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Labour Law Department

### **NEW FEATURES OF THE LAW ON EMPLOYMENT: FALSE SELF-EMPLOYED PERSONS**

[Law 3/2023, of 28 February](#), known as the Law on Employment, has repealed section d) of article 148 of the Law Regulating Company Jurisdiction. For Companies this means significant amendments to the definition of “false self-employed persons”.

- **Regarding the previous situation**

Before this regulatory text came into force, the Inspectorate of Work and Social Security (*Inspección de Trabajo y Seguridad Social*, or “ITSS”), after compiling a record in which it collected an alleged employment relationship of false self-employed persons, was compelled to take the employer *ex officio* to the Employment Courts claiming that they had the status of employed workers. Faced with this kind of claim, the Judge issued, where appropriate, the corresponding decision, which meant that until the judgment became final, the proceedings were “frozen” (thereby somewhat diminishing the executive nature of administrative proceedings). This meant that **the employer was not obliged to recognise the relationship as an employment relationship or pay contributions for those workers**, until a judge ruled otherwise. This also allowed the employer to continue contracting self-employed persons (even if ITSS had declared that they were employees) until there was a final judgment.

- **Regarding the current situation (in force since March 2023)**

The situation has changed substantially because all claims presented by the ITSS have executive force, insofar as false self-employed persons are concerned. **Now it is the employer who initiates judicial proceedings if they do not agree with the administrative proceedings, but without this bringing the Inspectorate’s enforcement proceedings to a halt.** Therefore, at the point in time at which the Inspectorate’s proceedings become final, it will automatically become enforceable, which means the employment status will be recognised as that of an employee and the employer will be obliged to face the consequences of said declaration from that point onwards (these effects being paying social security contributions for every false self-employed person, and contracting them as employees from then onwards).

In short, it can be concluded that **the previous system was much more advantageous for the entrepreneur** since the administrative file was suspended until a final judicial resolution. This meant that, in practice, it was frequently the case that enforcing the ITSS’s proceedings, whereby the contingency had been raised, and the settlement of contribution payments for false self-employed persons, was postponed. This issue has now changed very significantly, once the ITSS proceedings are received, settlement and the change in employment status of the false self-employed persons is determined directly by the ITSS. If the company opposes it, it will be able to challenge the claim but without bringing the enforcement process to a halt, that is, the workers will become employees and cease to be false self-employed persons without waiting for a sentence. Therefore, in the current situation, once the **ITSS initiates proceedings regarding false self-employed persons, the company will be forced to regularise them immediately**, without prejudice to its challenge before the contentious-administrative jurisdiction.