

MINISTRY OF LABOUR AND SOCIAL SECURITY  
BOE [Official Gazette] 29 March 1995, no. 75, [p. 9654];

**WORKERS' STATUTE.** Approves the Consolidated Text of the Law on the Workers' Statute

The seventh final provision of Law 42/1994 dated 30 December, on Tax, Administrative and Labour Measures, authorizes the Government to prepare a consolidated text of Law 8/1980 dated 10 March on Workers' Statute, incorporating the modifications introduced by it as well as those made by the legal provisions it enumerates within an interval of three months from the date that the Law comes into force.

Likewise, the final provision of Law 4/1995 dated 23 March, on the Regulation of Parental and Maternity Leave, gives orders to include the modifications it produced in the Workers' Statute into the consolidated text.

By virtue of these, upon the proposal of the Ministry of Labour and Social Security, subject to the opinion of the Economic and Social Council and the report of the General Council of the Judiciary, in accordance with the Council of State and subject to the deliberation of the Council of Ministers at their meeting on 24 March 1995, I hereby decree:

**Sole Article.**

The Consolidated Text of the Law on the Workers' Statute inserted below is approved.

**FINAL PROVISION.**

**Sole Final Provision.**

The present Royal Legislative Decree and the consolidated text that it approves shall come into force on 1 May 1995.

**APPENDIX**

**Consolidated Text of the Law on the Workers' Statute**

## **HEADING I**

### **On Individual Labour Relations**

#### **CHAPTER I**

##### **General Provisions**

##### **Section 1. Scope and Sources**

###### **Article 1. Scope of Application.**

1. The present Law shall be applicable to the workers voluntarily rendering their services for compensation on behalf of another party, within the scope of the organization and management of another, physical or legal person, called the employer or entrepreneur.

2. For the purposes of this Law, employers shall be those physical or legal persons or joint owners who are rendered services by the persons referred to in the preceding section, as well as by persons contracted for their cession to user companies by legally-constituted temporary work companies.

3. The following are excluded from the scope regulated by the present law:

a) The service relations of civil servants, which shall be regulated by the Statute of Civil Service, as well as those of personnel in the service of the State, Municipal Corporations and Regional Public Entities, where such relations are governed by administrative or statutory regulations under the protection of a Law.

b) Obligatory personal services.

c) Activities that are purely and simply limited to the mere performance of the functions of a director or member of the administrative organs in companies taking the legal form of corporations, provided that such activities in the company only involve the performance of tasks inherent to such a position.

d) Jobs done on account of friendship, benevolence or good-neighbour relationships.

e) Family tasks, unless the salaried-worker status of those carrying these out is demonstrated. Descendants, ascendants and other relatives up to and including the second degree of consanguinity or affinity and, as applicable, adoption, shall be considered family members for this purpose.

f) The activities of persons intervening in trading operations on behalf of one or more entrepreneurs, provided that these are personally obliged to respond for the good conduct of the operation, assuming the full risk for it.

g) In general, any job performed in compliance with a relationship other than that defined in Section 1 of this article.

For such purposes, the activities of persons rendering transport services for the pertinent price under the aegis of the administrative authorities owning them, using commercial vehicles for public service that they own or directly dispose of, even when these services are rendered continuously for a same transporter or merchandiser, are understood as excluded from labour coverage.

4. Spanish labour law shall be applicable to the work rendered by Spanish workers contracted in Spain at the service of Spanish companies abroad, without restriction to the public regulations that may be applicable to the workplace. Said workers shall enjoy at least the economic rights that would correspond to them had they been working in Spanish territory.

5. For the purposes of this Law, production units having a specific organization registered as such before the labour authorities shall be considered work centres.

In work at sea, the ship shall be considered as a work centre and understood as located in the province where its home port is found.

## **Article 2. Special Labour Relations**

1. The following shall be considered as special labour relations:

- a) That of top management personnel not included in Article 1.3 c).
- b) That of domestic help.
- c) That of convicts in penitentiary institutions.
- d) That of professional sportsmen and women.
- e) That of artists in public spectacles.
- f) That of persons intervening in trading operations in behalf of one or more entrepreneurs without assuming full risk thereof for these.
- g) That of handicapped workers rendering services in special employment centres.
- h) That of port stevedores rendering services through state companies or of persons performing the same functions as these in the ports managed by Regional Governments.
- i) Any other job expressly declared a labour relationship of special character by a Law.

2. In all the cases set forth in the preceding section, the regulation of the said labour relations shall respect the basic rights acknowledged by the Constitution.

### **Article 3. Sources of Labour Relations.**

1. The rights and obligations regarding labour relations are regulated:

a) By the legal and regulatory provisions of the State.

b) By collective bargaining agreements.

c) By the volition of the parties made manifest in the work contract, provided that its purpose is licit, and that in no case may the worker be granted conditions less favourable or contrary to the legal provisions and collective bargaining agreements mentioned beforehand.

d) By local and professional practices and customs.

2. The legal and regulatory provisions shall apply in strict observance of the principle of standard hierarchy. Regulatory provisions shall develop the precepts established by norms of a superior category, but may not establish working conditions different from those established by the laws to be implemented.

3. Conflicts arising between the precepts of two or more labour standards, whether imposed by the State or agreed on, are bound to respect, in any case, the minimums required by law, and shall be resolved through the application of the most favourable terms for the workers as a group, and, in yearly computations, considering quantifiable factors.

4. Practices and customs shall only apply in the absence of conventional or contractual legal provisions, unless express admission or waiver exists.

