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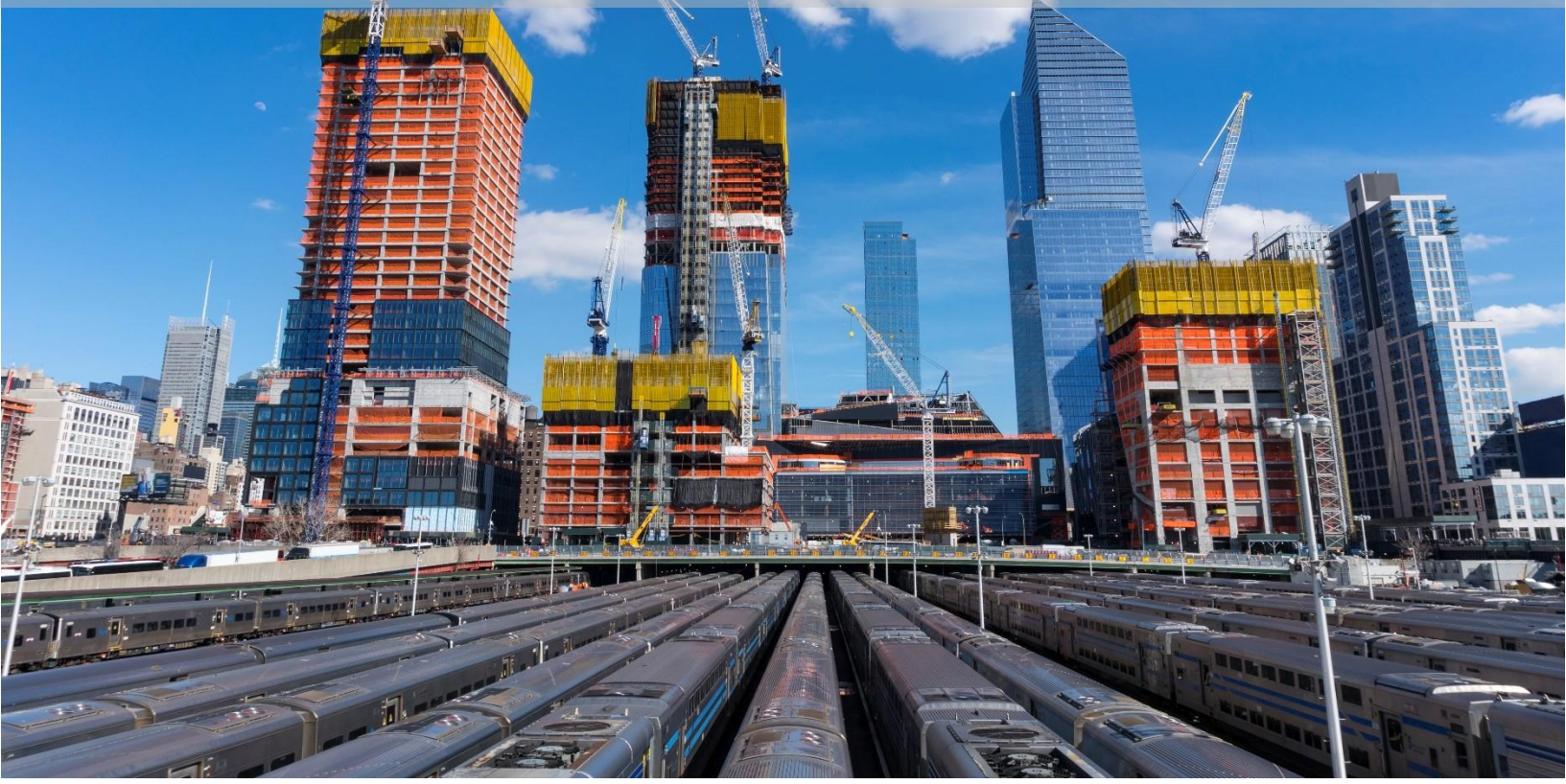
Royal Decree Law 32/2021, of 28 December 2021, on urgent measures for employment reform, the guarantee of employment stability, and the transformation of the employment market



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Following a period of prolonged talks, Spanish employment law has undergone a major overhaul as a result of the agreement reached by the Government and social partners last 23 December. The different partners have called this agreement “historic”. This is true in the sense that employment law reforms in Spain have not commonly been passed with a consensus after social dialogue.

The recent reforms affect multiple employment institutions: they strongly affect employment contracts and, to a lesser extent, on project-specific and service contract work and subcontracted work, temporary employment regulations, and collective bargaining.

The new on-the-job training contract and variations

The 2 training contracts that traditionally existed in the Spanish Workers Statute (Workers Statute, *Estatuto de los Trabajadores*) **have now been replaced by a single on-the-job training contract. However, this contract takes two forms, one for combined work and training and one for professional training consistent with the trainee's educational level.**

The combined work and training contract is intended to make remunerated work compatible with on-the-job vocational training, university studies, and the National Employment System's classification of specialist jobs.

