

15 TOP CONCERNS FOR EMPLOYERS IN 2023

1 INCREASE OF SOCIAL SECURITY COSTS

a) The Maximum Pensionable Salary is Increased

The maximum social security contribution base (which is the amount of the salary on which the Social Security contribution rates for employers are applied) gets to € **4,495.50 (x 12 months)**, which is equivalent to an increase of 7.92% with respect to that of 2022 (€ 4,139.40/month).

Thus, companies and employees will stop paying social security tax when salaries reach the limit of € **53,946 per year**. Their social security costs get to just such maximum threshold.

b) Approval of a New Social Security Tax

New Law has set a new tax as from 1st of Jan 2023, and over a period of ten years, payable both by employees and employers to increase the Social Security Reserve Fund for retirement pensions. This new tax of **0.6%** is distributed as follows **0.5%** by the employer and **0.1%** by the employee. Thus, employers must adjust their cost estimation when hiring a new employee.

2 RESTRICTION OF PUBLIC FUNDS TO EMPLOYERS WHEN HIRING INDEFINITE EMPLOYEES

Just a few groups of employees allow employers for this kind of public aids. But to access to such aids the company that is legally obliged to have an **Equity Plan** must have the plan in place (companies that are required to have an Equality Plan and do not have it will not be able to benefit). Also hiring of a replacement when an employee is on maternity or paternity leave will no longer be free of social security costs. Some social security cost will have to be paid, whereas before it was **100%** financed by social security.

3 REIMBURSEMENT OF PUBLIC FUNDS IN CASES OF BUSINESS RELOCATION

As of January 2023, employers relocating their business activity outside the European Union or the signatory States of the Agreement on the European Economic Area, **must refund all amounts** not paid in respect of discounts in contributions during the period of four years prior to the relocation. Surcharges and interests for late payment will also be applicable.

4 REMOTE WORK AGREEMENTS

Law 15/2022, of 12th July, comprehensive for equal treatment and non-discrimination, protects employees against dismissals in a situation of **temporary sick leave**. The law provides the nullity of those dismissals, as a new ground of discrimination based on, among other factors, illness, or health condition. If the dismissal is null and void, no severance pay can be paid and terminate the employment relationship. The employee must be reinstated, the company must pay the wages during the legal proceedings and compensation for damages. The matter has not yet reached the Supreme Court but there are already courts resolutions declaring the nullity of the dismissal in situations of sick leave.

5 NEW SYSTEM FOR EMPLOYEES TO REPORT SICKNESS NOTES FROM THE DOCTOR

As of April 1st, 2023, employees will no longer be required to submit sick leave notes to their employers. Thus, from that date on, the communication will be made directly by the Social Security to the employer online in the next **2-3 days** after the employee went off sick. Consequently, failure to submit sick leave notes will no longer constitute a breach for employees unless this is expressly included in the collective agreement as such.

When the note is received, the company is obliged to report to the social security new data about the remuneration items that are regular and those that are only paid occasionally (less than 6 months). If there is any doubt about this, we can help. Failures in this reporting system can lead to social security claims with surcharges of **20%**. The new report system will also be applicable to employees that has been sick before April 2023, if they have not exceeded the period of 365 days of absence.

7 NEW VISA TO WORK IN SPAIN - DIGITAL NOMADS

The approval of Start-ups Law has brought a new visa for non-EU/EEE citizens who want to live in Spain and continue working, both as an employee and as a contractor for companies that are not based in Spain. To be eligible for this visa, employees must carry out a work or professional activity remotely **100%** for companies that are located outside Spain, through the exclusive use of digital tools. Employees must be graduates or postgraduates from universities, or business schools or have, where appropriate, at least a **3-year professional experience**. The visa will have an initial duration of 1 year and after that period, employees may apply for the residence permit as "international remote employee", provided that the conditions that generated the right are maintained. The residence permit will have a maximum duration of 5 years. Start your application with us now.

