides that working arrangements must be adapted to changing circumstances arising from raising children and caring for dependants and the elderly, and sets out certain concrete conditions to ensure that tasks are actually shared and joint responsibility is exercised.”*

*“The transposition of the directive ultimately enriches the improvements and contributions made by Royal Decree-Law 6/2019 of 1 March 2019, on urgent measures to ensure equal opportunities and treatment between men and women in employment and at work, and goes beyond matters relating to the “double shifts” worked by woman, or lengthy leave periods, to focus on flexible working arrangements and the delimitation of absences from the workplace, enabling progress to be made in respect of actual workplace equality by genuinely recognising the right to a work-life balance as one of the rights held by all workers.”*

On this basis, the main amendments made to the Workers' Statute by means of RD-Law 5/2023 relate to: (i) the extension of the grounds for job discrimination; (ii) the adjustment of working hours, in terms of distribution and duration, to give effect to the right to a work-life balance; (iii) the extension of paid leave; (iv) amendments relating to the grounds for nullity of dismissal on objective and/or disciplinary grounds; and (v) the introduction of new parental leave.

The main employment-related developments are described below.

### Workers' rights within the employment relationship

Article 4.2 c) of the WS, relating to the rights of workers within the employment relationship, is amended to specify that any adverse treatment of women or men for exercising their right to a work-life balance or to joint responsibility with respect to family and working life will be deemed discrimination on grounds of sex.

To this end, the list of **causes of discrimination has been extended** to *“sexual identity, gender expression, sexual characteristics” and “adverse treatment of women or men for exercising their right to a work-life balance or joint responsibility with respect to family and working life.”*

### Adjustments to the duration and distribution of working hours (article 34.8 of the WS)

Certain aspects of the system governing the right to request working hour adjustments are amended. Specifically:

- ✓ This right has been extended to workers who need to care for children over 12 years of age, their spouse or de facto partner, blood relatives up to the second degree or other dependants, provided they live at the same address and cannot look after themselves.
- ✓ The negotiation process for adjusting working hours in order to strike a work-life balance has been reduced to a maximum of 15 days, and any requests made in this connection shall be presumed granted in the absence of any reasoned objections within that period.
- ✓ In view of the fact that the worker is entitled to request the reinstatement of their previous working hours or contractual arrangement upon conclusion of the agreed period, or in the event of any changes to the circumstances justifying

the adjustment, even where the envisaged period has not yet elapsed, the RD-Law adds that in all other cases, where warranted by a change in circumstances, **the company will only be able to deny the requested reinstatement where there is an objective reasoned case** for doing so.

### Leave (article 37.3 of the WS)

Certain types of leave are amended, while new developments have been introduced in respect of others:

- ✓ Workers registered as de facto partners are now entitled to **marriage** leave.
- ✓ Leave in the case of an **accident, serious illness, hospitalisation or surgery without hospitalisation but requiring rest at home**, involving relatives up to the second degree of consanguinity or affinity, has been unified and extended to five days, while persons liable for care by the worker has been extended to blood relatives of registered de facto partners, as well as any other person living with the worker and requiring their effective care. The four-day period of leave to cover travel requirements has been abolished.
- ✓ Two-day leave period for the **death** of a spouse, de facto partner or relative to the second degree of consanguinity or affinity. If travel is required, the period will be extended by two days.

### Absence from work in the event of the birth, adoption or guardianship with a view to adoption or fostering (article 37.4 of the WS)

Where **two workers from the same company** exercise this right in respect of the same event, the RD-Law provides that **the company must offer an alternative plan to ensure that the right may be enjoyed by both workers** and thus facilitate the exercise of the right to a work-life balance.

### Reduction of daily working hours due to legal guardianship (article 37.6 of the WS)

Leave for legal guardianship is **extended to blood relatives of the spouse or de facto partner**.

- ✓ Given that these working hour reductions constitute an individual right of any male or female worker, **where two or more workers from the same company are entitled to such reduction with respect to the same cause**, the employer

may limit their ability to simultaneously exercise this right for reasons related to the functioning of the company, provided that such reasons are set out in writing. The company must then offer an [alternative plan to ensure that both or all workers may enjoy the reduction](#) and thus facilitate the exercise of the right to a work-life balance.

- ✓ This right will be exercised in the spirit of supporting [joint responsibility among men and women](#) and also to prevent the perpetuation of gender roles and stereotypes.

### **Absence from work due to force majeure (urgent family reasons) relating to family members or cohabitants, in the event of an illness or accident that calls for the worker's immediate presence (article 37.9 of the WS)**

This is a **new form of leave** by virtue of which workers will be entitled to be [paid for the time for which they are absent](#) for the above reasons in respect of family members. In this connection, the paid leave period will be equivalent to four days per year. With respect to the regulation of this leave, express reference is made to the provisions of the relevant collective bargaining agreement. Workers will be required to submit proof of the reason for their absence.

