

Labour Law Remark

New provisions on The Guaranteed Minimum Interprofessional Wage,
Passive Classes, Labour Inspection and Special Scheme for Freelance
Workers

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Brief analysis of the labour provisions published in the State Gazette on December 30, 2017

1. Royal Decree 1077/2017, of 29th December, fixing the minimum wage for 2018.

The amount of the Minimum Wage (MW) for the year 2018 is set at 735.9 euros per month, in fourteen payments, representing an increase of 4%, and 10,302.6 euros per year. If these conditions are not met and the terms of the agreement do not automatically materialise, the government would open a new process of negotiation with the social partners.

An increase of 5% is also set for 2019 (773 euros per month and 10,819 euros per year) and 10% for 2020 (850 euros per month and 11,901 euros per year), provided that the economy registers a GDP growth of 2.5% and an increase in average social security contributions of over 450,000 people.

The MW for temporary and seasonal workers is set at 34.85 euros per day, and for domestic workers at 5.76 euros per hour.

The increase for next year is the result of the Social Agreement on MW 2018-2020, reached last December 26th, between the Government, the general secretaries of CCOO and UGT unions, and the presidents of the CEOE and CEPYME confederations.

The Royal Decree also regulates the MW for temporary and seasonal workers whose services to the same company do not exceed 120 days, which is set at 34.85 euros per day. Likewise, for those household employees who work by the hour, the MW shall be 5.76 euros per effective hour worked.

The standard incorporates two additional provisions with the purpose of enabling the necessary mechanisms to prevent the allocation of the new amounts of the MW to collective bargaining and non-State rules and private agreements.



2. Royal Decree 1079/2017, of 29 December, on the revalorisation of the pensions of state pensioners, the pensions of the Social Security system and other public social benefits for 2018.

Pensions will be revalued by 0.25% on 1 January 2018 and the minimum wage will be raised by 4%. Likewise, the Royal Decree establishes the revaluation of 0.25% of the minimum amounts of state pensions and the Social Security system in their contributory modality, of non-contributory pensions and of the non-contributory pensions of the expired Compulsory Old Age and Disability Insurance. In addition, the amounts of allowances for disabled children aged eighteen and over are updated.

It also regulates the revalorisation of pensions arising from accidents at work and occupational illnesses; extraordinary pensions arising from acts of terrorism; pensions recognised in accordance with international standards; rules on concurrent pensions and the financing and management of revalorisation.

3. Royal Decree 1078/2017, of 29 December, amending the Regulations on the Organisation and Functioning of the Labour and Social Security Inspectorate, approved by Royal Decree 138/2000, of 4 February, and the General Regulations on procedures for the imposition of sanctions for infringements of the social order and for liquidation proceedings relating to social security contributions, approved by Royal Decree 928/1998, of 14 May.

The aim of the regulation is to adapt both regulations to one of the main new features introduced by the Law Regulating the Labour and Social Security Inspection System of 21 July 2015, which was the creation of two specialized scales within the Corps of Labour Sub-Inspectors, the existing Employment and Social Security, increasing the functions of sub-inspectors and the new Occupational Safety and Health scale created by said Law.

The function of the Health and Safety sub-inspectors shall be aimed primarily at verifying that the material conditions in which services are provided comply with preventive regulations on working conditions, equipment, tools, products and substances existing in the workplace (especially those involving specific risks, such as physical, chemical or biological agents), individual and collective protective measures and medical examinations.

The extension of the functions of the Employment and Social Security sub-inspectors, for their part, includes responsibilities in terms of contractual arrangements, fixed-term contracts and temporary contracts concluded because of fraud under the law and child labour.

In both cases, sub-inspectors' actions include, in addition to sanctioning activities, informing and advising workers and employers, especially in the case of small and medium-sized enterprises.

4. - Order ESS/1310/2017, of 28 December, amending the Order of 24 September 1970, laying down rules for the application and development of the Special Social Security Scheme for Self-employed Workers.

Its purpose is to adapt its content to the modifications incorporated by the General Regulations on the registration of companies and affiliation, registrations, dismissals and variations of workers' data in the Social Security, because of Law 6/2017, of 24 October, on Urgent Reforms of Self-Employment, modifications that come into force on 1 January 2018.

The current regulation of the event causing the different economic benefits is as follows:

a. - In the Special Scheme for Freelance Workers, periodic financial benefits are accrued from the day following the date on which they are deemed to have been caused, provided that the application is submitted within 3 months of the aforementioned date. Otherwise, they are accrued only with a maximum retroactive accounting of 3 months from the date of filing the application.

b. - As to the causative event of the benefits, the new regulation provides for:

1. - The date of the event giving rise to permanent disability benefits is determined in accordance with the provisions of the General Regime, in such a way that it will vary according to the existence or otherwise of the situation of temporary incapacity and how, if applicable, the person has been registered in it. In any case, for those who are not registered or in a situation similar to that of registration, the benefit will be understood to have been paid on the day of filing the application.

2. - As far as the retirement pension is concerned, it is understood to be caused:

i. - In the case of discharge, the day on which the termination of the Special Scheme for Freelance Workers takes effect, as a consequence of the termination of employment.

ii. - In the case of situations similar to those in which the application is filed on the last day of the month in which the application is filed.

iii. - For those who are not registered or in a situation similar to that of discharge, the pension is considered to have been paid on the day of filing the application.

c. - As regards death and survivor benefits, they are understood to have been caused on the day on which the discharge from the Special Scheme for Freelance Workers takes effect as a consequence of the death of the deceased, unless the latter is not in a high or equivalent situation to that of discharge, in which case the causative event is considered to have occurred on the date of death.

As features:

For death assistance, the causative event is understood to have occurred on the date of death.

For the orphan's pension, when the beneficiary is a posthumous child, on the day of birth.

5. Entry into force and application

The entry into force of the aforementioned provisions took place with effect from 1 January 2018, except for Royal Decree 1078/2017, which modifies the Regulations for the Organisation and Operation of the Labour and Social Security Inspectorate, which did so on 31 December 2017.

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