

Legal Status

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EMPLOYMENT

Trade Union Time Credit. Is it Necessary to Justify it?



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Provision 68 of the Workers' Statute recognises the guarantees enjoyed by Workers' Representatives derived from the exercise of their functions of representation and defence of the interests of employees. One of them is the so-called time credit, which entitles those who perform such functions to be absent from work in order to duly fulfil the aforementioned duties.

Thus, this right of absence is articulated as a paid leave provided for in Provision 37.3.e) of the Workers' Statute. At the same time, it is considered an integral part of the fundamental right to freedom of association, so that its fulfilment is afforded special protection. Therefore, judicial doctrine has traditionally drawn attention to the autonomy that Workers' Representative must have in this regard, outside the control of the Company.

In this context, **the recent Supreme Court ruling of 11 June 2024 (rec. 472/2021) has confirmed the possibility of the Company requiring justification for** the use of the working time credit, without this being considered a violation of the right to freedom of association.

Specifically, the reasoning at the heart of the aforementioned court decision is that, although it is a guarantee of representation functions, it cannot be forgotten that those who exercise them are employees subject to the obligation to fulfil their work obligations. For this reason, and given that this function is articulated as paid leave, the requirement for justification, according to the High Court, "is a valid requirement for all cases of leave, including others that also involve the exercise of rights (or duties) of constitutional scope".

In the same line, it should be taken into account that in the context of an employment relationship, the improper or abusive use of working time credit could even give rise to punishable work behaviour.

However, such considerations should not mean overlooking a potential infringement of the right to freedom of association that exhaustive control by the Company could entail. The following **considerations** should therefore be taken into account when requiring justification for their use:

- The requirement for justification may not take place unexpectedly, and prior notice must be given.
- The justification required may under no circumstances involve intrusion or undue surveillance by the employer.
- In line with the above, such justification should not be exhaustive or detailed, and full proof should not be required.

It is also worth noting that the ruling constantly draws attention to the fact that its

pronouncement is limited to the specific case in question, in which the generic justifications given by the Workers' Representatives ("exercise of representative functions") were criticised, and highlights the need to generically indicate the type of activity to which the time in question is to be allocated (assembly, congress, meeting, etc.), without any additional information having to be provided in this respect.

In short, the aforementioned ruling raises the possibility of requiring justification for the use of the time credit, but this must be done with the appropriate precautions. It is advisable to pay attention to the evolution of case law in this respect and, in any case, to review the applicable Collective Bargaining Agreement or enter into agreements that ensure the legitimate exercise of this right.

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MEDIA

New Measures to Ensure the Protection of Minors in the Digital Environment



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On Tuesday 04 June 2024, the Council of Ministers approved the Draft Bill for the protection of minors in digital environments (the "Draft Bill").

The purpose of the Draft Bill is to ensure the rights of minors in the digital environment, emphasizing their right to privacy, honor and self-image. It also seeks to protect their personal data and guarantee access to age-appropriate content.

The Draft Bill includes measures to increase the knowledge of minors and their parents about the dangers of the digital environment and to sanction infringements of rights that may occur in this environment. It also establishes obligations for large operators and influencers, in order to ensure that the information provided to minors is appropriate and to protect their rights.

Among the main new aspects contained in the Draft Bill are the following:

The minimum age for consenting to the processing of personal data for accessing social media is increased from 14 to 16 years.

It requires manufacturers of electronic devices to ensure that their devices have a parental control system activated by default as well as labelling to warn whether or not they are suitable for minors.

Access by minors to random reward mechanisms in video games and platforms (i.e., "loot boxes") is prohibited.

It is established that video-sharing platforms (i.e., YouTube, Twitch, etc.) must make available to their users a link to reporting channels when the content broadcast is potentially harmful to the physical, mental and/or moral development of minors. This obligation extends to influencers who, where applicable, must unequivocally warn their viewers about the type of content broadcast.

It establishes the obligation on the part of public authorities to promote awareness campaigns on the risks that exist in the digital environment, with emphasis on the consumption of pornography.

Once the Draft Bill has been approved by the Council of Ministers, it will be submitted to the Spanish Parliament for final approval.

July 2024

New Energy Measures to Counter the Consequences of the War in Ukraine



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Some of the measures adopted by the Government to alleviate the effects of the war in Ukraine were scheduled to expire on 30 June 2024. Accordingly, on 26 June the government approved Royal Decree-Law 4/2024, extending a number of measures to address the economic and social consequences of the conflicts in Ukraine and the Middle East.

Over the first months of the 2024 financial year there has been an inflation rebound due to the outbreak of the conflict in the Middle East at the end of 2023 and the partial reversal of the support measures to face the energy crisis. In order to alleviate this situation, the Royal Decree-Law approved includes some support measures for industry in general, and for energy in particular.

In terms of industry, it seeks to compensate for the additional costs resulting from the exceptional increase in natural gas prices. In this regard, the deadline set out in the seventh Transitional Provision of Royal Decree-Law 5/2023 of 28 June for compliance with the requirements established in article 13.3 of the General Subsidies Law (Law

38/2003) for aid applicants established in Order ICT/744/2023 of 7 July is extended by six additional months. According to Royal Decree-Law 5/2023, these requirements were to be met six months after the effective receipt of the subsidy and failure to comply with them within that period would constitute grounds for total reimbursement of the subsidy.

