Labor and Employment Newsletter

Spain

GARRIGUES

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Index

1. European Regulation on Artificial Intelligence and Industrial Relations

Regulation (EU) 2024/1689 of the European Parliament and of the Council regulates the implications of the use of artificial intelligence also in the context of labor relations, both individually and collectively

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Although it may seem at first sight that Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 (which entered into force on August 2 of that year and becomes applicable, generally, on August 2, 2026 except for some matters that are already applicable) hardly pays any attention to the use of artificial intelligence (AI) in the field of labor relations, and they are addressed as a secondary matter, that is not at all the case.

Firstly, it should be borne in mind that practically all AI systems that can be used in the workplace are classified as high-risk AI systems. Point 4 of Annex III to the Regulation includes among the high-risk AI systems referred to in article 6(2) those related to the core aspects of industrial relations: AI systems used for the selection and recruitment of individuals, including the assessment of candidates, and those used to make decisions affecting working conditions, the establishment or termination of contractual relationships, the assignment of tasks, the evaluation and supervision of the performance and behavior of employees. This means that for practically all aspects of labor relations (selection and hiring, working conditions, assignment of tasks, supervision and control of work activity, promotion of employees and dismissal) the use of AI systems means that they are classified as high risk and therefore require application of the detailed and stringent rules provided for them. In data governance, possible biases need to be taken into account that may affect the health and safety of individuals and their fundamental rights, or that may lead to some type of discrimination (article 10.2.f), which is especially significant in the workplace. In addition, high-risk AI systems must be designed and developed in such a way that they can be effectively monitored by natural persons (article 14.1). And this human supervision will aim to prevent or minimize risks to health, safety or fundamental rights, which, again, is particularly relevant in the workplace.

Another point to consider is that the express prohibition of AI practices could have a particular impact in the field of labor relations. This means that practices aimed at inferring the emotions of a natural person (do legal persons or machines have emotions?) at workplaces are prohibited, unless the AI system is used for medical or safety reasons (article 5.1.f). Similarly, the use of biometric characterization systems that classify individual natural persons on the basis of biometric data to deduce, among other things, their union membership is prohibited (article 5.1.g). This protection of trade union membership data (placed alongside race, political opinions, religious or philosophical convictions, life and sexual orientation) is undoubtedly important because of the relevance given to it, although I really fail to understand how a person's trade union membership can be deduced from biometric data (barring Lombrosian exaggerations). In any case, these rules highlight concern about the use of AI systems in the workplace and the intention to protect certain aspects of employees' private sphere.

The regulation also covers the information rights of employees, and their representatives, where AI systems are used in the workplace. Article 26.7 provides that before putting into service or using a high-risk AI system in the workplace, employers must inform the employees' representatives and the employees concerned that they will be exposed to the use of the high-risk AI system. In the absence of representation, the information must be provided in any case to the employees concerned. On the other hand, the information only covers the fact that they will be exposed to an AI system and should not be extended to its characteristics or details. This makes it possible, on the one hand, to safeguard trade secrets and, on the other, to warn the employees' representatives, and the employees

individually, of the use of the AI system so that they can carry out their surveillance and control tasks, taking care to respect fundamental rights and reacting to discriminatory bias. The obligation of those responsible for the deployment of high-risk AI systems to provide "a summary of the findings of the fundamental rights impact assessment" (Annex VIII, Section C, point 4) should be taken into account. Also, and very importantly, that article 86.1 of the regulation enshrines the right of any person who is affected by a decision that the person responsible for deployment adopts based on the output results of a high-risk AI system listed in Annex III and that produces legal effects or significantly affects them, in a way that they consider has a detrimental effect on their health, safety or fundamental rights, to obtain from the person responsible for the deployment clear and meaningful explanations about the role that the AI system has had in the decision-making process and the main elements of the decision taken.

On the other hand, paragraph 11 of the same article 26 of the regulation provides that those responsible for the deployment of high-risk systems that make decisions or help to make decisions related to natural persons must inform them that they are exposed to the use of high-risk AI systems. This, as far as labor issues are concerned, implies a duty to provide information in that respect to candidates in a personnel selection process in which an AI system is to be used.

