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LABOUR NEWS

Legal news for the 3rd quarter of 2020*

- *The Supreme Court ratifies a tax-exempt minimum for personal income tax for severance payments made to senior management*
- *Main aspects of remote working regulated by Royal Decree-Law 28/2020, of 22 September*
- *Extending social measures to protect employment in the face of developments in the health crisis arising from covid-19*

Most recent and significant Supreme Court rulings*

- ***SC (Labour Chamber, 1st Section) Judgment no. 793/2020 of 23 September***

Sex discrimination of workers who do not receive variable remuneration during paternity leave

The Supreme Court considers that a failure by companies to pay variable remuneration to workers enjoying paternity leave is sex discrimination. Payment of the above is affected by absences arising from paternity leave, implying a clear disincentive to enjoy paternity leave in whole or in part. The Chamber takes the view that there is a lack of equality between men and women due to the fact that there is no balanced sharing of family childcare responsibilities, because it prevents those entitled to paternity leave from enjoying the latter without incurring any losses or negative impacts on pay.

- ***SC (Labour Chamber, Plenary) Judgment no. 805/2020 of 25 September***

Employment relationship of delivery riders. ***For greater detail, ref. Legal News AJ-October.***

The purpose of the discussion focused on determining whether there was an employment relationship between a delivery rider and Glovo.

Glovo carries out the tasks of coordinating and organising the service, indicating to the worker how it should be provided, controlling compliance with the indications through the app - since the delivery persons lacked their own autonomous business organisation -. Any commercial decisions were taken by Glovo, they were the only party that had the information necessary for managing the business system and even though the motorcycle and mobile were owned by the delivery person, they were not considered essential means of production.

Based on the above and other evidence, the SC concluded that the relationship between the delivery persons and Glovo was in the nature of an employment relationship.

- ***SC (Labour Chamber, 1st Section) Judgment no. 766/2020 of 15 September***

Using GPS data to justify a dismissal

The worker used the company car while on medical leave knowing that she could not drive it outside of her working time and that it was traceable through the GPS receiver. The company used this data to justify her disciplinary dismissal.

The SC concluded that GPS data from company vehicles could be used to justify a dismissal if the worker had been informed that the device had been installed, if the use of the car was restricted to work activity, and if the information collected only covered the vehicle's movement and location. Should these circumstances be applicable, there would be no breach of fundamental rights.

- ***SC (Labour Chamber, 1st Section) Judgment no. 793/2020 of 30 July***

The dismissal of workers on permanent seasonal contracts should be calculated on the basis of the days worked

The Supreme Court has established that unfairly dismissed workers on permanent seasonal contracts must receive compensation on the basis of the days they have worked and not on the basis of the calendar years they have been with the company, i.e., periods of inactivity are not counted for redundancy payments because workers did not actually provide services.

- ***SC (Labour Chamber) Judgment no. 706/2020 of 23 July***

Emails are documentary evidence

The dispute being litigated was based on determining whether documents presented to the hearing through new electronic media are considered documentary evidence.

The Chamber stated that emails could constitute documentary evidence; however, it emphasised that not every email could prove that the current case involved a factual error. Therefore, any emails in each specific case would have to be assessed (whether or not their authenticity had been challenged and whether or not they had been authenticated).

- ***SC (Labour Chamber, 1st Section) Judgment no. 719/2020 of 23 July***

Unemployment benefits are not extinguished due to a failure to provide information about marginal and/or occasional income

The recipient of contribution-based unemployment benefits did not inform the State Public Employment Service ("SEPE") about income earned when carrying out employment activity on his own behalf. SEPE issued a communication ruling on a proposal to terminate benefits and the undue receipt thereof. Article 25 of the Labour Infringements and Penalties Law describes a failure to communicate without just cause situations which would lead to the suspension or termination of the right, as a serious breach.

The Chamber concluded that the penalty of terminating unemployment benefit cannot be imposed where the beneficiary has omitted to inform SEPE that they had obtained negligible and residual economic income, deriving from a completely marginal activity of no economic significance.

