LEGAL NEWS

Pension System Reform: Development and Key Issues

Royal Decree-Law 2/2023 of 16 March (BOE 17th March 2023) has recently been published. The main purpose of this norm is to complete the reform of the pension system. It establishes a new long-term sustainability framework for the public system and complements the measures included in Laws 21/2021 guaranteeing the purchasing power of pensions, Law 12/2022 regulating the promotion of employment plans and Royal Decree-Law 13/2022 of 26 July establishing a new contribution system for self-employed workers and improving protection in the event of cessation of activity.

The regulatory text is structured in three blocks of content:

- The **first block** refers to the sufficiency of pensions, the main objective of which is to reinforce the financial capacity of the system to establish the bases that guarantee its sustainability.
- The **second block** refers to the fairness of the system, with the aim of tackling and correcting the problems of both the people reaching retirement, as well as those who have been harmed by job instability and precariousness, as well as the legal insecurity derived from irregularities in the contribution systems.
- The **third block** refers on the financial sustainability of the system focuses on long-term action, following European guidelines and standards to guarantee the financial stabilization of the pension system in the coming decades.

The following is a detailed analysis of the measures belonging to each of the three content blocks:

First block: Adequacy of pensions

Law 21/2021 established a new stable framework to guarantee purchasing power through the revaluation of pensions in accordance with the average annual inflation registered in the previous year, thus guaranteeing the maintenance of the purchasing power of pensions, a particularly relevant issue in context of high inflation, such as the current one.

To overcome this situation, a **progressive increase in the minimum contributory retirement pension** for those over 65 years of age and with a dependent spouse is planned from 2024 onwards, so by 2027 it cannot be lower than the poverty threshold calculated for a household of two adults, which is 1.5 times the single-person household as defined by the National Statistics Institute (NST). For the rest of the pensions, an annual increase is foreseen, and especially in relation to non-contributory pensions, will be increased annually with the reference of multiplying by 0.75 the poverty threshold for a single-person household.

Second block: Equity of the system

In line with the aim of maintaining the adequacy of pensions, an increase in the gender gap supplement and the integration of gaps in contribution periods are established. This increase will be revalued at the beginning of each year by a percentage equivalent to the Consumer Price Index ("CPI"), except for the 2024-2025 biennium, when an additional 10% increase is envisaged. As for the coverage of contribution gaps, compensation is maintained at 100% of the minimum base up to a maximum of five years, and for the sixth and seventh year without contributions, it will be covered at 80% of the minimum base.

Likewise, to be more in line with the regulatory purpose, its application is expressly recognized for men who fulfil certain conditions, being able to benefit from such fulfilment retroactively, from the date of retirement.

Furthermore, **a new system for calculating retirement pensions** has been introduced. Currently, and up to and including the year 2025, two calculation systems are established.

The period to be considered for calculating the regulatory base of the retirement pension is extended to 27 years, taking as a reference the 29 years prior to the month before this, from which the 324 contribution bases with the highest amount will be selected automatically. For those who have gaps in these months, the contribution bases for this period will be updated with the evolution of the CPI, except for those corresponding to the 24 months prior to the month before retirement, which will be calculated at their nominal value.

The system for integrating gaps is established for the first 48 monthly payments considering the full minimum contribution base of the General Scheme corresponding to the respective month and the rest of the monthly payments considering only 50% of the said minimum contribution base.

However, for those who apply for a retirement pension between 1 January 2026 and 1 January 2041, the regulatory base will be calculated considering the legislation in force on 1 January 2023, i.e., the calculation based on the last 25 years of contributions or the legislation applicable depending on when the applicant retires, whichever is more favourable for the applicant.

A transitional period is established between 2041 and 2044 in which the contribution bases to be included in the calculation of the regulatory base will be increased at a rate of six months per year, to determine which regulatory base is the most favourable for the worker until the total of 27 years is reached.

From 2023 onwards, **students who carry out training placements or external academic placements included in training programs will be included in the Social Security system under the consideration of being assimilated into the system.**

The protective action will be that corresponding to the applicable social security system, with the exclusion of unemployment protection, coverage by the Wage Guarantee Fund and Vocational Training. In the case of unpaid internships, protection for temporary incapacity due to common contingencies shall also be excluded.

However, different contribution provisions are established depending on the paid nature of the training placements.

Regarding paid training placements, the contribution rules corresponding to alternating training contracts shall apply, with the monthly contribution base applicable for the purposes of benefits being the minimum contribution base in force at any given time for group 7, except in those months in which the registration does not cover the whole month, in which case the contribution base shall correspond to the proportional part of that minimum contribution base.

Contrariwise, for unpaid training placements, a company contribution for common and professional contingencies will be made for each day of training placements. The applicable monthly contribution base will be the result of multiplying the minimum contribution base in force at any given time for contribution group 7 by the number of days of training placements carried out in the calendar month.