We are therefore in the presence of complete and directly applicable rules, which do not require any implementation in domestic law. Having said that, article 2.11 of the regulation states that its provisions "shall not prevent the Union or the Member States from maintaining or introducing laws, regulations or administrative provisions that are more favourable to employees as regards the protection of their rights with regard to the use of AI systems by employers or that encourage or allow the application of collective agreements that are more favourable to employees".

This is established in what "concerns the protection of their (employees') rights with respect to the use of AI systems by employers", which leaves out issues related to the AI systems themselves, as well as the procedural aspects of their application (information rights of article 26.7) and possible collective or trade union rights.

The extension or improvement of employees' rights allowed by the regulation should therefore focus on the possibilities of monitoring and reacting to the consequences of the application of AI systems. Its implementation is within the scope of business powers, and such systems are also protected by trade secrets, so the reinforcement of labor rights must come from the possibilities for reacting to possible irregular uses or discriminatory results of their application. And this is more appropriate for collective bargaining than for legal intervention. It is the collective agreements that, in these situations, must establish the necessary corrective measures, and any preventive controls that the legal provisions could try to introduce are inadequate. This is a challenge that our collective bargaining should certainly have started to face by now.

2. News

The Supreme Court rules that compensation for unfair dismissal cannot be increased by the courts

It rejected the binding nature of decisions issued by the European Committee of Social Rights, which has found that the current Spanish legislation breaches the European Social Charter.

3. On the radar

The Council of Ministers begins the ratification of ILO Convention 191 on the fundamental right to safe and healthy work

The **Council of Ministers**, in a meeting held on July 1, 2025, gave the green light to request the Spanish parliament for authorization to ratify ILO Convention 191, which recognizes occupational safety and health as a fundamental right at work. This convention updates eight previous ILO agreements, ensuring the right of employees to perform their work in a safe and healthy environment.

Amendments are presented during the passage through parliament of the bill for reduction of the maximum working hour limit

The lower house of the Spanish parliament is in the process of reviewing the **Bill** which proposes to reduce the maximum limit on ordinary working hours from 40 to 37.5 hours a week calculated annually. The initiative also establishes new obligations for recording working time, which must be carried out digitally and with immediate access for employees, representatives and the labor inspectors.

The bill also reinforces the right to digital disconnection, by guaranteeing the absence of work communications outside working hours and considering it an inalienable right. It provides for a stricter penalty regime, with high fines for non-compliance with recording obligations.

The text still needs to pass the legislative process (it is still in an initial phase). So far, amendments have been presented to reject the whole bill during its passage through the lower house and it is not expected to be approved in the immediate future.

Approval of the prior procedure for determining the assumptions for bringing forward the retirement age through the application of reduction multipliers

Royal Decree 402/2025 regulates the prior procedure for determining the cases in which the retirement age can be brought forward in the social security system by applying reduction multipliers, with respect to occupations or professional activities that involve work of an exceptionally arduous, toxic, dangerous or unhealthy nature and have high morbidity or mortality rates.

4. Judgments

The compensation obtained from the dismissal of a permanent-discontinuous employee must be calculated exclusively by reference to periods of effective work

The Supreme Court, in a **ruling** dated May 20, 2025, held that only the periods in which the employee actually worked must be included to calculate the severance pay for permanent-discontinuous employees. Periods of inactivity are excluded because they do not qualify as computable working time for this purpose.

Thus, severance pay is treated as non-salary compensation based on effective working time, and not on the entire period of the contractual relationship.

Companies can deduct payments in excess of salary if the debt is liquid, due and payable, and not disputed

In a **judgment** dated May 21, 2025, the Supreme Court recognized the lawfulness of the offset made by the company against the employee's salary in respect of amounts paid in excess as a result of an error in the calculation of a pay supplement determined unilaterally. This offset is valid as long as the debt is liquid, due, and payable, and there is no collective dispute concerning its existence or amount.