5. Workers may not validly avail of the rights acknowledged to them by mandatory legal provisions before or after their acquisition thereof. Neither may they validly avail [in these conditions] of the rights acknowledged as indispensable by collective bargaining agreement.

### **Section 2. Basic Labour Rights and Duties**

#### **Article 4. Labour Rights.**

1. Workers have the basic right to the following, along with the content and scope provided for by specific regulations for each item:

- a) Employment and free choice of occupation and trade.
- b) Free association.
- c) Collective bargaining.
- d) Adoption of measures for labour disputes.
- e) Strike.
- f) Meetings.
- g) Participation in the company.

2. In labour relations, workers have the right:

- a) To actual employment.
- b) To promotion and occupational training at work.
- c) Not to be directly or indirectly discriminated in employment, or, once employed, discriminated by reason of sex, civil status, age within the limits set forth by this Law, racial or ethnic origin, social status, religion or convictions, political ideas, sexual orientation, membership or non-membership in a union, or for reasons of language within the Spanish State.

Neither may they be discriminated due to of handicap, provided that they have the aptitude to perform the job or work in question.

- d) To their physical integrity and an adequate policy on safety and hygiene.
- e) To respect for their privacy and consideration for their dignity, including protection against harassment by reason of racial or ethnic origin, religion or convictions, handicaps, age or sexual orientation, and against sexual and sexist harassment.
- f) To the punctual receipt of the compensation agreed on or legally established.
- g) To the individual exercise of the actions deriving from their work contract.
- h) To any other rights specifically deriving from their work contract.

## **Article 5. Labour Duties.**

Workers have the following basic duties:

- a) To fulfil the specific obligations inherent to their work post, in keeping with the tenets of good faith and diligence.
- b) To observe the safety and hygiene measures adopted.
- d) To fulfil the orders and instructions of the employer in the regular exercise of his/her managerial authority.
- d) Not to compete with the activity of the company in the terms set forth in this Law.
- e) To contribute to the improvement of productivity.
- f) Whatever other duties arise, as applicable, from their respective work contracts.

### **Section 3. Elements and Effectiveness of the Work Contract**

#### **Article 6. The Employment of Minors.**

1. The employment of persons under sixteen years of age is prohibited.
2. Workers less than eighteen years of age may not hold night-time jobs or those activities or work posts that the Government, upon the proposal of the Ministry of Labour and Social Security, declares unhealthy, laborious, harmful or dangerous to both health and their occupational and human training, after consultation with the most representative labour organizations.
3. Workers less than eighteen are prohibited from doing overtime.
4. The intervention of persons less than sixteen in public spectacles shall only be authorized in exceptional cases by labour authorities, provided that this does not involve danger for their physical health or for their occupational and human training. The permit must be issued in writing and for specific functions.

#### **Article 7. Capacity to Enter into Contract.**

The following may enter into work contracts:

- a) Those who have the full capacity to act as provided for in the Civil Code.
- b) Persons older than sixteen and younger than eighteen living independently with the consent of their parents or guardians or with the authorization of the person or institution taking charge of them.

Should the legal representative of a person with limited capacity expressly or tacitly authorize him/her to undertake a job, s/he shall also be authorized to exercise the rights and fulfil the duties deriving from his/her contract and cessation.

c) Foreigners, as per the provisions contained in the specific legislation on the matter.

### **Article 8. Form of Contract.**

1. The work contract may be formalized in writing or orally. It shall be presumed to exist between anyone rendering a service on behalf of and within the scope of the organization and management of another, and the person receiving it in exchange for a compensation paid to the former.

2. Work contracts must be reflected in writing whenever a legal provision so demands and, in any event, in the case of apprenticeship and training contracts, part-time contracts, fixed-discontinuous contracts and replacement contracts, contracts for household work, contracts for specific works or services, and contracts of workers hired in Spain at the service of Spanish companies abroad. Contracts for a specific term in excess of four weeks shall likewise be reflected in writing. Should such requirement not be observed, the contract shall be presumed as existing for an indefinite period of time and for the whole day, barring proof to the contrary that accredits its temporary nature or the part-time character of the services.

3. a) The employer shall turn over a basic copy of all the contracts to be formalized in writing to the workers' legal representatives, except for the special work contracts of executive managers, regarding which the duty of notifying the workers' legal representatives is established.

To verify the compliance of contract contents with the laws in force, this basic copy shall contain all the contract data except for the national identity document number, domicile, civil status, and any other data which, as per Organic Law 1/1982 dated 5 May, may affect the worker's personal privacy.

The basic copy shall be turned over by the employer to the workers' legal representatives within an interval not superior to ten days from the formalization of the contract. These shall sign it to certify that submission has taken place.

Afterwards, said basic copy shall be sent to the employment office. Where no workers' legal representation exists, the basic copy shall also be formalized and sent to the employment office.

b) The representatives of the Administration as well as of the labour organizations and employers' associations who have access to the basic copy of the contracts by virtue of their membership in the organs of institutional participation vested by regulations with such authority shall observe professional secrecy, not being able to use the said documentation for purposes other than those that justified their knowledge thereof.

4. Either of the parties may demand that the contract be formalized in writing, even during the course of the labour relations.

5. Where the labour relations are of a duration in excess of four weeks, the employer must inform the worker in writing about the essential elements of the contract and the main conditions for the execution of the services in the terms and intervals established

by regulations whenever such elements and conditions do not figure in the work contract formalized in writing.