- This contract is intended for **workers** who lack the qualifications for a professional training contract to acquire professional experience, with contracts for vocational training or university programmes excluded. In certain cases, these contracts are only available for young people under 30.
- The **contract term** must be indicated in the training plan and must run for a minimum of 3 months and a maximum of 2 years. The contract may span various annual periods over the course of studies, if this is established in the training plan. There can be only one contract per degree, but there may be more than one with different companies within the same course of studies.
- The **professional training** contract encompasses both theoretical training dispensed at an educational centre and practical training at the company and the centre. There is a limit on time spent working to make room for the theoretical training.

  Companies' training commitments ensue from an individual training plan that will specify the content, schedule, and training activities. The latter will also set out how the activity under the contract relates to the activities that serve as the reason for hiring and will name tutors both in the company and at the educational centre.

The professional training contract replaces the contract traditionally known as an internship, though some significant changes have been made:

- Although the qualifications that are the **basis** for this type of contract are the same as before, the length of time allowed to elapse between completion of the studies and the contract has been reduced.
- The minimum and maximum **contract term**.
- The scope of the company's **training commitments**. In addition to job requirements, an individual training plan will need to be drawn up, and the company will have to appoint a tutor. Provision for theoretical training is also made, particularly for specific training programmes aimed at digitisation, innovation, or sustainability, along with provision for possible micro-credentials within the framework of vocational or university studies.

A lengthy series of rules for both of these two types of training contract have also been provided.

Reform concerning temporary contracts

The rules concerning temporary hiring have been extensively revised, mainly as regards the **cases** in which they are allowed. Following the revisions, only 2 cases in which temporary hiring is possible remain.

- **Temporary production-contingent contracts**. Production-contingent circumstances are sporadic, unforeseeable increases in production or fluctuations which, despite falling within normal business activities, give rise to a temporary imbalance between the stable employment available and the employment required.
  Temporary hiring for contract work and the cases in which the new fixed-term intermittent contract may be used (other than hiring for holiday cover, which is regulated separately) are precluded.

  Contracts may run for up to 6 months, although sector collective bargaining agreements (CBAs) may extend their term to up to 1 year. Furthermore, companies are limited to using these contracts to meet occasional, foreseeable, short-term situations in the conditions laid down in this paragraph to enter into this type of contract for only up to 90 days per calendar year.

- **Substitution contracts.** New regulation sets out the above statutory and regulatory rules relating to interim hires for both substitutions and vacancies. One new development under these contracts is the option to hire within the fifteen days before the start of the employee's leave to help the new employee familiarise themselves with the job.

General rules on temporary hiring:

- **Contracts will continue to be presumed to be permanent,** and the rebuttable element has been eliminated. Fraudulent circumvention of the law as grounds has also been eliminated, and simple breach suffices to activate the rules.
- **Extending temporary contracts** has been made more restrictive, and the cases in which temporary contracts are made permanent have been expanded. Therefore, hiring under a temporary contract for 18 months in any 24 month period suffices for the contract to be made permanent.
- Breach of the rules on temporary hiring continues to be considered a serious **administrative breach**, but now there will be a separate breach for each individual person affected. These breaches are now also subject to a special system of sanctions. Transitional rules provides that the new sanction frame will not apply to infringements committed before this new RDL 32/2021 entered into force.
- New regulation provides that CBAs may establish **plans to reduce temporary hiring**.
- **Social Security contributions for temporary contracts** and for all contracts with terms of up to 30 days have been raised. The increase becomes payable upon expiry of the contract.

Permanent construction sector job-related contracts

The new regulation laids down the conventional rules for fixed-term contracts for works (*contratos fijos de obra*) as foreseen in the Collective Bargaining Agreement for the construction sector. Under the new wording, these contracts are replaced by a new type with the following characteristics:

- This is a form of permanent contract that has **its own special grounds for termination** defined as being "individual worker-related." Accordingly, no matter how many of these contracts lapse, there is no collective dismissal.
- These grounds arise where a job has come to its end. In these cases, which are defined by law, a company must make a **placement proposal**, where appropriate, following retraining. If the proposal is rejected or, despite everything, placement is not feasible, the contract will be terminated, and damages paid as stipulated in the provision itself.

Transitional rules for hiring

Particular attention should be paid to the transitional rules for hiring:

- **Temporary contracts or fixed-term contracts existing at the time of entry into force** continue to be governed by the previous laws until their maximum terms have expired.
- It is allowed project-specific and service-related contracts and temporary contracts due to market conditions, an accumulation of work, or excess orders to be concluded **between 31 December 2021 and 30 March 2022** for periods not to exceed 3 months.
- There are also rules regarding the **temporal applicability of the new rules on serial contracts.**

Part-time contracts; new types of fixed-term intermittent contracts

The revisions have had a limited effect on **part-time contracts**. One of the most relevant changes affects to the so-called fix-term cyclical contract, which will be a type of part-time contracts.

In actuality, rather than being eliminated, they have been included in the new **fixed-term intermittent contract.** In this connection the new wording of the Work Statute is much more detailed than the former wording to enable this type of fixed term hiring to meet some of the needs of businesses for flexibility that up to now have been addressed by temporary contracts.