Likewise, four periods for payment of the corresponding contributions are established for this purpose, being the months of April, July, October, and January, which may be paid up to the penultimate calendar day of each of these months. Likewise, the General Treasury of Social Security ("GTSS") must be informed of the number of days of practice carried out in the three previous months, and if any day is not carried out, this circumstance must be reported.

From the perspective of benefits, each day of training will be considered as 1.61 days of contributions. The possibility is established retroactively for those persons who, prior to the entry into force of this provision, had been in this circumstance, to sign a special agreement with the aim of calculating the contribution for the periods of training or non-labour and academic internships carried out for up to a maximum of two years.

Likewise, **a new contribution consideration is established for part-time contracts and for discontinuous permanent employees**, with part-time work being treated in the same way as full-time work for the purposes of calculating the periods contributed for the recognition of pensions for retirement, permanent disability, death and survival, temporary disability, birth and care of a child, since the periods contributed are taken into account regardless of the length of the working day worked in each of them.

About the situation of discontinuous permanent employees, who are treated as part-time workers for the purposes of the Social Security system, the above provision will apply to them in identical terms regarding the new contribution consideration for part-time contracts.

For **self-employed workers**, the integration of periods without the obligation to pay contributions is regulated, which is extended to the six months following each situation of cessation of activity and is covered by the minimum base of the general table of this Special Scheme with effect from 1 January 2026.

As of 1 June, the automatic extension of the temporary incapacity situation is established after 365 months without notification from the

National Social Security Institute ("NSSI"). The possibility of the mutual insurance companies being able to contact the NSSI in the event that the public health services have rejected the proposal for discharge is eliminated. With regard to the powers of control of the temporary disability processes after 365 days, the managing entity exercises this power through its technical inspection, without the intervention of the disability assessment teams or equivalent entities in Catalonia, so the start of the permanent disability file is articulated through the issuing of the medical discharge with the proposal for permanent disability.

Once the period of 365 days has elapsed from the start date of the temporary incapacity without a medical discharge, the temporary incapacity will automatically be extended, without the need for an express declaration, with compulsory collaboration being maintained during the extension of the temporary incapacity until the maximum of 545 days has elapsed, or when a medical discharge is issued due to a proposal for permanent incapacity.

Within the scope of the Workers' Statute, article 37.6 is amended to extend the cases and duration of the regime of reduced working hours from one to three years, for the care of a child or person who has been the object of permanent foster care, guardianship for the purpose of adoption during hospitalisation and continuous treatment due to being affected by cancer or any other serious illness, which implies long-term hospitalisation and requires direct, continuous and permanent care, maintaining 100% of the remuneration during the three years.

Likewise, the age of the dependant is extended to 26 years of age, which allows them to receive financial benefit for the care of seriously ill minors. However, these three years will only be extended if the person has a degree of disability equal to or greater than 65%.

Financial sustainability

A gradual increase in the maximum contribution bases is established, increasing the wage bill subject to contribution, in conjunction with a corresponding increase in the maximum pension. It is stipulated that the maximum ceiling established for the Social Security contribution bases of each of its schemes will be updated annually in the General State Budget Act by a percentage equal to that established for the revaluation of contributory pensions.

Therefore, from 2024 the bases will be updated by the CPI plus a fixed amount of 1.2 percentage points. Maximum pensions will be revalued year by year at the annual CPI plus an additional 0.0115 percentage point increase each year until 2050.

To preserve the future balance between generations and strengthen the sustainability of the Social Security system in the long term, the already well-known **Intergenerational Equity Mechanism ("IEM")** has been in place since January 2023, as a compulsory contribution for all social security schemes and in those cases in which contributions are made for the contingency corresponding to retirement.

Furthermore, as of March 2025, the Independent Authority for Fiscal Responsibility (IAFR) is empowered to review the situation of the Social Security coffers and the effectiveness of this measure.

The third of the provisions consists of the so-called **solidarity contribution**, as an additional contribution that will vary according to the excess of the income from work as an employee over the maximum contribution base that is established annually by the General State Budget Act.

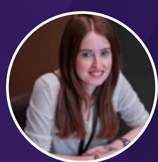
For this purpose, three income brackets are established to which a progressive additional contribution rate will correspond, which will be shared between the company and the employee -in the same proportion as in the contribution for common contingencies-.

This contribution rate will be applied gradually from 2025 to 2045, starting with contributions in tranches of around 1% and reaching values of 6% at the end of that phase.

With this alert we have shown how labour law, which has an eminently dynamic content, is no unaware to the growing difficulties that have been observed in the area of pensions and the need for urgent measures to guarantee the pensions of the next generations, taking into account the demographic reality of Spain, a challenge that will undoubtedly involve important and constant changes in labour matters.

For more information:

Francisco Javier Saez
Labour and Employment Law
FranciscoJavier.Saez@es.gt.com
Phone +34 93 206 39 00



Laura Velasco
Labour and Employment Law
Laura.Velasco@es.gt.com
Phone +34 93 206 39 00