#### **Article 9. Validity of the Contract.**

1. Should only one part of the work contract turn out null and void, this shall remain valid in the rest, and it shall be understood as completed with the appropriate legal precepts in keeping with the provision contained in number 1 of Article 3 of this Law.

Should the worker have been granted special conditions or compensations by virtue of considerations established in that part of the contract that is not valid, the competent jurisdiction which, upon the petition of a party, declares the nullity, shall make the due pronouncement on the subsistence or suppression of all or part of such conditions or compensations.

2. Should the contract turn out void, the worker may demand the compensation corresponding to a valid contract for the work already done.

#### **Section 4. Modalities of the Work Contract**

#### **Article 10. Jobs in Common and Group Contracts.**

1. Should an employer assign a job in common to a group of his/her workers, s/he shall preserve their individual rights and duties.

2. If the employer formalizes a contract with a group of workers considered as a whole, s/he shall not have the rights and duties that correspond to him/her as such with respect to each individual. The head of the group shall represent the members composing it and respond for the obligations inherent to such representation.

3. If a worker, in accordance with written agreement, associates an aide or assistant to his job, his/her employer shall also be the employer of this aide or assistant.

#### **Article 11. Training Contracts.**

1. Contracts for practicum may be signed with those who are in possession of a university degree, or intermediate or higher vocational training qualifications, or titles officially acknowledged as equivalent, authorizing them for professional practice, within the four years following the end of the pertinent studies, or six years in the case of handicapped workers, in accordance with the following rules:

a) The work post must permit the trainee to obtain the professional experience proper to the level of the studies undertaken. The work posts, groups, levels or professional categories subject to this form of contract may be determined through national

collective bargaining agreements in the sector or, in their absence, through sectoral collective bargaining agreements of lesser scope.

b) The contract duration may not be less than six months or more than two years, within the limits of which the national sectoral collective bargaining agreements, or, in their absence, the sectoral collective bargaining agreements of lesser scope, may determine the duration of the contract, considering the sectoral characteristics and the practicum to be performed.

c) No worker may be hired for practicum in the same or in a different company for a period superior to two years by virtue of the same qualification.

d) Unless otherwise provided for in collective bargaining agreements, the probationary period may not exceed one month for practicum contracts with workers holding intermediate qualifications, or two months for practicum contracts with workers holding higher qualifications.

e) The worker's compensation shall be that fixed in collective bargaining agreements for workers in practicum. By default, it cannot be inferior to 60 percent of the salary determined by the agreement for a worker assuming the same or an equivalent work post during the first year, or 75 percent of this for the second year the contract is valid.

f) If, at the end of the contract, the worker were to continue in the company, a new probation period cannot be contracted. The duration of the practicum shall count towards determining seniority in the company.

2. Training contracts are intended for the purpose of acquiring the theoretical and practical training necessary for the proper exercise of a trade or a work post requiring a certain degree of qualification, and shall be governed by the following rules:

a) They may be entered into with workers older than sixteen and younger than twenty-one who lack the qualifications required to fulfil a practicum contract.

The maximum age limit shall be twenty-four where the contract is signed with unemployed persons recruited as student-workers in workshop and apprenticeship programs.

The maximum age limit shall not apply where the contract is signed with unemployed persons recruited as student-workers in employment workshop programs or handicapped persons.

b) State-wide sectoral collective bargaining agreements or, in their absence, sectoral collective bargaining agreements of lesser scope, shall make it possible to establish the maximum number of these contracts to be signed as well as the work posts subject to them, depending on the size of the work force.

Likewise, company collective bargaining agreements may establish the maximum number of contracts to be signed depending on the size of the work force, should a corporate training plan exist.

Should the collective bargaining agreements referred to in the preceding paragraphs not determine the maximum number of contracts that each company can sign depending on its work force, the said number shall be that determined by regulations.

c) The minimum duration of the contract shall be six months, and the maximum two years. State-wide sectoral collective bargaining agreements or, in their absence, sectoral collective bargaining agreements of lesser scope, shall make it possible to establish other durations, depending on the characteristics of the trade or the work post to be filled and the training requirements thereof. In no case shall the minimum duration be inferior to six months, nor the maximum superior to three years, or to four years in the case of the handicapped, bearing in mind the type or degree of handicap and the characteristics of the training process.

d) Once the maximum contract duration for training has expired, the worker may not be contracted under this modality by the same or by a different company.

It shall not be possible to formalize training contracts to qualify a worker for a work post that s/he has previously held in the same company for a period in excess of twelve months.

e) The time spent on theoretical training shall depend on the characteristics of the trade or work post to be filled and the adequate number of hours established for the training module for the said post or trade. In no case may this be inferior to 15 percent of the maximum working day projected in the collective bargaining agreement or, in its absence, the maximum legal working day.

Collective bargaining agreements may establish the time devoted to theoretical training and its distribution respecting the aforementioned limit, establishing, as applicable, the regime for alternating or concentrating this with respect to actual working time.

Where the worker hired for training has not finished the requirements of mandatory basic education, the theoretical training shall have the immediate purpose of completing the said education.

The requirement for theoretical training shall be understood as completed when the worker accredits having done an occupational training course appropriate for the trade or work post that is the subject of the contract, through a certificate from the competent public administration authorities.. In this case, the worker's compensation shall be increased in proportion to the time not devoted to theoretical training.