Failure to give notification of periods of medical leave, after prior warnings and sanctions, can be a ground for justified dismissal

The Madrid High Court confirmed in a **judgment** dated April 23, 2025 the allowability of a disciplinary dismissal of an employee for not immediately giving notification of her medical leave. This conduct taken in isolation is not a sufficiently serious reason to punish the employee with dismissal. However, the sanction relates to the repetition of serious or very serious misconduct, even though of a different nature, over a six-month period. In this case, the defendant had already been sanctioned on two occasions, within that period for serious misconduct, and it was proven that she was warned that she had to give notification of her leave periods and failed to do so.

The judgment also points out that, in order to prove the repeated misconduct in the dismissal letter, it is sufficient to refer to the previous sanctions without the need to describe exhaustively in the communication the facts providing the grounds for them.

The exclusion of periods of temporary incapacity for more than 90 days in the proportional calculation of a bonus does not constitute discrimination

In the incentive plan unilaterally implemented by a company, it was expressly stated that variable compensation was not payable in the event of a suspension of the employment contract for more than 90 calendar days in the vesting period. The claimants initiated collective dispute proceedings to claim the full payment of the bonus for 2024 despite having been on medical leave for more than 90 days. They alleged discrimination on the basis of their health under Law 15/2022.

The National High Court, in a **judgment** dated June 3, 2025, dismissed the claim, without finding a breach of Law 15/2022 insofar as it did not appear that in the calculation of that bonus, a person who had been forced to take leave for temporary incapacity is penalized disproportionately. It is, therefore, lawful that, as part of the dynamics of suspension of a contract, the incentive should be

allowed to be payable in the same way as any other item of salary, because during the periods of suspension the employer is exempt from paying salary.

A prior hearing is not required before notification of the dismissal if it occurred before November 18, 2024

In line with the judgment dated November 18, 2024, the Supreme Court, in a **judgment** dated May 28, 2025, has once again defined the limits of the direct application of Article 7 of ILO Convention 158 in relation to a hearing prior to disciplinary dismissal, by holding that it was not required in dismissals that occurred prior to the recent modification of the Supreme Court's case law.

Minor penalties may be applied to infringements classified as very serious

The debate over whether it is possible to apply a sanction relating to a minor or serious offence while classifying the facts as a very serious offence, has been resolved. In a **judgment** dated May 28, 2025, the Supreme Court pointed out that the discrepancy between the classification of a misdemeanor as very serious and the imposition of a sanction applying to a serious misdemeanor does not render the sanction null and void, provided that it is contemplated in the collective agreement and the principles of proportionality and gradualness are observed. In this specific case, the sanction of suspension from employment and salary imposed on an employee for insults was confirmed, even though the sanction applied was less serious than the classification of the offense.

5. Labor and Employment Blog

How to keep talent through permanence agreements and retention bonuses

Faced with increasing difficulties in attracting and retaining talent, many companies are turning to measures such as specialized training and financial incentives. In this context, we analyze two tools whose implications should be known: the permanence agreement regulated by the Workers' Statute and retention bonuses.

LGBTI measures in the workplace: refresher on companies' obligations

In the week in which International LGBTI Pride Day is celebrated (28 June), we refresh the obligations of companies in relation to equality and non-discrimination of LGBTI people.

Video surveillance at work: legal keys to proper use

Article 20.3 of the Workers' Statute allows the employer to adopt the measures it deems most appropriate to verify compliance with the employees' labor obligations and duties. One such measure can be video surveillance. In this post we provide a practical guide on its use.

Revolution in access to active retirement: from April 2025 it is not necessary to have a full contribution career

In April 2025, new rules on access to the retirement pension introduced by Royal Decree-Law 11/2024, of 23 December, to improve the compatibility of the retirement pension with work, came into force. Among other issues, the requirements for access to active retirement are modified, expanding the possibilities for employees who wish to extend their working life while receiving a pension.

6. In the press

Reduction of working hours, time recording and digital disconnection: the key takeaways regarding the bill passing through the lower house of the Spanish parliament

In this article published in elderecho.com (Lefebvre), Raúl Vázquez, partner at Garrigues, looks at the bill to reduce the maximum limit on ordinary working hours and guarantee the recording of working time and the right to disconnect.

Can an employment contract be terminated due to a declaration of the employee's disability?

