

III Agreement for Employment and Collective Bargaining, new regulations governing Temporary Employment Agencies and new developments in the control of temporary incapacity processes

This commentary contains, by way of summary, the most relevant aspects of the labor legislation published on June 20, 2015 in the Official State Gazette. To be specific:

- The Resolution of June 15, 2015, of the Directorate General of Employment, registering and publishing the III Agreement for Employment and Collective Bargaining 2015, 2016 and 2017.
- Royal Decree 417/2015, of May 29, approving the Regulations governing Temporary Employment Agencies (ETTs).
- Order ESS/1187/2015, of June 15, implementing Royal Decree 625/2014, of July 18, regulating certain aspects of the management and control of temporary incapacity processes in the first three hundred and sixty-five days of their duration.
- Royal Decree 416/2015, of May 29, on the filing of bylaws of labor unions and employers' organizations

1. III Agreement for Employment and Collective Bargaining 2015, 2016 and 2017

The Agreement, signed by the employers' organizations CEOE and Cepyme and the labor unions CCOO and UGT on June 8 and in force for the years 2015, 2016 and 2017, has as its objective to constitute a driving force of the Spanish economy in order to address the current problems and to contribute to improving competitiveness and employment and creating confidence among the general public, by addressing a combination of interrelated issues which act as recommendations which must be transferred to collective bargaining at all levels.

As fundamental aspects, the Agreement establishes criteria in relation to:

- (a) Stimulating quality employment and rights: (i) stability in employment and forms of contracts; (ii) hiring of young people; (iii) training and qualifications; (iv) restructuring processes; (v) rights to information and consultation; (vi) equality of treatment and opportunity and (vii) health and safety at work.
- (b) Criteria in relation to salaries: (i) salary structure (increases and structure) and (ii) additional social provision.

To be specific the guidelines agreed for determining salary increases are as follows: For the year 2015 up to 1%, and for the year 2016 up to 1.5%. Collective agreements negotiated under those guidelines must take into account the fact that the sum of the

salaries of 2015 and 2016 will be greater than the sum of the inflation of both years, in proportion to the salaries initially agreed.

In relation to the year 2017, the signatories of the Agreement will adopt as a reference the evolution of the Consumer Price Index in 2016 and the Government's macroeconomic framework for 2017, and will specify it in the three months from the publication of the latter.

- (c) Flexibility instruments: Employment conditions: (i) occupational classification and functional mobility; (ii) regulation of working time; (iii) non-application of employment conditions of collective agreements; (iv) teleworking; (v) absenteeism and (vi) temporary incapacity.
- (d) Collective bargaining: (i) automatic application of collective agreements following notice of termination and negotiation processes and (ii) joint committees and independent dispute resolution systems.

The full content of the Resolution can be accessed at the following link:

<http://boe.es/boe/dias/2015/06/20/pdfs/BOE-A-2015-6865.pdf>

2. Royal Decree 417/2015, of May 29, approving the Regulations governing Temporary Employment Agencies

The Royal Decree approves new regulations which come into force from June 21, 2015 and whose purpose is to regulate the activity of Temporary Employment Agencies (ETTs).

The legislation introduces new features, inter alia, in the regulation and the processes of award of administrative authorizations, the provision of the necessary financial security in order to operate as an ETT, the ETT Registry or the obligations to inform the labor authority.

The Royal Decree also describes the content and the characteristics, both of the labor supply contract, and of the contract entered into between the ETT and the worker:

- The following are added, as minimum information required for the labor supply contract: (i) the minimum provisions regarding health and safety at work in relation to ETTs; (ii) the common services and collective facilities of the user company; (iii) the total remuneration and (iv) the collective agreement at the user company.

In addition, in training and apprenticeship contracts, a tutor will be designated at the user company.

- As a new development, in the contract between the ETT and the worker in order to be made available to user companies, the definition of the collective agreement applicable to the ETT and to the user company must be included.

In addition, in the case of work experience contracts the worker's qualification shall be stated and in the case of training and apprenticeship contracts, the annex relating to the agreement for the training activity.