SPAIN

6 COMPANIES MUST PROVIDE OR PAY FOR GLASSES WHEN THEY ARE NECESSARY FOR WORK WITH COMPUTERS

The Court of Justice of the European Union (CJEU) has ruled that employers are **obliged to provide** (or reimburse the cost of) glasses to employees who need them for work with computer's screens. The Spanish Courts must abide the CJEU ruling. It is expected that individual or collective complaints about this will arise, leading to litigation. A doctor's report is required prescribing the need for glasses to prevent or cure eye disease if screens are used at work. In the absence of regulation by collective agreement, companies can regulate this type of compensation in the employment contract or in internal policies, establishing the conditions of access to financial assistance. We can help you.

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8 GENDER EQUALITY PLAN

Starting 2023, employers with 50 or more employees must have a Gender Equity Plan in place. During 2022 employers have been allowed to start negotiations with trade unions and Works Councils but now without a plan the Labour Inspection announces big fines. Failure to have the Plan in place is a serious breach of the Law and may be punishable with fines of € 7,500.

The Equality Plans must be negotiated with the workers council or in their absence, with the trade unions. The negotiation shall include a diagnosis, an evaluation of roles of equal value and a salary audit.

Additionally, employers who do not have such equity plan will not be able to enter contracts with the Spanish administration.

9 SALARY RECORD BASED ON GENDER

Regardless of their size, all companies are required to have a salary record that reflects the average values of all components of the salary package, broken down by gender. This record must be done annually and is subject to control by the Labour Authority and the workers' representatives. Failure to have it is a serious offence and may be punishable with fines up to € 7,500.

10 DIVERSITY MANAGEMENT PLAN

In compliance with the new Law 15/2022, the Diversity Management Plan shall include actions to prevent, eliminate and correct all forms of **discrimination** in the field of **employment and working conditions** for the reasons set forth therein. This policy would **include** measures in relation to the **following blocks**: generational diversity, functional diversity, LGTBI+ diversity, gender diversity, diversity based on origin and religious diversity.

11 HARASSMENT PREVENTION POLICY

As part of their health and safety duties, employers must have a **harassment prevention policy**. These policies shall reflect a real commitment of companies to manage harassment, establishing a guide for the prevention and eradication of any **conduct** that could constitute **harassment**.

They must contain a definition of the behaviours constituting harassment, as well as a procedure for action in the event of a complaint regarding facts that could constitute it.

12 DIGITAL DISCONNECTION POLICY

Employers shall draw up a Digital Disconnection Policy for employees, including managers, to define the right of employees to disconnection and to assure their rest time after the end of their working hours. For remote work this is compulsory too. Failure to draw up such policy is a serious offence and may be punishable with fines up to € 7,500. Besides, in the event of repeated e-mails and/or calls outside working hours, companies could be punished based on a very serious offence, with fines that could reach € 225,000!

13 WORKING TIME RECORD

Employers are required to track the working hours of their employees. Such record must be daily and must reflect the start and end time of the working day. Any breach regarding such record may trigger a penalty to the company of up to € 7,500. Without the record, employees can easily claim financial compensation for overtime. Bear in mind that the Labour Authority will be able to claim **the double tax charged** to employers if there is overtime and in addition, staff could demand that their contract be declared terminated with the right to receive compensation for unfair dismissal (33 days' salary per year of service).

14 REMOTE WORK AGREEMENTS

Remote work agreements are mandatory when the percentage of remote work is above **30%** of the working time.

These agreements must include, among others, (i) the equipment; (ii) financial compensation for the employee; (iii) daily working hours; (iv) duration of the agreement and (vi) place of work. In addition to the minimum content of the law, the agreements must be drawn up considering the regulations of the Collective Bargaining Agreement applicable in each case.

If this agreement is not made with the mandatory content of the Law, the employer can be punished with a fine up to € 7,500.

15 NEW CRIMINAL OFFENCE IF HIRING FALSE SELF-EMPLOYED EMPLOYEES

A new criminal offence has been created in the Law whereby the legal representative of the employer who imposes a consultant contract when it should be an employment contract, or who persists in failing to comply with the Labour Inspection orders, can be sent to prison **up to six years**.

What was previously punishable by a fine by the Labour Authority is now punishable by imprisonment. New art. 311.2 of the Spanish Penal Code. The employer must use contracts other than the employment contract. This could be a civil or service contract or even illegal scholarships (when used to mask a real employment relationship).

There will also be a claim for all **social security** debts. This is a reform aimed mainly for digital platforms that hire self-employees.