This type of contract may be used in the following **cases**:

- The most traditional case is seasonal work or work involving **seasonal production activities.**
- Furthermore, it may also be used in cases of all other work which, while not seasonal in nature, is **performed intermittently**, independently of whether there are definite, specific, or undefined periods of work.

- Expanding the concept this way not only covers the gap left by the no longer available fixed-term seasonal **contracts but also provides a means of covering a third case, work consisting of providing services in the framework of commercial** or administrative contracts that is foreseeable and part of a company's ordinary activities.

This case is a completely new development in the tradition of contracts intended for periodic work and results in fixed-term intermittent contracts, which, until case law rulings changed things in late 2020, had been covered by temporary specific project-specific and service contracts. Accordingly, this new mode constitutes a sub-type allowing periods of inactivity only at the end of the contract while the worker is placed in another job. These periods, however, will have a maximum term specified in the applicable sector CBA or 3 months, after which time the company must take appropriate permanent or short-term measures.

These new fixed-term intermittent contracts may be established directly or through a Temporary Employment Agency.

The new rules, expand the **guarantees provided for fixed-term intermittent workers**:

- **Hiring must be in writing**. This applies both to the contract and to call-up for work.
- **Guarantees connected with work assignments**. Details will be specified in the CBA or in the enterprise agreement. Each year the company will send the workers representatives a schedule with projected assignments. Furthermore, provision may be made for minimum annual assignments and compensation for early termination of assignments.
- **Sectoral employment exchanges**. To minimise the impact of time out of work, the revision provides for establishing **sectoral employment exchanges** in the CBA for periods of inactivity and the obligation to report ordinary job openings and gives this group of workers priority access to occupational training initiatives.
- **Principle of equal treatment** both for rights connected with work-life balance and the like and for rights attaching to job seniority.

New regulations concerning project-specific and service contract work and subcontracted work

The revision has been taken as an opportunity to redraft the appropriate section of WS as a whole using inclusive language, but the new development in respect of that section concerns the **CBA applicable for contractor and subcontractor companies**. The general rule is that the applicable CBA will be the CBA for the sector corresponding to the “activity performed.”

In any case, there are 2 exceptions:

- The general rule is superseded where **there is another applicable sectoral CBA**.
- It is also superseded by **enterprise agreements**.

Internal flexibility: the new system of planned furloughs

In the end section 41 has not been revised in the interest of consensus, and the new internal flexibility rules focus on revisions affecting the regulations for planned furloughs.

First, **section 47 WS has been redrafted** based on the experience with planned furloughs gained during the pandemic. The result is a much expanded section containing the following principal new developments:

- Planned furloughs in response to production, organisational, technical, and economic circumstances may be **extended beyond the initial period established** using an expedited consultation procedure.
- **Furloughs and cutbacks to working hours as a result of force majeure** have been regulated in more depth, with special features in case of **impairment of or limitations on a company's ordinary business activities** as a result of decisions taken by the competent public authorities, including public health measures. The regulations dealing with planned furloughs in the context of the pandemic have thus been made more structural.
- The revisions include an extensive series of **rules common** to all cases of cutbacks in working hours and furloughs. Again, some of these are related to rules ordinarily followed in planned furloughs due to COVID (possibility of individual layoffs; no overtime, new hires, or outsourcing; the commitment not to make job cuts).

  These common rules also apply to the flexibility and stability mechanism [*mecanismo RED]* and include **a permanent system of Social Security contribution benefits**,

New section 47 bis WS has introduced the new **Job Flexibility and Stability mechanism.**

- This mechanism can be **activated by decision of the Council of Ministers** as a **cyclical measure** for the entire country as a whole in cases where the general macroeconomic situation makes it advisable to implement additional stabilisation measures or as a **sectoral measure** in cases where a given sector exhibits permanent changes that make necessary specific reskilling action and occupational transition processes.

  These are **temporary situations** to have a duration of a maximum of one year, though the sectoral measures will be extendible for two six-month periods.
- Under the plan companies affected by the mechanism may voluntarily apply for **planned furloughs or cutbacks in working hours**. Certain special rules for processing applications have been enacted, and the employment authorities are to issue a decision in every case.
- Finally, a **Job Flexibility and Stability Sustainability Fund** is being set up to address needs related to activation of the mechanism (benefits, Social Security exemptions, training plans).

Changes to collective bargaining

The main changes are the following:

- **Scope of application of enterprise agreements**: It is no longer possible to negotiate remuneration lower than the level stipulated in the sectoral CBA in the enterprise agreements.

  Note should be taken of the **transitional rule.**

  The changes in the new rules for previous CBA will not apply to the agreements that were in effect when the new regulation entered into force until they cease to be valid or, at most, until 1 year from that date. There is an additional period of 6 months to bring CBAs into line with the new rules.

- **Extended enforceability**: the main change is the return to unlimited duration, on condition that there is no agreement otherwise.

  The new rules regarding extended enforceability also apply to **CBAs that had been denounced before entry into force** of the new regulation.

Other changes

The new RDL 32/2021 contains other changes and provisions for future regulatory measures. One that should be noted is the extension of the minimum wage set in 2021 during 2022.

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