The obligations to inform the user company in relation to the workers seconded are also regulated. These consist of: (i) a copy of the employment contract or of the relevant service order; (ii) documentation proving the fulfillment of the salary obligations incurred vis-à-vis such workers and in relation to Social Security (the reference to Social Security is new) and (iii) in the case of a training and apprenticeship contract, the annex relating to the agreement for the training activity.

Finally, until the rate of unemployment is below 15%, labor supply contracts may also be entered into in the same cases and under the same conditions and requirements provided for the young person's first employment contract.

The full content of the Royal Decree can be accessed at the following link:

<http://www.boe.es/boe/dias/2015/06/20/pdfs/BOE-A-2015-6838.pdf>

3. Order regulating certain aspects of the management and control of temporary incapacity processes in the first three hundred and sixty-five days of their duration

3.1 General aspects

In this section we summarize the main aspects and new developments in Order ESS/1187/2015, of June 15, establishing a series of modifications in the management and control of temporary incapacity processes.

Basically, the Order implements the provisions of Royal Decree 625/2014, of July 18, implementing aspects of the management and control of temporary incapacity processes and approving the standard forms of new medical sick leave certificates, certificates of confirmation of sick leave and certificates of fitness for work in temporary incapacity processes (which are attached as an annex to the Order). This legislation comes into force on December 1, 2015.

3.2 Regulation of sick leave certificates

The doctor who issues the sick leave certificate and certificate of confirmation is responsible for determining the envisaged duration at the time it is issued. He may alter that estimated duration as a result of the modification or review of the diagnosis or of the evolution of the worker's state of health. For such purpose he shall issue a confirmation certificate which will contain the new estimated duration and, where relevant, the inclusion of the process in a different type.

For these purposes, the doctor shall have certain tables of optimum duration of the different pathological processes capable of giving rise to incapacity, as well as tables regarding the degree of impact of such processes upon the various employment activities, which are supplied and reviewed by the National Social Security Institute.

The legislation distinguishes four types of temporary incapacity processes, according to their estimated duration, which must be taken into account for the purposes of the maximum periods of confirmation of sick leave, as included below:

Type of temporary incapacity process according to duration	Estimated duration	Maximum period for the first confirmation certificate	Maximum period for the second and subsequent confirmation certificates
Very short	Less than 5	Not applicable	Not applicable
Short	5 to 30	7 days	Every 14 days
Average	31 to 60	7 days	Every 28 days
Lengthy	61 or more days	14 days	Every 35 days

The following are other essential aspects of the regulation of sick leave and confirmation certificates:

- In processes of a very short estimated duration at the same time as the issue of the sick leave certificate the certificate of fitness must be issued, using a single certificate, placing on record the data relating to the sick leave, the certificate of fitness and the date of same, which may coincide with the date of the sick leave, or within the following three calendar days. However, an examination may be requested by the worker from which it is concluded that he has not recovered his capacity, the certificate of fitness being annulled in such case.
- In processes of a short, average or lengthy estimated duration: the sick leave certificate shall state the date of the next envisaged medical examination which shall not, in any event, exceed seven calendar days from the date of the sick leave certificate, in the case of processes of a short or average estimated duration, or fourteen calendar days in the case of processes of a lengthy estimated duration.
- The doctor who treats the worker must issue the certificate of fitness due to recovery or improvement, when he considers that the worker has recovered his capacity to work, regardless of what was the estimated duration of the process. Likewise, if the worker fails to attend a medical examination envisaged in the sick leave and confirmation certificates, the certificate of fitness may be issued due to failure to appear.
- In addition, when the diagnosis has been modified or revised, or a variation has occurred in the estimated duration depending on the evolution of the workers' state of health, a confirmation certificate must be issued, in which the revised diagnosis, the new estimated duration and the date of the next examination must be stated, so that the subsequent confirmation certificates will be issued depending on the new estimated duration.

