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Employment Alert

CMS Albiñana & Suárez de Lezo

January 2026

Supreme Court Judgment No. 1244/2025 of 11 December 2025

Issue resolved:

Is the collective assignment of part of the workforce to a different collective agreement through a substantial modification of working conditions (Art. 41 ET) valid, taking into account the principle of unity of the company and the predominant activity?

Description of the case:

A company in the technology sector announced a substantial collective change affecting workers at several centres, consisting of a switch from the provincial metal/metal trade agreements to the 18th State Agreement on Consulting and Information Technology. The measure included maintaining the salary in force as of March 2024, creating a collective agreement change supplement (compensable and absorbable), adapting professional categories and applying working hours and other conditions of the state collective agreement. The decision was taken after a period of consultation with negotiation in good faith. The trade unions challenged the measure on the grounds that the change of collective agreement could not be made under Art. 41 ET.

Observations/recommendations:

In this groundbreaking ruling, the Supreme Court confirms that changing the agreement under Article 41 of the Workers' Statute is valid if there is a proven organisational/productive cause, the consultation procedure is followed and negotiation in good faith is guaranteed. It is not necessary to opt out when the measure involves full integration into another agreement applicable to the activity.

See summary of the ruling here

Supreme Court ruling no. 1157/2025, of 27 November 2025

Issue resolved:

Can the termination of Social Security coverage due to the expiry of the maximum period of temporary incapacity (545 days) provided for in Article 174 of the General Social Security Law be considered dismissal?

Description of the case:

In this case, the employee was on temporary disability leave and had exhausted the maximum legal period of 545 days provided for in Article 174 of the LGSS. In view of this circumstance, the company proceeded to terminate her Social Security coverage and gave her severance pay, without expressly communicating her dismissal or initiating a contract termination procedure. The employee interpreted these actions as a tacit intention to terminate her employment on the part of the company and filed a claim for unfair dismissal, arguing that the administrative termination and the payment of severance pay were evidence of the intention to terminate the employment relationship.

Observations/recommendations:

The Supreme Court concluded that the termination was a legal obligation arising from the expiry of the right to benefits (Art. 174 LGSS), without any unequivocal intention to terminate the contract. In order to establish tacit dismissal, there must be clear evidence of an intention to terminate the contract, which was not the case. The appeal was dismissed and the ruling of the High Court of Justice of Catalonia was upheld.

See summary of the ruling here

Supreme Court ruling no. 1084/2025, of 13 November 2025

Issue resolved:

Should paid leave for hospitalisation, serious illness or death be taken on working days or calendar days?

Description of the case:

The Third Collective Agreement for the Contact Centre sector expressly classified paid leave for hospitalisation, serious illness, surgery for family members and death as "calendar days", a criterion that was also reaffirmed by the joint committee of the agreement; this wording was challenged by USO, CCOO, UGT and CGT on the grounds that, as it was calculated in calendar days, the leave was used up on weekends and public holidays, effectively reducing the time available to be absent from work and deal with the contingency immediately (for example, if the event occurred on a Friday afternoon, the leave would "run" on Saturday and Sunday, days when most staff do not work).

Observations/recommendations:

The Supreme Court interprets Article 37 of the Workers' Statute in accordance with its purpose: to allow absence from work; therefore, leave must be calculated on working days. The conventional provision in calendar days reduces the effective number of days and affects the immediacy of attending to the contingency and is therefore declared null and void (except in specific cases of travel).

See summary of the ruling here

Supreme Court Judgment No. 1080/2025 of 13 November 2025

Issue resolved:

Is the 24-hour notice period in the agreement for communicating changes to working hours and shift patterns reasonable when these changes may be permanent?

Description of the case:

The applicable collective agreement established that the company could modify the working hours and shift patterns of its employees with a minimum of 24 hours' notice, citing "service requirements" or other similar reasons, at the discretion of management.

The controversy arose because such changes could be permanent, significantly affecting the personal and family organisation of workers. The question before the Supreme Court was whether this notice period was reasonable and in accordance with the law, particularly in relation to labour and European regulations on predictability and work-life balance.

Observations/recommendations:

The Supreme Court clarifies that this is not an irregular distribution of working hours as regulated in Article 34.2 of the Workers' Statute but considers that such a short notice period does not meet the requirement of reasonableness, especially when the changes may be stable and not merely temporary. It points out that this lack of predictability affects the work-life balance and contravenes the principle of transparent working conditions set out in Directive (EU) 2019/1152. It therefore confirms the invalidity of the collective agreement provision.

See summary of the ruling here

1. Royal Decree-Law 16/2025 of 23 December extending certain measures to address situations of social vulnerability and adopting urgent measures in the field of taxation and social security

Regulated matter:

This Royal Decree-Law extends measures to protect against situations of social vulnerability and establishes urgent provisions on taxation and social security, applicable until the approval of the 2026 General State Budget Law.

New features of interest:

i. Social Security contributions (Chapter III, Article 9)

- Maximum and minimum contribution bases
    - Maximum monthly base: €5,101.20, until the 2026 budget is approved.
    - Minimum bases: these are updated with the percentage increase in the Minimum Interprofessional Salary (SMI) increased by 1/6, while the extended SMI remains in force.
- Intergenerational Equity Mechanism (MEDI)
    - General rate: 0.90%, distributed as 0.75% paid by the company and 0.15% paid by the worker.
- Additional solidarity contribution on remuneration exceeding the maximum limit (€5,101.20), in three brackets of 1.15%, 1.25% and 1.46%.

ii. Special Scheme for Self-Employed Workers (RETA)

- The 2025 tables are maintained for 2026 by reference to the provisions of Royal Decree-Law 13/2022.
- The maximum bases for brackets 11 and 12 are updated to the new maximum limit (€5,101.20).
- In the case of multiple activities (employed + self-employed), 50% of the excess contribution for common contingencies exceeding €17,323.68 may be reimbursed, up to a maximum of 50% of the contributions paid.

iii. Extension of the Minimum Interprofessional Salary (SMI)

- The current SMI will remain in force until a new update is approved for 2026.