Where the worker contracted for training is a psychically-handicapped person, the theoretical training may be totally or partially substituted, subject to the report of the pertinent multidisciplinary professional evaluation teams on the conduct of rehabilitation or personal and social adjustment procedures in a psychosocial or socio-occupational rehabilitation centre.

f) The actual work that the worker does in the company must be related to the tasks proper to the occupational level, trade or work post that is the subject of the contract.

g) At the end of the contract, the employer must hand the worker a certificate reflecting the duration of the theoretical training and the level of the practical training acquired. The worker may ask the competent public administration authorities to issue the pertinent certificate of professional aptitude, subject to the necessary tests.

h) The compensation of the worker contracted for training shall be that set forth in the collective bargaining agreement. In no case may this be inferior to the minimum wage in proportion to actual working time.

i) The protective action of the Social Security of the worker contracted for training shall include situations subject to protection and benefits, situations deriving from work accidents and professional illnesses, health assistance in cases of common illnesses, non-work accidents and maternity coverage, economic benefits due to temporary incapacity deriving from common risks, maternity, and pensions as its contingencies. Likewise, s/he shall have the right to the coverage of the Salary Guarantee Fund.

j) Should the worker continue in the company at the end of the contract, the provisions established in Section 1, paragraph f) of this article shall be applicable.

k) The training contract shall be presumed of common or ordinary character should the employer fail to fulfil the totality of his/her obligations as regards theoretical training.

3. Collective bargaining may establish compromises for the conversion of training contracts into permanent contracts.

## **Article 12. Part-time Contracts and Replacement Contracts.**

1. The work contract shall be understood as part-time when the services are agreed on for a number of hours a day, week, month or year that is inferior to the working day of a comparable full-time worker.

For the purposes of what is set forth in the preceding paragraph, a “comparable full-time worker” shall be understood as a full-time worker from the same company and work centre with the same type of work contract, performing an identical or similar job. If there is no comparable full-time worker in the company, the full-time working day defined in the applicable collective bargaining agreement shall be considered or, in its absence, the legal maximum working day.

2. The part-time contract may be entered into for an indefinite period of time or for a certain duration in the cases where the use of this modality of contract is legally permitted, except in the case of training contracts.

3. Without prejudice to what has been set forth in the preceding section, the part-time contract shall be understood for an indefinite period of time when it is used to perform fixed and periodic jobs within the company’s normal volume of activity.

4. The part-time contract shall be governed by the following rules:

a) The contract, as provided for in Section 2 of Article 8 of this Law, must be formalized in writing on the form established for the purpose. The contract shall reflect the number of ordinary working hours contracted per day, week, month or year and their distribution.

Should these requirements not be observed, the contract shall be presumed full-time, barring proof to the contrary accredited by the partial nature of the services.

b) The daily part-time working day may be continuous or separately distributed. Where the part-time contract involves a daily working day inferior to that of the full-time workers and this is separately distributed, it shall only be possible to have a single interruption in the said daily activity unless otherwise provided for by the sectoral Collective Bargaining Agreement or, in its absence, by an agreement of a lesser scope.

c) Part-time workers may not do overtime except for the cases referred to in Section 3 of Article 35. The additional hours worked shall be governed by the provisions of Section 5 of this article.

d) Part-time workers shall have the same rights as full-time workers. Where this is due in consideration of their nature, such rights shall be acknowledged proportionally in the legal and regulatory provisions and in the Collective Bargaining Agreements, depending on the time worked.

e) Conversion from a full-time to a part-time job and vice-versa shall always be voluntary for the worker and may not be imposed unilaterally, or as the consequence of a substantial modification in working conditions, as set forth in letter a) of Section 1 of Article 41. The worker may not be dismissed, nor may s/he suffer any other type of sanction or damaging consequence should s/he reject this conversion, without prejudice to the measures that may be adopted for economic, technical, organizational or production reasons, as provided for in Articles 51 and 52 c) of this Law.

So as to make voluntary mobility possible in part-time work, the employer must inform the workers of the company about the existence of vacant work posts, so that these may formulate applications for voluntary conversion to a full-time job in a part-time job and vice-versa, or so as to increase the working hours of part-time workers, all in keeping with the procedures set forth in the sectoral Collective Bargaining Agreements or, in their absence, in the agreements of a lesser scope.

Those workers who may have agreed to the voluntary conversion of a full-time work contract into part-time or vice-versa, and who, owing to the information referred to in the preceding paragraph, request their return to the previous situation, shall have preference in the access to a vacant work post of such nature as may exist in the company corresponding to the same professional group or an equivalent category, in accordance with the requirements and procedures established in the sectoral Collective Bargaining Agreements or, in their absence, in the agreements of a lesser scope. Those workers initially contracted part-time who may have rendered services as such in the company for three or more years shall enjoy the same preference in covering those full-time vacancies corresponding to the same professional group or an equivalent category existing in the company.

In general, the applications referred to in the preceding paragraphs shall be taken into consideration by the employer as far as possible. Notice of rejection of the application must be given to the worker by the employer with the reasons stated in writing.

f) Collective Bargaining Agreements shall establish measures to facilitate effective access to continuous professional training to part-time workers, so as to favour their progress and professional mobility.

g) Sectoral Collective Bargaining Agreements and, in their absence, agreements of a lesser scope, may, as applicable, establish requirements and specializations for the conversion of full-time contracts into part-time contracts where this is mainly motivated by family or training reasons.

5. Those working hours whose possibility of execution has been agreed on as additional to the ordinary hours set forth in the part-time contract shall be considered as additional hours, in accordance with the legal regime established in the present section and, as applicable, in the sectoral collective bargaining agreements or, in their absence, in agreements of a lesser scope.