Mauricio Maggiora, senior associate, addresses in this article published in *La Verdad* de Murcia, the entry into force, on April 30, of Law 2/2025, which significantly amends the Workers' Statute in relation to one of the grounds for termination of the employment contract: the declaration of the employee's disability.

7. In Latin America

Data protection evolving regulation in Latin America and their impacto on labor relations

Among the topics we analysed in the latest issue of our Latin American Labour Newsletter, we highlight this analysis of the protection of personal data in the workplace. In recent months, countries such as Peru, Chile, and Mexico have been undergoing significant reforms that could require major changes in information management.

Mexico: Rules Approved for the Inclusion of Digital Platform Workers in the Social Security Regime

On June 24, 2025, the Official Gazette of the Federation (DOF) published the Agreement ACDO.AS2.HCT.270525/132.P.DIR, issued by the Technical Council of the Mexican Social Security Institute (IMSS), which approves the General Rules for the pilot program to incorporate digital platform workers into the mandatory social security regime.

Colombia: New labor reform approved to promote decent work, strengthen rights and regulate new forms of employment

The law changed fixed-term employment agreements, ruled the disciplinary procedure, extends paid leave, changes deh apprenticeship agreement nature and reinforces the protection of women, people with disabilities and victims of violence. It also regulates work on digital platforms, promotes labour inclusion and makes modalities such as teleworking more flexible.

Peru: Employers must pay bonuses for National Holidays before next Wednesday, July 15

With regard to the next payment of the legal bonus for National Holidays (Law No. 27735 and Supreme Decree No. 005-2002-TR), we review the main criteria for employers to adequately comply with this obligation.

Citizens of Japan and Qatar will no longer require a visa to enter Peru

Through recent regulatory amendments, the Ministry of Foreign Affairs has established exemption from the requirement of business and tourist visas for the entry into Peru of citizens of Japan and Qatar. The new migratory provisions are intended to facilitate the entry of citizens, as well as to promote commercial, tourist and diplomatic exchange between the countries.

Chile: The law establishing a readjustment of the minimum monthly income, with retroactive effect, as of May 1, 2025, is published

The Official Gazette published Law No. 21,751 that sets the minimum monthly income at $529,000 with retroactive effect from May 2025. The new law also readjusts the amount of family and maternal allowance, and implements a single family allowance.

Chile: Companies are required to inform employees every six months about the prevention of workplace and sexual harassment and violence at work

The Karin Law obliges employers in Chile to inform their employees every six months about the prevention of harassment and workplace violence. They must include information on reporting channels and access to occupational health benefits.

Peru: Companies with more than 100 employees will no longer be required to hire a social employee

Supreme Decree No. 005-2025-TR, published on June 14, 2025, repealed Supreme Decree No. 009-65-TR, which imposed on private sector companies with more than 100 employees the obligation to have a social employee on their payroll. In addition, the fine against such non-compliance is eliminated.

Colombia: Pension reform establishing a comprehensive social protection system for old age, disability and death of common origin enters into force

The new regulation profoundly modifies the obligations of contracting parties with regard to social security contributions from natural persons. Among the main changes are the transfer of responsibilities to the contractor, the increase in contributions to the Pension Solidarity Fund and the need to identify if employees and contractors belong to the transitional regime.

Chile: Supreme Court Reinforces Defendant's Right to Access Background Records in Harassment Investigations

The Supreme Court of Chile has established that those denounced for harassment have the right to access all the background information of the investigation, beyond the report of conclusions. This access must guarantee the anonymization of personal data of those involved.

Mexico: National Workers' Housing Fund Institute (INFONAVIT) Sets Deadline for Employers to Cover Housing Loans of Absent or Incapacitated Workers

As a result of recent reforms to the INFONAVIT Law, a new obligation has been established for employers in Mexico: to cover the mortgage payments of housing loans for their workers when they are absent or incapacitated.

News on medical licenses in Chile: modifications, requirements and whistleblowing channel

On May 24, a new law came into force in Chile that introduces important changes in terms of the granting of medical licenses. The law reinforces oversight, toughens penalties and enables new mechanisms such as anonymous reporting.

More information:

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