

Employment Update

Main labour and social security updates introduced by Royal Decree-Law 28/2018, of 28 December, for the revaluation of public pensions and other urgent social, labour and employment measures.

10th January 2019

1.- News on the revaluation of pensions and social security contributions:

a.- Public Pensions:

The pensions paid by the Social Security system in its contributory regime experience an increase of 1.6% over the amount they would have had in 2018 in 2019 if they had been revalued by 1.7% (CPI percentage recorded from December 2017 to November 2018). The maximum limit established for the receipt of public pensions for 2019 will be 2,659.41 euros per month or 37,231.74 euros per year.

It is also expected that the legal regime for revaluing public pensions will be modified within the first six months of 2019. For further information on this matter, Appendices I and II to the RDL 28/2018 of 28 December set all the amounts corresponding to the amounts and public benefits applicable in 2018 (consolidated amounts) and 2019.

b.- Social Security contribution rules in 2019

The aforementioned RDL establishes certain provisions regarding Social Security contributions, taking into account, on the one hand, the updating of the maximum limit, the impact on the minimum contribution bases of the new amount of the SMI, the bases and types of contributions in the Special Regime for Self-Employed Workers (RETA) and in certain special systems, and, on the other hand, the maintenance of the application of the 2018 State General Budgets.

Thus, during 2019, the maximum amount of the Social Security contribution base is set at 4,070.10 euros per month or 135.67 euros per day, which implies a 7.0% increase over the amounts in force in 2018, with the result that the absolute minimum amount of the Social Security contribution is set at 1,050 euros/month or 35 euros/day.

The contribution rates are maintained in 2019 at the amounts set for 2018, i.e.: i) common contingencies: 23.6% borne by the company and 4.7% by the employee; ii) overtime derived from force majeure: 12% borne by the company and 2% by the employee; and finally, iii) remaining overtime: 23.6% borne by the company and 4.7% by the employee.

The rates of the premium rate established in the fourth additional provision of Law 42/2006, of 28 December, must be applied to contributions for occupational accidents and professional illnesses. This provision has undergone some modifications, increasing the contribution rates for certain activities or economic situations, and the percentage applicable to office work has risen to 1.5%.

c.- Special contribution for short-term employment contracts

An increase in the contribution for short-term employment contracts is foreseen, with those of less than 5 days being fixed as such, so that the increase in the company contribution for common contingencies, in the case of employment contracts with a duration of less than 5 days, stands at 40%.



For this type of full-time contract, for each day of work it will be considered as 1.4 days of contribution.

This increase does not apply in the case of part-time contracts, part-time relief and permanent-discontinuous contract, since in these cases the TRLGSS contains certain rules regarding the accreditation of the vesting periods of such benefits.

d.- Prórroga en las condiciones de acceso a la pensión de jubilación (en todas sus modalidades)

This regulates an extension of the validity of the legislation prior to Law 27/2011, of August 1, updating, adaptation and modernization of the Social Security system, making it possible to continue applying the regulation of the retirement pension, in its different forms, provided that the eligibility requirements, conditions and rules for determining benefits, in force before the entry into force of Law 27/2011, are met for retirement pensions payable before 1 January 2020 (i.e. the application of the previous legislation is extended by one year) in the following cases:

Persons whose employment relationship ended before 1 April 2013, provided that after that date they are not included again in one of the schemes of the social security system;

- i. Persons with a suspended or terminated employment relationship as a result of decisions adopted in employment regulation files, or by means of collective agreements of any scope, company collective agreements, as well as decisions adopted in insolvency proceedings, approved, subscribed or declared prior to 1 April 2013, provided that the termination or suspension of the employment relationship occurs prior to 1 January 2020.
- ii. It will be an indispensable condition that the aforementioned collective agreements of the company are duly registered with the INSS or the ISM, as the case may be, within the period determined by regulation.
- iii. As a novelty, it is specified that, in any case, the persons referred to in the previous sections may also opt for the legislation in force on the date of the event giving rise to the pension to be applied for the recognition of their right to a pension, without the application of the previous legislation being obligatory, as was the case with the previous wording of the fourth transitory provision of the TRLGSS.

e.- Unemployment Benefit

This regulates the indefinite validity of the extraordinary unemployment subsidy as well as the Government's commitment to present, in the first four months of 2019, a proposal for a model of protection system for welfare unemployment.

f.- Voluntary collaboration in the management of TI arising from common contingencies

The voluntary collaboration in the management of the economic benefit of temporary incapacity due to common illness or non-occupational accident is extinguished for all those companies that were authorized to do so, having to cease in this collaboration with effect from March 31, 2019 and opt before April 1, 2019 to formalize the protection of this benefit with a mutual collaborator.

g.- Unemployment in training and apprenticeship contracts

The right to unemployment contingency coverage is provided for in training and apprenticeship contracts entered into on or after 1 January 2019 with student workers in public employment and training programmes, including workshop school programmes, trade houses and employment workshops.

h.- Listing and protective action developments in special regimes

Certain rules on social security contributions and protective action are amended in the special schemes for domestic workers, employed and self-employed agricultural workers, special scheme for seafarers and coal miners.