The execution of additional hours is subject to the following rules:

a) The employer may only require the execution of additional hours when this has been expressly agreed on with the worker. The additional hours may be agreed on upon the formalization of the part-time contract or afterwards, but they shall, in any case, be a specific agreement with respect to the contract. The agreement shall necessarily be formalized in writing, on the official form established for the purpose.

b) An agreement on additional hours may only be formalized in the case of indefinite part-time contracts.

c) The agreement on additional hours must reflect the number of additional hours that the employer may require.

The number of additional hours may not exceed 15 percent of the ordinary working hours of the contract. Sectoral collective bargaining agreements or, in their absence, agreements of a lesser scope, may establish another maximum percentage which, in no case, may exceed 60 percent of the ordinary hours contracted. In any event, the sum of ordinary hours and additional hours may not exceed the legal limit of part-time work defined in Section 1 of this article.

d) The distribution and manner of executing the additional hours agreed on shall comply with what is established in this regard in the applicable collective bargaining agreement and in the agreement on additional hours. Unless otherwise established in the agreement, the worker must know the day and time that the additional hours are to be done through notice given seven days in advance.

e) The execution of additional hours shall, in any case, respect the limits established in Articles 34, Sections 3 and 4; 36, Section 1; and 37, Section 1 of this Law as regard working days and rest periods.

f) The additional hours actually worked shall be paid as ordinary working hours and computed for the purposes of Social Security contribution bases, periods of exclusion and bases regulating benefits. To such an end, the number of hours and compensation for the additional hours done shall be reflected in the individual payslips and in the documents of Social Security contribution.

g) The agreement on additional hours may become void through the waiver of the worker, by means of an advanced notice of fifteen days once one year has elapsed after its formalization, under the following circumstances:

Consideration for the family responsibilities mentioned in Article 37.5 of this Law.

For training needs, in the manner determined by regulations, provided that incompatibility of timetables is accredited.

Due to incompatibility with another part-time contract.

h) The agreement on additional hours and the conditions for these shall be subject to compliance with the requirements established in the preceding letters and, as applicable, the regime provided for in the applicable collective bargaining agreements. Should such requirements and legal regime not be fulfilled, the worker's refusal to do the additional hours despite their having been agreed on shall not constitute sanctionable labour conduct.

6. Likewise, contracts entered into by workers who agree with their company on a reduction of their working day and their salary of between a minimum of 25 percent and a maximum of 85 percent under the conditions established in the present article shall be understood as part-time contracts when these meet the general conditions required to have a right to the contributory Social Security retirement pension with age exceptions, which must be inferior by, at most, five years to the required age, or when they have reached the said age while likewise meeting the mentioned general conditions. The execution of this part-time work contract and its compensation shall be compatible with the pension that Social Security acknowledges the worker by way of partial retirement, with labour relations being extinguished when total retirement occurs.

In order to execute this contract in the case of workers who have not yet reached retirement age, the company must simultaneously formalize a work contract with a worker in a situation of unemployment or who holds a contract for a specific period of time with the company, so as to replace the working day left vacant by the worker partially retiring. This work contract, which may also be signed to replace workers who have partially retired after having reached retirement age, shall be called a replacement contract and shall have the following specific characteristics:

a) The duration of the contract shall be indefinite or equal to the time that the worker replaced may require to reach the retirement age referred to in the first paragraph of this section. If, upon reaching the said age, the partially-retired worker were to continue in the company, the replacement contract formalized for a specified period of time may be extended for annual periods through the agreement of the parties, being extinguished, in any case, upon the termination of the period corresponding to the year in which the total retirement of the worker replaced takes place.

In the case of the partially-retired worker, after reaching retirement age, the duration of the replacement contract that the company may formalize to replace the part of the working day that s/he leaves vacant may be made indefinite or annual. In this second case, the contract shall be automatically extended for annual periods, becoming extinct in the manner indicated in the preceding paragraph.

b) Replacement contracts may be entered into as full-time or as part-time. In any case, the duration of the working day should be at least equal to the reduction of the working day agreed to by the worker being replaced. The timetable of the replacement worker may complete that of the worker being replaced or be simultaneous with his.

c) The work post of the replacement worker may be the same as that of the worker replaced or similar, understanding as such the performance of tasks corresponding to the same professional group or an equivalent category.

d) Collective bargaining may establish measures to give impulse to the formalization of replacement contracts.

### **Article 13. Work-at-Home Contracts.**

1. Those contracts in which the work activity is done in the worker's domicile or in the place freely chosen by this, without the supervision of the employer, shall be considered work-at-home contracts.

2. The contract shall be formalized in writing with the approval of the employment office, where a copy shall be deposited reflecting the place in which the work is done, so that the necessary measures of hygiene and safety as determined may be required.

3. The salary, in whatever form it is specified, shall be at least equal to that of a worker from an equivalent occupational category in the economic sector concerned.

4. Any entrepreneur employing workers at home must place a document recording the work-related activity that they perform at their disposal, where the name of the worker, type and amount of work, amount of raw material delivered, rates agreed on for setting salary, delivery and acceptance of prepared products and any other aspects of the working relation of interest to the parties should be reflected.

5. Workers working at home may exercise the rights of collective representation as provided for in the present Law, unless this is a family group.