- ***SC (Labour Chamber, 1st Section) Judgment no. 697/2020 of 22 July***

Pre-contract breached and action for damages

The issue in dispute focused on determining the applicable limitation period for seeking compensation for a pre-contractual breach. Since the agreement signed by the parties is an employment agreement in nature, any question raised about it must be subject to the jurisdiction of the Labour Courts, and the limitation period in art. 59 of the Workers Statute therefore applies.

- ***SC (Labour Chamber, 1st Section) Judgment no. 662/2020 of 16 July***

In a case involving an illegal transfer, the wages concerned are those that should have been received and not those unduly paid

An unlawful transfer of workers having been declared, the question arose as to whether the salary to be taken into account for calculating compensation for unfair dismissal, and where appropriate, the wages for the proceedings, should be determined on the basis of the corresponding salary paid by the transferor undertaking or that paid by the transferee undertaking, where the latter was the option chosen by the worker in their own application.

The Chamber concluded that the salary to be paid to the worker who chose to join the transferee undertaking is that which had been collectively agreed for another worker in an equal professional category and with equal seniority, not the salary which they may have received from the transferor undertaking.

- ***SC (Labour Chamber, 1st Section) Judgment no. 633/2020 of 9 July***

It was not appropriate to equate a degree of disability with a degree of incapacity

It was sought to determine whether recognition of a certain degree of disability requiring another person's assistance determines whether severe incapacity should be recognised.

The Chamber considered that certain degrees of disability cannot be equated with degrees of permanent incapacity; each case would have to be assessed individually.

- ***SC (Labour Chamber, 1st Section) Judgment no. 626/2020 of 9 July***

Defects in the company's subpoena for the hearing

Actions are declared invalid when the acknowledgement of receipt of a notice does not record the relationship that the party may have with the person signing it. This is so because the act of communication seeks to ensure that parties can defend themselves, in such a way that the existence of defects in the notice would cause the interested party to find themselves in a situation of defencelessness.

- ***SC (Labour Chamber, 1st Section) Judgment no. 582/2020 of 2 July***

Nullity of disciplinary dismissal in the case of a worker undergoing fertility treatment

The issue was whether a disciplinary dismissal, following a miscarriage and whilst the worker was undergoing fertility treatment, is null and void due to a breach of fundamental rights. The ban on dismissing pregnant workers does not apply, since the situation of the woman undergoing in vitro fertilisation is not the same as that of a pregnant worker.

The Supreme Court bases the nullity of the dismissal on the fact that the worker was female, considering the dismissal null and void on the grounds that it was due to discriminatory reasons on grounds of sex, without the employer having been aware of the pregnancy.

- ***SC (Labour Chamber, 1st Section) Judgment no. 566/2020 of 1 July***

A contractually agreed cause of termination is valid if there is no abuse of rights

The question to be resolved lies in determining whether the termination of the employment relationship based on art. 49(1)(b) of the Statute of Workers Rights for a failure to comply with the performance clause agreed in the employment contract is valid in law.

If the employer were to dismiss the worker for disciplinary reasons, it would have to prove not only the basic fact of that agreed decrease, but that it had occurred on an ongoing and voluntary basis, which would require the undertaking to deploy evidence that would convince the court of the reality of said conduct. Therefore, if the undertaking decides to exercise that power to dismiss without committing an obvious abuse of rights, it must carry it out in accordance with the principles of good faith, so that it provides sufficient evidence when implementing the latter to arrive at the conviction that there was actually a contractual breach on the part of the worker.

The Supreme Court concluded that the undertaking was engaged in an abusive exercise of the power of termination, since it did not provide any reference to the objective or subjective facts that may have been used to justify it.

- ***SC (Labour Chamber, 1st Section) Judgment no. 540/2020 of 29 June***

Successive and valid temporary contracting

The acting party had been providing services through successive contracts covered by a fixed term of work or service, in which the end date had been set. Said party made a claim requesting that they be deemed to have been indefinitely employed before their most recent contract came to an end.

The Chamber considered that the applicant's contract had an end date and upheld the business decision to extinguish the contract on that date, without imposing its decision on the strength of the claim, nor varying what had become the business's usual conduct of terminating temporary contracts on the grounds of initially set dates.