### **Leave in order to take care of children, a spouse or de facto partner, or a family member up to the second degree of consanguinity or affinity, including blood relatives of a de facto partner (article 46 of the WS)**

Given that such leave constitutes an individual right of any male or female worker, [where two or more workers from the same company are entitled to such reduction](#) with respect to the same cause, the employer may limit their ability to simultaneously exercise this right for reasons related to the functioning of the company, provided that such reasons are set out in writing. The company must then offer an [alternative plan to ensure that both or all workers may enjoy the leave](#) and thus facilitate the exercise of the right to a work-life balance.

This right will be exercised in the spirit of supporting [joint responsibility among men and women](#) and also to prevent the perpetuation of gender roles and stereotypes.

### **Suspension with retention of the worker's job position in the event of disability of the son or daughter at birth, adoption or in care scenarios with a view to adoption or fostering (article 48.6 of the WS)**

In such cases, [the full extensions of the additional two-week period will also apply where there is just one parent.](#)

### **Parental leave (new article 48.bis and new wording of article 45.1 o) of the WS)**

A new form of leave is introduced to care for a son, daughter or minor in foster care for a period exceeding one year, until the minor turns eight.

- ✓ The duration of this leave [will not exceed eight weeks and may be continuous or interrupted and enjoyed on a full-time or part-time basis.](#)
- ✓ This leave constitutes an [individual right of any male or female workers](#) and cannot be transferred.
- ✓ It will be for the [worker to specify the start and end date of the leave period\(s\) to be taken, of which the company must be notified 10 days in advance](#), or subject to the notice period specified in the relevant collective bargaining agreement, except in cases of force majeure, having regard to the company's situation and organisational requirements.
- ✓ Where two or more workers are entitled to such leave with respect to the same cause, or in the event of other circumstances defined in the collective bargaining agreements, where enjoyment of the parental leave during the requested period would seriously affect the proper functioning of the company, the company may [defer the grant of the leave for a reasonable period, providing an explanation of the reasons for the deferral in writing, after having offered an equally flexible alternative](#) for enjoyment of the right.



## Extension of the scenarios in which dismissal on objective or disciplinary grounds may be annulled (articles 53.4 and 55.5 of the WS)

In the case of objective dismissal, the grounds for nullity are extended to decisions to terminate the employment contract of (i) workers enjoying the parental leave provided for in article 48 *bis*, (ii) workers who have requested or are enjoying the working hour adjustments provided for in article 34.8 and (ii) workers who have requested one of the leave arrangements provided for in article 37.

## Calculation of compensation/termination benefits in certain reduced working hour scenarios (additional provision 19 of the WS)

The salary to be taken into account for the purpose of calculating the compensation/termination benefits provided for in this law in the parental leave scenarios referred to in the new article 48.*bis* of the WS will be the salary to which the worker would have been entitled had they not exercised the right to such leave.

## Transitional regime

- ✓ Any working hour adjustments in place at the time when RD-Law 5/2023 entered into force (understood as the general entry into force on 30 June 2023) will remain in force and fall subject to the new regulations, in particular, the provisions relating to reinstatement of the situation enjoyed previously.
- ✓ Any leave referred to in the above articles that was being enjoyed when the RD-Law entered into force (understood as the general entry into force on 30 June 2023) will be subject to the legislation in force when the enjoyment of such leave commenced. On no account will the enjoyment of such rights limit the taking of parental leave, which may be taken in full following exhaustion of the other rights.

## Miscellaneous

The temporary layoff procedures (in Spanish, ERTes) connected with the temporary force majeure situation regarding companies and workers from the Canary Islands affected by the volcanic eruption in the Cumbre Vieja area are extended until 31 December 2023.

The provision preventing companies benefiting from the direct aid provided for in RD-Law 5/2023 from asserting the rise in energy costs as an objective ground for dismissal is also extended until 31 December 2023.

Elsewhere, the relevant adjustments have been made to the Labour Jurisdiction Law to bring it into line with the amendments to the Workers' Statute.

Mention should also be made of article 88 of RD-Law 5/2023 relating -in the corporate-commercial area- to intra-European cross-border structural modifications, due to its impact on employment:

- Workers' representatives or, where there are no such representatives, the workers themselves, must be informed and consulted before a decision is made with respect to the draft terms of modification or directors' report, whichever comes first, so that the workers may be provided with a reasoned response prior to the approval of the structural modification by the shareholders' meeting.
- Where the company or companies arising from the structural modification have their registered office in Spain, the workers' rights of involvement will be defined in accordance with Spanish employment legislation. More specifically, the workers' rights of involvement in the company or companies will be defined pursuant to Law 31/2006 of 18 October 2006.
- Where at least one of the companies involved in the structural modification is managed under an employee participation system and the company or companies arising from the structural modification is/are governed by such system, the company or companies concerned must adopt a legal form that allows rights of involvement to be exercised.
- For the purposes of RD-Law 5/2023, the concepts of employee involvement and participation will be as described in Law 31/2006.
- The rights to information and consultation held by workers of the company or companies arising from the structural modification who render their services at workplaces located in Spain will be governed by Spanish employment legislation, irrespective of the location of the registered office of the company or companies.

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