3.3 Issue of certificates of fitness

The legislation establishes the rules applicable to the issue of certificates of fitness. Among them we particularly emphasize the following issues:

- In cases in which mutual insurance companies file with the National Social Security Institute requests for certificates of fitness, in accordance with the provisions of Royal Decree 625/2014, they shall do so by telematic means. The managing entity shall decide within a period of four days. If the managing entity considers that the certificate of fitness requested by the mutual insurance company is not warranted, it shall so inform the latter by telematic means, immediately, and in any event, on the first business day following

that on which such decision has been adopted. If the managing entity considers that the certificate of fitness requested by the mutual insurance company is warranted, it shall issue the relevant certificate of fitness.

- When in a temporary incapacity process the certificate of fitness has been issued by the National Social Security Institute through the medical inspectors, the Institute shall be the only party competent to issue through such inspectors a new sick leave certificate for the same or a similar pathological condition, in the 180 calendar days from the date on which the sick leave certificate was issued.

3.4 Common rules in the processing of sick leave/fitness and confirmation certificates

We summarize below the main aspects of the new regulation relating to the processing of sick leave/fitness and confirmation certificates:

- The doctor who has issued the medical certificate must furnish to the worker two copies thereof, one for the person concerned and another intended for the employer, the former being obliged to present to the employer the copy of the sick leave and confirmation certificates intended for it, within a period of three days from the date of issue thereof and within 24 hours from the issue thereof, in the case of a certificate of fitness. In addition, in processes of a very short estimated duration, the worker must present to the employer the copy of the sick leave/fitness certificate within 24 hours from the date of the certificate of fitness.

If the employment relationship ends during the temporary incapacity situation, from then onwards the worker must present a copy of the confirmation and fitness certificates intended for the employer, to the managing entity or mutual insurance company which covers the temporary incapacity pecuniary benefit, within the same periods.

- Once the relevant medical certificate has been received, the employer must record on the copy of the sick leave certificate delivered by the worker the data relating to his Social Security contributions, for the purpose of determining the regulatory base of the benefit, as well as the National Classification of Economic Activities code and the general data which may be established for the purpose of identifying the process and the employer, defined by means of the system of Electronic Dispatch of Data (RED).

The relevant medical certificate (sick leave, fitness or confirmation), completed with the data indicated, must be notified by the employer to the National Social Security Institute through the RED system immediately and, in any event, within a maximum period of three business days from the receipt thereof.

Presentation by telematic means of the copies of the medical certificates means that they should not be presented on paper. In any event, the forms of the copies of the medical certificates on paper must be kept by employers for a period of four years from the date of presentation thereof by telematic means.

- In temporary incapacity processes in which the subsidy should be directly paid by the managing or collaborating entity, the persons concerned shall be responsible for presenting to it the sick leave/fitness or confirmation certificates, using for this purpose the copy intended for the employer.

3.5 Other relevant issues

- The legislation regulates the mechanisms whereby temporary incapacity will be monitored by the medical inspection departments of the public health service.
- The new forms of medical certificates shall be used in temporary incapacity processes which are in progress on the date of entry into force of this Order and which have not exceeded 365 days, although they will be issued at the intervals and in relation to the compulsory data required by the previous legislation.

This legislation shall apply to periods of relapse in temporary incapacity processes commenced prior to the date of entry into force of the Order, when the new sick leave certificate is issued after that date.

The full content of the Order, including the Annexes with the new Forms of medical certificates, can be accessed at the following link:

<http://www.boe.es/boe/dias/2015/06/20/pdfs/BOE-A-2015-6839.pdf>

4. Royal Decree 416/2015, of May 29, on the filing of bylaws of labor unions and employers' organizations

The legislation repeals Royal Decree 873/1977, of April 22, on the filing of bylaws of organizations, and proceeds to regulate the filing of the bylaws of labor unions and employers' organizations, establishing the documentation which must be presented together with the application and the administrative filing procedure, as well as the competent authority, which will depend on the geographical area of operation of the organization. With this new regulation it is sought to adapt the processes to the reality of electronic administration.

In addition, the legislation includes a new provision in the Regulations on elections to workers' representative bodies, approved by Royal Decree 1844/1994, of September 9, establishing the mechanism for calculation of electoral results if a labor union organization is affiliated to or disassociated from another of greater scope.

The full content of the Royal Decree can be accessed at the following link:

<http://www.boe.es/boe/dias/2015/06/20/pdfs/BOE-A-2015-6837.pdf>