

### Employment alert

## Amendment of the Regulation on the implementation of company pension commitments to employees and beneficiaries

March 2018

On 10 February 2018, Royal Decree 62/2018, of 9 February, was published in the Official State Gazette of RD 62/2018, amending the Regulation on the implementation of companies' pension commitments to employees and beneficiaries, the main change of which is that it is permitted to redeem contributions to pension plans with a minimum seniority of 10 years, without any penalty.

This measure will only apply to contributions made after 31 December 2015, and it will not be applied until 1 January 2025, when the standard becomes practically relevant to the effects discussed above.

Brief comments are given below on the main modifications introduced by the aforementioned regulation approved by the Ministry of Economy, Industry and Competitiveness.

In connection with the reform of the tax regulations operated by Law 26/2014 of 27 November 2004, the Pension Plans and Funds Regulation Law was amended, approved by Royal Legislative Decree 1/2002 of 29 November 2002, so as to introduce the possibility of early disposal of the vested rights of the participant in a pension plan corresponding to contributions made for at least ten years.

This right of early provision is extended, under the conditions and terms set forth in the standard, to supplementary pension schemes similar to the pension plans referred to in Article 51 of the LIRPF (insured pension plans, corporate social security plans and insurance policies with social welfare companies).

Finally, in accordance with the provisions of DT 7 of the Pension Plans and Funds Regulation Law, the rights corresponding to the contributions or premiums paid before January 1, 2016, may become effective as of January 1, 2025; and indicates that the conditions, terms and limits on which they may become effective shall be established by regulation.



Therefore, by means of Royal Decree 62/2018 of 9 February 2008, in order to include the new liquidity scenario in pension plans and similar systems, and to adapt the rights mobilization systems, and in short, with the aim of encouraging the contracting of these products, the following regulatory provisions are modified, amongst others:

**a. - Regulations of Pension Plans and Funds, approved by RD 304/2004, of 20 February:**

1.- The members of the pension plans of the individual and associated system may dispose in advance of all or part of their vested rights corresponding to contributions made for at least ten years.

2.- In the same sense, the members of the pension plans of the employment system will be able to dispose of the vested rights corresponding to the contributions and corporate contributions made for at least ten years, if the commitment allows it and the plan specifications provide for it, under the conditions and limitations that may be established.

3.- The collection of vested rights corresponding to contributions made at least ten years old shall be compatible with making contributions to pension plans for contingencies that may arise; in contrast to entitlements received as a result of serious illness or unemployment, which is incompatible with making new contributions.

4.- The commitments entered into by companies with workers who terminate their employment relationship and become unemployed for the reasons set out in Article 49 (1)(g). 51,52 and 57 of the ET, which consist of the payment of benefits prior to retirement, may be implemented by means of insurance contracts, including corporate social security schemes and collective dependency insurance, by means of a pension plan or several of these instruments on a voluntary basis, as long as retirement is not reached.

**b.- Regulation on the implementation of company pension commitments to employees and beneficiaries, approved by Royal Decree 1588/1999, of 15 October:**

With regard to the insurance policies taken out with friendly societies and company welfare plans, the following should be highlighted:

1.- Obligations to inform the insured worker and beneficiaries who already receive their benefits under the insurance contract, regarding the following matters:

a.- Certification of the insurance company indicating the policy number, covered contingencies and individually guaranteed benefits.

b.- Value of premiums paid by the policyholder in the previous year.

c.- Value of the life insurance provision at 31 December of the previous year.

d.- Information on the amount of the financial right at the end of the calendar year, which may become effective in the event of early withdrawal.

2.- The policyholder of a corporate social security plan may only exercise the right of redemption to integrate all the commitments implemented in the corporate social security plan, or in a pension plan promoted by the company. In both cases, the new insurer or the pension plan will assume full coverage of the transferred pension commitments.

In summary, from a purely labor point of view, it is worth noting that those instruments linked to this field (labour or professional), such as occupational pension plans of the employment system, company social welfare plans and insurance policies arranged with social welfare mutuals, in order to be able to exercise the power of early provision provided for in the standard, this must be expressly contemplated in the regulation of the corresponding legal instrument.

Finally, it should be noted that, since the rule does not expressly regulate this possibility, this option of early provision cannot be extended to insurance policies that implement pension commitments other than corporate social security plans.

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