## **CHAPTER II**

### **Content of the Work Contract**

#### **Section 1. Contract Duration**

#### **Article 14. Probationary Period.**

1. A probationary period may be agreed on in writing, subject to the limits of duration which, as applicable, are established in the Collective Bargaining Agreements. In the absence of a pact in the Agreement, the duration of the probationary period shall not exceed six months for qualified technicians or two months for other workers. In companies with less than twenty-five workers, the probationary period shall not exceed three months for workers who are not qualified technicians.

The employer and the worker are respectively obliged to perform the actions making up the purpose of the probation.

The pact establishing a probationary period shall be null where the worker has already previously performed the same functions in the company under any contract modality.

2. During the probationary period, the worker shall have the rights and obligations corresponding to the work post occupied as though s/he formed part of the work force, except for those deriving from the dissolution of the labour relations, which may take place at the petition of either of the parties in the course of the probation.

3. Once the probationary period has elapsed without withdrawal, the contract shall take full effect, with the period of the services rendered being included in the worker's seniority.

Situations of temporary incapacity, maternity and the adoption or fostering of children affecting the worker during the probationary period interrupt the computation of the term, provided that agreement is reached between both parties.

#### **Article 15. Contract Duration.**

1. The work contract may be entered into for an indefinite period of time or for a specific duration.

Contracts for a specific duration may be formalized in the following cases:

a) When the worker is contracted to perform a specific independent work or service with its own substance within the activity of the company, the execution of which – albeit limited in time – is of uncertain duration. National sectoral collective bargaining agreements and agreements of lesser scope, including company agreements, may identify those jobs or tasks with a substance of their own within the normal activity of the company that may be covered by contracts of this nature.

b) Where market circumstances, the accumulation of tasks or the excess of orders thus require, even where this concerns the normal activity of the company. In such cases, the contracts may have a maximum duration of six months within a period of twelve, to be counted from the moment in which such causes arise. The maximum duration of these contracts and the period within which they may be formalized in consideration of the seasonal character of the activity in which such circumstances may arise may be modified by national sectoral bargaining agreements or, in their absence, by agreements

of a lesser scope. In such a case, the maximum period for which they may be entered into shall be eighteen months, whereby the contract duration may not exceed three-fourths of the reference period established or, by way of maximum, twelve months.

Should the contract be formalized for a duration inferior to the legal or conventional maximum established, it may be extended for a single time through an agreement between the parties, whereby the total duration of the contract may not exceed the maximum duration.

The activities in which casual workers may be contracted as well as the general criteria on the appropriate proportion between the volume of this contract modality and the total work force of the company may be determined by collective bargaining.

c) When dealing with the substitution of workers with a right to the reservation of their work posts, provided that the name of the worker substituted and the reason for substitution are specified in the work contract.

d) ...

2. Workers who may not have been registered in Social Security shall acquire the status of permanent workers, whatever the modality in which they were contracted, once a period equal to that which could legally have been fixed for the probation period has elapsed, unless the temporary duration of such activities or services as are contracted may be clearly deduced from their proper nature, without restriction to any other liabilities as may arise in law.

3. Provisional contracts signed by way of legal fraud shall be presumed permanent.

4. Employers must notify the workers' legal representatives in the company of the contracts signed in accordance with the contract modalities for specific time periods envisioned in this article where there is no legal obligation to submit a basic copy of such contracts.

5. Without prejudice to what is set forth in Sections 2 and 3 of this article, the workers who, in a period of thirty months, may have been contracted for a term superior to twenty-four months for the same work post with the same company by means of two or more temporary contracts with the same or different contract modalities of a specific duration, with or without resolved continuity, either directly or through the agency of a temporary work company, shall acquire the status of permanent workers.

In consideration of the peculiarities of each activity and the characteristics of the work post, collective bargaining shall establish the requirements aimed at preventing the abusive use of contracts of a specific duration using different workers to fill the same work post previously covered by contracts of this type, with or without resolved continuity, including outsourcing contracts subscribed with temporary work companies.

What is provided for in this section shall not be applicable to the use of training, replacement or substitution contracts.

6. Workers with temporary and specific-duration contracts shall have the same rights as workers with indefinite contracts, without prejudice to the specific peculiarities of each contract modality as regards contract extinction and those expressly provided for by Law in relation to training contracts. Where this is fitting in consideration of their nature, such rights shall be acknowledged proportionally in the legal and regulatory provisions and in collective bargaining agreements, depending on the time worked.

Where a certain right or work status is attributed in the legal or regulatory provisions and in the collective bargaining agreements by virtue of the prior seniority of the worker, this shall be computed in accordance with the same criteria for all workers, whatever their contract mode.

7. The employer must inform those workers of the company holding specific-duration or temporary contracts, including training contracts, regarding the existence of vacant work posts, so as to guarantee them the same opportunities of access to permanent posts as other workers. This information may be facilitated by public announcement in an appropriate place in the company or work centre, or through other means that may ensure the transmission of the information provided for by collective bargaining agreement.

Collective bargaining agreements may establish objective criteria or compromises for the conversion of specific-duration or temporary contracts into indefinite contracts.

Collective bargaining agreements shall establish measures to facilitate the effective access of these workers to continuous occupational training so as to improve their qualifications and favour their professional progress and mobility.

8. The indefinite fixed-discontinuous contract shall be entered into to perform jobs having a fixed and discontinuous nature and that do not repeat on certain dates within the company's normal volume of activity. The regulations governing indefinite part-time contracts shall be applicable to the cases of discontinuous jobs that repeat on certain dates. Fixed-discontinuous workers shall be called in the order and manner provided for in the respective collective bargaining agreements, with the worker being able to file claims for termination before the competent jurisdiction in case of breach, the timeline for such beginning from the moment in which s/he learned of the absence of a call.