- ***SC (Labour Chamber, 1st Section) Judgment no. 538/2020 of 26 June***

VAT returns and annual accounts are valid as evidence to prove the company's negative economic situation, since they are official documents

Quarterly VAT returns settled with the Tax Agency constitute official documentation and, likewise, the company's annual accounts deposited in the Commercial Register, allowing ordinary income or the income obtained each quarter to which they refer to be verified. They are therefore valid to justify the company's negative economic situation.

- ***SC (Labour Chamber, 1st Section) Judgment no. 528/2020 of 25 June***

Substantial variation between filings for settlement and the claim since the alleged facts were not new

The question at issue focuses on determining whether there was an inconsistency between the papers filed for settlement and the claim, where the worker in the papers challenging the dismissal does not state that she was pregnant on the date of the dismissal but alleges that fact in her claim.

The SC considers that, since the facts alleged in the pleadings of the claim are different to those adduced in the papers for settlement, there was no requirement to take the aforesaid facts into account.

- ***SC (Labour Chamber, 1st Section) Judgment no. 480/2020 of 18 June***

Termination at the worker's request is valid due to non-payment by the Company of the full wage on the payroll

A dispute as to the reason for terminating the employment contract when the company paid a portion of the wages without fully declaring them to the competent bodies of the Social Security and the Public Treasury, additionally failing to document the worker's complete salary, nor complying with the obligation to pay contributions and obtaining signed but unpaid severance payment documents. The SC understood that the employer had failed to fulfil its obligations, declaring the employment relationship terminated and ordering the employer to pay compensation.

- ***SC (Labour Chamber, 1st Section) Judgment no. 383/2020 of 21 May***

Admissibility of an appeal for reversal in a case not involving a substantial change to the employment contract

This case addressed whether an appeal for reversal could be admitted against a court judgement, delivered in proceedings challenging a change of workplace.

A substantial change in the terms of the employment contract was not at issue, since it was not a transfer or a temporary move involving changes to the worker's place of residence. Therefore, since the dispute did not concern matters of geographical mobility (transfer and displacement), it was possible to present an appeal for reversal.

- ***SC (Labour Chamber, 1st Section) Judgment no. 330/2020 of 14 May***

Termination of the contract at the worker's behest

The female worker had been the subject of a disciplinary dismissal which was not challenged, thus agreeing that the contractual relationship had conclusively broken down on a date when she had not yet obtained a final favourable judgment on her claim for termination. The employment relationship was definitively extinguished on the date of dismissal, and it was not possible to declare the termination of a contract that was no longer in force. The fact that the precautionary measure – exempting the worker from providing services – was still in place was irrelevant, since the suspension of the actual provision of services which had been decreed in the latter was no obstacle to arguing that the relationship was alive until the date of dismissal.

- ***SC (Labour Chamber, 1st Section) Judgment no. 194/2020 of 3 March***

(Valid) conversion of the contract to indefinite

A temporary contract for a given work or service shall become indefinite when the company converts the temporary activity subject of the contract into a permanent activity, because the reason for said temporary contract has ceased to exist.

- ***SC (Labour Chamber, 1st Section) Judgment no. 185/2020 of 27 February***

Obligation to communicate a substantial change to the employment contract in a personalised document, "posting" it on the intranet being invalid

If a substantial change to collective working conditions is not notified in writing to workers or their representatives, but is published on the company intranet, the 20-day period for exercising the action to challenge said substantial change cannot be applied, since the start date for the calculation is based on written notification.

- ***SC (Labour Chamber, 1st Section) Judgment no. 179/2020 of 27 February***

Compensation at the date of termination of the employment relationship, that of the judgment itself being valid

The purpose of the debate was to determine the time up to which to count the provision of services in order to calculate compensation for unfair dismissal.

The Chamber concluded that compensation must be calculated up to the date of dismissal; however, where the termination of the employment relationship is agreed in the judgment itself declaring the dismissal unfair, the date in the judgment shall be taken into account for calculating the compensation.

**Note: The full content of AJs and SC judgements can be accessed by clicking on the italicized text.*

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