2.- Developemets in employment matters: Return to the Obligatory Retirement Clauses provided that the Collective Agreements regulate such possibility:

Collective agreements may establish a forced retirement age linked to employment policy objectives and generational replacement. Without a doubt, this would be the most relevant measure in labour matters introduced by RDL 28/2018, which, in practice, will make it possible for numerous collective agreements at sector level -state, regional or provincial- or company level, to introduce the pertinent modifications through the regulatory and conventional mechanisms to such regulated effects, in order to make this possibility effective, that is, to proceed with the forced retirement of all those employees who have reached the legal retirement age established in the Social Security regulations, provided that the requirements set out below are met:

PREVIOUS WORDING	WORDING GIVEN BY RDL 28/2018 (IN FORCE ON 1 JANUARY 2019)
<p>Tenth additional provision. Clauses in collective agreements referring to the attainment of the ordinary retirement age.</p> <p>Clauses in collective agreements that make it possible to terminate the employment contract due to the worker's compliance with the ordinary retirement age established in the Social Security regulations shall be understood to be null and void, regardless of the extension and scope of said clauses.</p>	<p>Tenth additional provision. Clauses in collective agreements referring to the attainment of the ordinary retirement age.</p> <p>Collective agreements may establish clauses that make it possible to terminate the employment contract due to the worker's compliance with the legal retirement age established in the Social Security regulations, provided that the following requirements are met:</p> <p>a) The worker affected by the termination of the employment contract must comply with the requirements demanded by the Social Security regulations in order to be entitled to one hundred percent of the ordinary retirement pension in its contributory modality.</p> <p>b) The measure must be linked to coherent employment policy objectives expressed in the collective agreement, such as the improvement of employment stability through the transformation of temporary contracts into indefinite contracts, the hiring of new workers, generational replacement or any others aimed at favouring the quality of employment.</p>

3.- News applicable to self-employed or self-employed workers:

- a) Updating for 2019 of the minimum bases and other contribution limits for **self-employed workers in the Social Security system**. In general, the contribution base in the Special Regime for Self-Employed Workers (RETA) is the one chosen by the interested parties within minimum and maximum amounts that vary depending on the age of the worker, as well as the concurrence of other factors, such as the age of the self-employed, the contribution base they have had, etc.

The maximum contribution base for self-employed workers is equivalent to that established in the General Regime, i.e. 4,070.10 euros/month, while the minimum contribution base is 944 euros/month (increase of 1.25%).

- b) The scope of the protective action is specified in the RETA established in Law 20/2017, of 20 July, of the Statute of Self-Employment so that its coverage extends to health care in cases of

maternity, common or professional illness and accidents, whether at work or not; economic benefits in situations of IT, risk during pregnancy, maternity, paternity, risk during lactation, permanent disability, retirement, death and survival and family members for dependent children, as well as coverage for accidents at work and occupational diseases.

- c) The obligation is established that the workers included in the RETA must formalize the coverage of the protective action for professional contingencies, TI and cessation of activity with a mutual collaborator with the Social Security, having to opt for the same mutual collaborator for all the protective action indicated.
- d) 60 euros/month-plan-rate (with respect to the amount of 50 euros/month of the previous legislation) is the quota to be paid by the self-employed worker who is initially registered or who has not been registered in the two immediately preceding years, starting from the date of registration.
- e) Different bonuses are regulated for self-employed workers who return to work in certain cases.
- f) The duration of the Social Security benefit for self-employed workers is modified, which depends on the credited contribution period within the 48 months prior to the legal situation of cessation of activity of which at least 12 must be continuous and immediately prior to the said situation of cessation.

4.- Modifications in the scope of the legislation on labour infringements and penalties:

A new section 16 will be added to article 22 of the Law on labour infringements and penalties -LISOS-, relating to the classification of serious infringements in the field of Social Security by employers and self-employed workers, configuring as such the conduct consisting of reporting the withdrawal from a Social Security system of employed workers, despite the fact that they continue in the same work activity or maintain the same provision of services, using an undue registration in a system of self-employed workers.

The classification of the new infraction in turn originates the modification of letter e), paragraph 1, of article 40 of the LISOS (amount of the sanctions to employers, and in general, to other subjects that do not have the condition of workers or assimilated), incorporating in the sanctions foreseen in the same the corresponding one to the new infraction contained in article 22.16 of said law, consisting of the following fine: in its minimum degree, from 3,126 to 6,250 euros; in its average degree, from 6,251 to 8,000 euros and in its maximum degree, from 8,001 to 10,000 euros.

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