This contract shall necessarily be formalized in writing, in the established form. It shall reflect an indication regarding the estimated duration of the activity, as well as the manner and order of the call established by the applicable collective bargaining agreement. It shall likewise reflect, by way of orientation, the estimated working day and the distribution of its hours.

Sectoral collective bargaining agreements may resolve, where the peculiarities of the sectoral activity so justify, the use of the part-time modality in fixed-discontinuous contracts, as well as the requirements and special factors for the conversion of temporary contracts into fixed-discontinuous contracts.

9. The Government is authorized to implement what is set forth in this article through regulations.

## **Article 16. Access to Work.**

1. Employers are obliged to inform the public employment office within an interval of ten days after hiring of the content of the work contracts that they sign or the extensions thereof, in the terms determined by the regulations, whether or not these have to be formalized in writing.

2. The existence of placement agencies for purposes of gain is prohibited. The public employment service may authorize the existence of placement agencies without purposes of gain under the conditions determined by the pertinent agreement of collaboration and subject to the prior report of the General Council of the National Institute of Employment, provided that the compensation received from the employer or the worker is exclusively limited to the expenses caused by the services rendered. The said agencies, within their scope of action, shall guarantee the principle of equal access to employment and may not establish any discrimination based on reasons of origin, including racial or ethnic, sex, age, civil status, religion or convictions, political opinion, sexual orientation, labour union membership, social status, language within the State, and handicap, provided that the workers meet the conditions of aptitude required to perform the job or employment involved.

## **Article 17. Non-discrimination in Labour Relations.**

1. The regulatory precepts, clauses of collective bargaining agreements, individual pacts and the unilateral decision of employers containing direct or indirect unfavourable discrimination by reason of age or handicap, or favourable or adverse discrimination in employment, as well as with regard to compensation, working day and other working conditions owing to circumstances of sex, origin – including racial or ethnic – civil or social status, religion or convictions, political ideas, sexual orientation, adhesion or non-adhesion to unions and to their agreements, family relationships with other workers in the company, and language within the Spanish State, shall be understood as null and void.

Orders to discriminate and employers' decisions involving an unfavourable treatment of workers as a reaction against a complaint made in the company or against an administrative or legal action intended to require compliance of the principle of equality in treatment and non-discrimination, shall be equally null and void.

2. Exclusions, reservations and preferences in free hiring may be established by Law.

3. Notwithstanding what is provided for in the preceding section, Government may regulate measures of reservation, duration or preference in employment intended to facilitate the placement of workers demanding employment.

Likewise, Government may grant subsidies, tax relief and other measures to promote the employment of specific groups of workers with special difficulties of access to

work. These shall be regulated subject to prior consultation with the most representative labour organizations and employers' associations.

The measures referred to in the preceding paragraphs shall have the priority orientation of promoting the stable employment of the unemployed and the conversion of temporary contracts into indefinite contracts.

4. Without prejudice to the provisions contained in the preceding sections, collective bargaining may establish measures of positive action to favour the access of women to all occupations. To this end, it may establish reservations and preferences in hiring conditions, such that, in equal conditions of ideal character, the persons of the less representative gender in the group or professional category concerned may have the hiring preference.

Likewise, collective bargaining may establish this type of measures in the conditions of occupational classification, promotion and training, such that, in equal conditions of ideal character, the persons of the less representative gender may have the preference, favouring their access to the group, professional category or work post concerned.

5. The establishment of plans towards equality in companies shall conform to what is provided for in this Law and in the Organic Law for effective equality between men and women.

#### **Article 18. The Inviolability of the Worker's Person.**

Searches of the worker's person, in his lockers and personal effects, where necessary to protect the assets of the company and of the other workers in the firm, may only be made inside the work centre and during working hours. In executing these, maximum respect for the dignity and privacy of the worker shall be shown, and a workers' legal representative or, in his/her absence from the work centre, of another worker from the company, shall be present, whenever this is possible.

#### **Article 19. Safety and Hygiene.**

1. In rendering his/her services, the worker shall have the right to effective protection as regards safety and hygiene.

2. The worker is obliged to observe the legal and regulatory measures of safety and hygiene in his job.

3. The worker has the right to participate through his/her legal work centre representatives in the inspection and control of such measures of obliged observance by the employer, if there are no specialized bodies or centres competent on the subject in the terms of the legislation in force.

4. The employer is obliged to facilitate an appropriate practical training as regards safety and hygiene to the workers that s/he contracts, or when these change their work

post or have to apply a new technique that may cause serious risks to the worker him/herself, to his/her companions or to third parties, whether these are services proper to the centre or involve the intervention of the pertinent official services. The worker is obliged to follow such instruction and to undergo practice when this is held within the working day or during other hours, albeit discounting the time invested in this from the working day.

5. The internal bodies of the company competent in questions of safety and, in their absence, the workers' legal work centre representatives who may appreciate a serious and significant probability of accident due to non-observance of the applicable law on the subject, shall require the employer in writing to adopt the suitable measures to eliminate the state of risk. Should the petition not be attended to within an interval of four days, these shall address the competent authority. Should this authority appreciate the circumstances alleged, it shall require the employer to adopt the appropriate safety measures or suspend his/her activities in the area or work premises, or involving the dangerous material, through a motivated resolution. With the technical reports necessary, it may also order the immediate paralyzation of work if a serious risk of accident is perceived.