As to the the energy sector, extensions are provided for the following measures:

- 1. Temporary extension of the discounts of the "bono social"**: Exceptionally, and with effect from 1 July 2024 and valid until 30 June 2025, the following discounts applicable to certain categories of domestic electricity consumers are approved:

	Applicable discounts			
	1/07/24 to 30/09/24	1/10/24 to 31/12/24	1/01/25 to 31/03/25	1/04/24 to 30/06/25
Vulnerable consumer	65%	57,5%	50%	42,5%
Severely vulnerable consumer	80%	72,5%	65%	57,5%

Furthermore, the discounts applicable permanently as of 1 July 2025 are increased. The new discounts are increased by 10% with respect to the original values established in Royal Decree 897/2017 for both groups.

The applicable discount on the "Tarifa de último recurso" [regulated price] for

vulnerable consumers will be 35 per cent (previously 25 per cent), while the applicable discount for severely vulnerable consumers will be 50 per cent (previously 40 per cent).

This measure aims to ensure a smooth transition from the current extraordinary values, applicable from 1 July 2024 to 30 June 2025, approved in the context of the energy crisis, as defined in the table above, and the permanent regime as of 1 July 2025.

2. Guarantee of water and energy supply to vulnerable consumers:

The prohibition on the suspension of water and energy supply is extended until 31 December 2024, as per the provisions of Royal Decree-Law 8/2021, of 4 May, for consumers who are vulnerable, severely vulnerable or at risk of social exclusion. Categories defined in Royal Decree 897/2017, which defines the figure of vulnerable consumer and the *bono social*.

3. Flexibilisation of electricity supply contracts:

the temporary flexibilisation scheme for electricity supply contracts is extended until 31 December 2024. This scheme was established in Royal Decree-Law 18/2022, of 18 October, approving measures to reinforce the protection of energy consumers and to contribute to the reduction of natural gas consumption in application of the "*Plan + seguridad para tu energía (+SE)*" [Security of energy supply plan].

This flexibility in energy supply contracts refers to the possibility of requesting a change of contracted power for the self-employed and companies, and consumers in certain tariff segments (3.0TD, 6.1TD, 6.2TD, 6.3TD and 6.4TD) established in Circular 3/202 of the National Commission for Markets and Competition. Furthermore, this flexibility includes the possibility for consumers who have requested a change of power to request a new modification of the supply contract or new values of the technical parameters of the network access contract, without incurring any cost, with the exception of:

a) Payments for extension rights for increases in contracted power above the contracted threshold before Royal Decree-Law 18/2022 came into force,

b) Payments for supervision of transferred facilities, if any; and,

c) In the event that it is necessary to change the metering equipment, payment for actions on the control and metering equipment provided for in Chapter VII of Royal Decree 1048/2013, of 27 December, which establishes the methodology for the remuneration of the electricity distribution activity.

4. Support for the electricity-intensive industry:

the support measure established in Royal Decree-Law 6/2022 of 29 March is extended until 31 December 2024. This measure consists in a reduction in electricity bills of 80% of the cost corresponding to the applicable

access tolls to the electricity transmission and distribution networks.

Independently of this measure approved in this Royal Decree-Law, the Ministry of Industry and Tourism has recently opened a prior public consultation for the modification of Royal Decree 1106/2020, of 15 December, which regulates the Statute of Electro-intensive Consumers. According to the Ministry, the aim is to simplify the procedures for the verification of compliance with the requirements to obtain the qualification of electro-intensive consumer, as well as the obligations that this qualification entails. Although the details of the reform are currently unknown, it could also affect the mechanism for compensating charges to this type of consumer.

- 5. The scope of application of the “*tarifa de último recurso*” is extended:** The aim of this amendment is to include homeowners' associations, groups of associations, publicly owned buildings used as residential dwellings and buildings belonging to trusts or non-profit organisations.

Thus, the aim is to correct the discrimination that, in practice, the current regulation of this tariff limited its application, since 1 July 2009, to consumers with an annual consumption of less than 50,000 kWh/year, which left out, among others, families who lived in buildings with central heating and who

could not benefit from this tariff because the building gas consumption exceeded the aforementioned threshold.

- 6. Promotion of electric mobility:** This promotion of mobility is carried out through two specific measures established in this Royal Decree-Law.

The first refers to the implementation of a dynamic information system for electric recharging points, all in accordance with the public information obligation established in Law 7/2021, of 20 May, on climate change and energy transition.

The current regulation includes provisions on the static information that vehicle recharging service providers must provide to the Ministry and establishes provisions for the submission of dynamic information in real time. This real-time information shall relate both to the retail price of electricity or the recharging service and the availability of the infrastructure of recharging points accessible to the public for electric vehicles with a capacity of 43 kW or more.