For further information, please refer to the following link.

2. Law 9/2025, of 3 December, on Sustainable Mobility

Regulated matter:

Law 9/2025 establishes new obligations for companies in the area of sustainable mobility, aimed at encouraging more environmentally friendly commuting.

New features of interest:

i. Sustainable Mobility Plan for Work (PMST)

- Obligated parties: Companies and public entities with workplaces that have more than 200 employees, or more than 100 per shift.
- Deadline: 24 months from the date of entry into force (5 December 2025), i.e. until 5 December 2027.
- Minimum content:
    - Incentives for the use of public transport, active transport (cycling, walking) or low-emission transport.
    - Incentives for recharging electric vehicles (recharging points).
    - Promotion of shared mobility or carpooling.
    - Possibility of teleworking to reduce travel.
    - Road safety and accident prevention measures.
    - Consideration of visitors, suppliers and external staff.

ii. Negotiation and monitoring

- The PMST must be negotiated with the legal representatives of the workers or, failing that, with representative trade unions through a negotiating committee.
- A biannual report on implementation and results will be required, which must be renewed every two years during the plan's validity period.

iii. High-occupancy centres

- In centres with more than 1,000 workers located in municipalities with more than 500,000 inhabitants:
    - Enhanced measures must be included to reduce travel during rush hour or during the working day.
    - Active, shared and low/zero-emission mobility should be particularly promoted, including recharging infrastructure.

iv. Transport card

- The Law expressly recognises the transport card as a valid instrument for promoting sustainable travel.

v. Negotiation in collective agreements

- The third additional provision amends Article 85.1 of the Workers' Statute to:
    - Establish mandatory negotiation of sustainable mobility measures in collective agreements if their commission is constituted from 5 December 2025.
    - Allow agreements to regulate aspects such as public transport, active mobility, low emissions, teleworking, working hours, parking, collaboration with local authorities, among others.

For further information, please refer to the following link.

3. Royal Decree-Law 9/2025, of 29 July, extending birth and care leave by amending the revised text of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015, of 23 October, the revised text of the Basic Statute of Public Employees Act, approved by Royal Legislative Decree 5/2015, of 30 October, and the revised text of the General Social Security Act, approved by Royal Legislative Decree 8/2015, of 30 October, to complete the transposition of Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on the reconciliation of family and professional life for parents and carers, and repealing Council Directive 2010/18/EU.

Regulated matter:

Royal Decree-Law 9/2025 introduces an extension of the leave for the birth and care of a child provided for in Article 48.4 of the Workers' Statute, extending its duration and making it more flexible during the first years of the child's life.

New features of interest:

i. Extension of leave

- Additional duration:
  - Two additional weeks are added to the leave.
  - In the case of single-parent families, the extension is four weeks.
- Effective date: 1 January 2026.
- Purpose: To protect joint responsibility and ensure greater care for children during their early years.

ii. Flexibility in taking leave

- The additional weeks may be taken at any time until the child reaches the age of eight.
- This leave may be taken in instalments, making it easier to adapt to family or work needs.
- The leave remains non-transferable between parents.

iii. Coordination with the company

- The employee must communicate and plan the enjoyment of these additional weeks with the company, ensuring compatibility with the organisational needs of the workplace.

For further information, please refer to the following link.

4. Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 strengthening the application of the principle of equal pay between men and women for the same work or work of equal value through pay transparency measures and enforcement mechanisms.

Issue regulated:

Directive 2023/970 establishes new obligations for Member States and companies, introducing measures on pay transparency, the right to information, and the assessment and correction of unjustified pay gaps.

New features of interest:

i. Pre-recruitment pay transparency measures

- Salary information in job offers and selection processes
    - The employer must indicate the starting salary or salary range in the job offer.
    - It is prohibited to ask candidates about their salary history.
- Accessible salary criteria
    - The criteria used to determine remuneration, its progression and classification must be objective, neutral and easily accessible.

ii. Workers' right to information

- Information on their individual remuneration level.
- Information on average remuneration levels, broken down by gender, for categories of workers performing the same job or work of equal value.
- The employer shall be obliged to provide the information within a reasonable time and without reprisals against the person requesting it.

iii. Pay reporting obligations for companies

- Companies with 100 or more employees must prepare and publish periodic pay reports containing, as a minimum:
    - Average and median pay gap.
    - Gap in salary supplements and variable remuneration.
    - Proportion of employees receiving supplements or benefits.
    - Gap in salary increases and promotions.
    - Distribution by gender in different professional categories.
- Frequency:
    - Companies with 250+ employees: annual report.
    - Companies with 100–249 employees: report every three years.

iv. Joint remuneration assessment

- If a report detects a pay gap of at least 5% that cannot be justified by objective and neutral criteria, the company must carry out a joint remuneration assessment together with employee representatives.
- The assessment must identify causes, corrective measures and implementation deadlines.

v. Transposition

- Member States must transpose the Directive by 7 June 2026.

For further information, please refer to the following link.

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