

Employment Law Remark

Main practical application measures contained in the Master Plan for Decent Work (2018, 2019 and 2020) including mention of the four proposed legislation initiatives presented

September 2018

Agreement of the Council of Ministers of 27 July 2018 approving the Master Plan for Decent Work 2018-2019-2020

A.- Operational Measures

i.- Measures to combat abuse and fraud in the use of temporary contracts:

a.- Discourage companies - including temporary employment agencies ("ETTs") - that may be engaging in fraudulent practices in temporary hiring, using all the means and powers assigned by the Labour Inspection Ordinance Law, i.e., proposing economic sanctions and converting fixed-term contracts into indefinite or fixed discontinuous contracts.

b.- Improve the control of training and apprenticeship contracts, with particular attention to training activities, and apprenticeship contracts, including those produced under public aid and various European programmes, such as the European Social Fund or within the National Youth Guarantee System.

ii.- Measures to combat abuses in part-time recruitment, overtime and overtime not paid or compensated, by improving the processing of databases to allow a better selection of companies to include in fraud control campaigns in part-time recruitment.

iii.- Measures to correct wage defaults and offshoots arising from the outsourcing of activities:

a.- Development of an instruction on the part of the Labour and Social Security Inspectorate on action regarding non-payment of salaries, which deals with the different cases with the aim of giving a quicker and more efficient response to the complaints presented.

b.- Launching of specific campaigns being the first actions aimed at the groups of waitresses and floor waiters and other workers in the tourist accommodation sector.

c.- Intensification of actions, with a gender perspective, in the case of workers affected by business subrogation.

d.- The cases of collective agreements annulled by the social jurisdiction will be especially reviewed.



iv.- Measures on the protection of fundamental rights and the promotion of equality:

a.- Creation of an Anti-Discrimination Unit, as a body responsible for promoting and coordinating the application of measures against certain situations regarding access to employment, professional promotion, working conditions, especially remuneration and access to vocational training, both in the education system and for employment.

b.- Designation of Labour and Social Security Inspectors specialized in each Provincial Inspection.

c.- Use of database crossings through the Anti-Fraud Tool, with the aim of detecting possible situations of salary discrimination in companies, both direct and indirect, on which to carry out the corresponding inspection actions.

d.- Agreement with the regional labour authorities as well as at the Directorate General of Labour level to carry out checks on the legality of collective agreements, with the aim of detecting possible discriminatory clauses in them.

v.- Measures relating to sexual and gender-based harassment and discrimination in access to employment:

In the mailbox of the Labour and Social Security Inspectorate, there will be room for communications received regarding cases of sexual harassment or harassment based on sex, as well as those referring to discrimination in access to employment, acting from the Provincial Inspectorates.

vi.- Measures in relation to immigrant workers, as well as the "LGTBI" collective:

a.- Intensification of the planned activity of the Labour Inspectorate to check the working conditions of immigrant workers, especially women and minors, in sectors such as agriculture.

b.- Provide complaint forms to the Labour Inspectorate in different languages.

c.- Undertake specific actions to monitor compliance with the principle of equality and non-discrimination, in particular on grounds of sexual orientation or gender identity, as well as discriminatory harassment.

d.- Promote awareness-raising actions to encourage reflection on the importance of compliance with social regulations and the principle of equality and non-discrimination.

vii.- Measures to strengthen the fight against the irregular economy:

a.- ITSS carries out visits during special hours, referring to night hours, weekends or holidays, to prevent the proliferation of undeclared work during those times, with the active collaboration of the members of the Security Forces and Corps with their officials.

b.- Intensify relations and coordination with the General Social Security Treasury and Social Security Management Entities, as well as with the State Tax Administration Agency to have information that allows the identification of companies that use the so-called false self-employed.

c.- To provide the ITSS with technical means to allow the identification of the subjects involved in the digital platforms and electronic commerce.

d.- Elaboration of an Action Guide that facilitates the development of its employees, accompanied by training in this matter that allows their specialization.

e.- Carrying out of a specific inspection campaign on Platforms and e-commerce.

f.- Carry out all types of actions from ITSS for the possible identification and, where appropriate, regularisation of those situations qualified as "false self-employed" and "false scholarship holder".

g.- To guarantee, through the role of ITSS, the full exercise of the rights to form union sections, to elect union delegates who can exercise their duties and to have their legal guarantees, in compliance with the law.

Ensure that works councils and personnel representatives have access to information and are consulted on any issues that may affect workers, as well as on the company's situation and the evolution of employment in the company under the terms established in the Law and collective bargaining agreements. Guarantee the exercise without undue restrictions of the rights to collective bargaining, collective conflict and strike.

B.- Organizational Measures

i.- Measures for the effective implementation of the state ITSS agency:

a.- The constitution of the Governing Council of the State Labour and Social Security Inspectorate, which will take place in September 2018, and that of the General Council immediately thereafter.

b.- Approve a new list of state agency jobs that enhances and strengthens the inspection work and responds to the needs of the new structure.

ii.- Measures in the framework of ITSS modernization:

- a.- The elimination of the role in the external and internal activity of the inspection in a maximum term of two years.
- b.- The creation of a single computer application for the electronic processing of the sanctioning procedure, with the regional administration and the Labour and Social Security Inspectorate working in the same shared environment.
- c.- The electronic exchange of files with the Justice Administration.
- d.- Complete adaptation to the requirements of electronic administration provided for in Law 39/2015 of 1 October 2015.

iii.- Measures for the development of an ITSS Communication Plan:

- a.- Creation of an Inspection Newsletter, periodically prepared and disseminated to a previously defined target audience with greater interest in the actions of the Inspection: business and trade union organizations, organizations of self-employed workers and cooperatives, etc.
- b.- Disseminate good practices of enterprises, SMEs in particular, related to compliance with labour and social security legislation, to serve as an example for other enterprises.

C.- Proposals for regulatory reforms

- a.- The proposed law modifying article 42.1 of the Workers' Statute to guarantee equality in the working conditions of subcontracted workers.
- b.- The Proposed Law amending article 34 of the Workers' Statute to include the obligation to record daily the specific time of entry and exit for each worker.
- c.- The Bill to guarantee equal treatment and equal opportunities for women and men in matters of remuneration.
- d.- The Bill to ensure equal treatment and opportunities for women and men in employment and occupation.

The Plan establishes that these four Propositions address important problems of the labour market, which must be the object of priority attention from the Government's labour policy, in concert with the social agents, as already foreseen in the IV Agreement for Employment and Collective Bargaining 2018, 2019, 2020.

For further information, please contact:

Alfredo Aspra
alfredo.aspra@AndersenTaxLegal.es

José Antonio Sanfulgencio
jose.sanfulgencio@AndersenTaxLegal.es