In order to comply with the obligation to provide this information in real time, which will empower consumers, the Royal Decree-Law assigns this new function to Red Eléctrica de España as system operator. Red Eléctrica will be responsible for collecting the dynamic information (established in Annex III of Order TED/445/2023) and processing it so that it can be displayed on the website

of the Ministry for Ecological Transition and on the mobile application created for this purpose.

The second measure approved to boost mobility refers to the extension, until 31 December 2024, of the MOVES III aid program, regulated in Royal Decree 266/2021. In this regard, the Government has declared its intention to allocate 200 million euros to the Recovery, Transformation and Resilience Plan, which will be transferred to the IDAE to reinforce this program.

July 2024

Limits on the Right to be Forgotten



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The Supreme Court has confirmed through a ruling dated 4 March 2024 the denial of the right to be forgotten of the now deceased court clerk of the Military Court which in 1940 instructed the trial that condemned the poet Miguel Hernández to death.

The right to be forgotten, also known as the right to erasure, consists as its name suggests of the right to request the erasure of personal data in internet searches. The aim of this right is to prevent the dissemination of personal information on the internet when its publication does not meet certain requirements of adequacy and relevance, such as inaccurate information. However, this right is not absolute, and may be waived when the processing of the data is necessary to exercise the right to freedom of expression and information.

The Supreme Court has dismissed the appeal filed by the son of the deceased against a judgment of the Spanish National High Court which upheld the refusal of Google and the Spanish Data Protection Agency to remove eighteen pieces of information linking the court clerk to the proceedings against the poet, on the basis of the prevalence of the right to freedom of information, expression and historical research.

Although the Supreme Court recalls in its ruling that the right to be forgotten also applies to deceased persons, after analysing the case in question, it concludes that the fundamental right to freedom of information and expression prevails, as well as the freedom of scientific creation, considering that the information on the intervention of the court clerk in the trial against Miguel Hernández - a matter that is considered to be established - is of public interest given that is part of the history of Franco's repression and of the struggle for freedom of expression.

It is worth noting that the complainant requested the suppression of this information as he considered it to be inaccurate, and argued that in fact his relative was not a member of the court that issued the sentence of conviction, but of the court that investigated the case at an earlier stage, so that it would not be correct to state that he was the court clerk of the court that sentenced the poet to death.

In this regards, in terms of the accuracy of the information, the Supreme Court considered that the existence of errors is not sufficiently important to justify the suppression of all the information given that they are circumstantial errors that do not affect the essence of the information or the accuracy of the information as a whole.

Furthermore, the Court assessed the rights in question and maintained that if it were to be affirmed that the data protection of a deceased person should be accepted when it

is demonstrated that the information is inaccurate, without taking into account other rights, this would lead to the “absurdity that deceased persons would not only have more protection than living persons, but automatic and absolute protection against any other consideration and against the freedoms and rights of others”.

In conclusion, the Supreme Court is in agreement with the National High Court and considers that both the legislation and the existing case law were correctly applied, and that the right to information should prevail over the right to suppression exercised by the relatives of a deceased person.

Furthermore, the scope of the alleged inaccuracy of the information was assessed to conclude that the inaccuracies alleged by the appellant do not affect the substance of the information reported or the accuracy of the information processed as a whole.

The case of the court clerk in the investigation against Miguel Hernández thus highlights the complexity of the right to be forgotten and the need to strike a balance between the right to privacy and the right to information, a matter that must be analysed and assessed on a case-by-case basis.

July 2024

Trends in Foreign Real Estate Investments in Spain



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The Spanish General Council of Notaries has published a report analysing the evolution of the sale and purchase of freehold property by foreigners in Spain during 2023.

In general, there was a slight fall in the total number of transactions when compared to previous year, especially in the second half of the year. However, the proportion of sales and purchases by foreigners has increased compared to sales and purchases by locals. Thus, in 2023, foreign buyers and sellers accounted for 20.9% of all sales and purchases in Spain, an increase in relation to 2022 (20.6%).

The average price paid per m² has also increased by 6.1% in the case of non-resident foreigners and by 3.1% in the case of foreigners resident in Spain. The average price paid per m² was €2,715 for non-residents, €1,720 for non-resident foreigners and €1,580 for locals.

In terms of nationality of buyers, the highest percentage are British citizens (9.7%), followed by Moroccans (7.14%) and Germans (7.11%).

Spain's most attractive cities for investment

According to Trends in the Real Estate Market in Europe 2024, a report published by PwC and the Urban Land Institute, Spain has two of the most attractive European cities to invest in: Madrid, which is in third position, and Barcelona, which is in tenth position.

Real estate market outlook for the second half of 2024

Sociedad de Tasación, an expert company in real estate valuations, has noted that a recovery and expansion of real estate and mortgage activity is expected for the second half of 2024, especially for new housing in the residential sector. In this regard, they highlight that energy efficiency has become a differential factor in demand, to the extent that one out of every two new homes developed in Spain has the maximum EEC in energy consumption ('A').

The price per m² will also continue to rise, and it is estimated that at the end of 2024 the m² of new construction will stand at €2,979/m², which represents a positive year-on-year variation of 3.8% and constitutes a new high.

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