If the risk of accident is imminent, the paralyzation of activities may be agreed on by a decision of those bodies of the company competent as regards safety, or by 75 percent of the workers' representatives in companies with discontinuous processes, and of the totality of these in companies with continuous processes. Such agreement shall be reported immediately to the company and to the labour authorities, who, in twenty-four hours, shall annul or ratify the paralyzation agreed on.

## **Article 20. Management and Control of Labour Activities.**

1. The worker shall be obliged to do the work agreed on under the management of the employer or the person to whom this delegates responsibility.

2. In complying with the obligation to work assumed in the contract, the worker owes the employer the due diligence and collaboration in the job marked out by the legal provisions, the collective bargaining agreements and the orders or instructions adopted by the employer in the regular exercise of his/her management authority and, in their absence, by practices and customs. In any event, the worker and the employer shall be subject to the requirements of good faith in their reciprocal actions.

3. The employer may adopt the measures of supervision and control that s/he deems most fitting in order to verify compliance by the worker of his/her working obligations and duties, observing, in such adoption and application, the due consideration for his/her human dignity and bearing in mind the real capacity of handicapped workers, as applicable.

4. The employer may verify the status of illness or accident alleged by the worker to justify his/her absences from work through check-ups by medical personnel. The worker's refusal to undergo such check-ups may determine the suspension of any economic rights as may exist to be borne by the employer in the said circumstances.

## **Article 21. Pact of Non-competition and Permanence in the Company.**

1. A worker may not render services to diverse employers when such is considered unfair competition or when full dedication is agreed on through express economic compensation, in the terms that may be suitable for the purpose.

2. The pact of non-competition after the work contract has been extinguished – which may not have a duration in excess of two years for technical personnel and six months for other workers – shall only be valid if the following requirements are present:

a) That the employer has an actual industrial or commercial interest in such, and

b) That the worker is paid an adequate economic compensation.

3. In the event of economic compensation for full dedication, the worker may rescind the agreement and recover his freedom to work at another job, informing the employer thereof in writing with advanced notice of thirty days, and losing the economic compensation or other rights related to full dedication in this case.

4. Where the worker may have received a professional specialization to start up certain projects or undertake specific jobs at the expense of the employer, his permanence in the said company for a certain period of time may be agreed on between both. The agreement shall not be of a duration superior to two years and shall always be formalized in writing. Should the worker abandon the job before the term, the employer shall have a right to indemnification for damages.

## **Section 3. Professional Classification and Promotion at Work**

### **Article 22. The System of Professional Classification.**

1. The workers' system of professional classification by means of professional categories or groups shall be established by collective bargaining or, in its absence, by agreement between the company and the workers' representatives.

2. The professional group shall be understood as that which groups together professional aptitudes, qualifications and general service content, and may include both diverse professional categories and different professional functions or specializations.

3. A professional category shall be understood as equivalent to another when the professional aptitude necessary to fulfil the functions proper to the former makes it possible to carry out the basic work functions of the latter, subject to the conduct, where necessary, of simple procedures of training or adaptation.

4. The criteria for defining categories and groups shall accommodate to common rules for the workers of one and the other gender.

5. The content of the service that is the subject of the work contract as well as its equivalence to the category, professional group or compensation level projected in the collective bargaining agreement or, in its absence, in the agreement applicable to the company corresponding to the said service, shall be established by agreement between the worker and the employer.

Where functional polyvalence or the performance of functions proper to two or more categories, groups or levels is agreed on, equivalence shall be determined by virtue of the prevalent functions.

### **Article 23. Promotion and Professional Training at Work.**

1. The worker shall have a right:

a) To enjoy the leaves necessary to undergo examinations, as well as a preference to choose work shifts, if such is the regime instituted in the company, when s/he regularly attends studies to obtain an academic or professional qualification.

b) To the adaptation of the ordinary working day in order to attend professional training courses, or to the concession of convenient leaves for training or professional improvement, with reservation of his/her work post.

2. The terms for the exercise of these rights shall be agreed on in the Collective Bargaining Agreements.

### **Article 24. Promotions.**

1. Promotions within the system of professional classification shall take place as established in agreement or, in the absence of such, in the collective bargaining agreement between the company and the workers' representatives.

In any case, promotions shall take place in consideration of training, merits, workers' seniority and the organizational capabilities of the employer.

2. The criteria for promotion in the company shall accommodate to common rules for the workers of one and the other gender.

### **Article 25. Economic Promotion.**

1. Depending on the job s/he performs, the worker may have the right to an economic promotion under the terms established by his/her Collective Bargaining Agreement or individual contract.

2. What is set forth in the preceding number is understood not to restrict the rights acquired or in the course of acquisition as per the pertinent applicable timeline.

## **Section 4. Salaries and Salary Guarantees**

## **Article 26. On Salaries.**

1. The totality of the economic payments received by workers in cash or in kind for services rendered on behalf of another, whether in exchange for actual work, whatever the form of compensation, or for the rest periods that can be counted as work, shall be considered as salary. In no case may salary in kind exceed 30 percent of the amounts received as salary by the worker.
2. The amounts received by the worker by way of indemnification or replacement for the expenses incurred as a consequence of his/her work activity, the benefits and indemnifications from Social Security, and the indemnifications corresponding to transfers, suspensions or terminations, shall not be considered as salary.
3. The structure of salaries shall be determined through collective bargaining or, in its absence, through the individual contract. This shall include basic salary as fixed compensation per unit of time or per job, and, as applicable, the salary supplements established depending on the circumstances relating to the personal conditions of the worker, the work done, or the situation and income of the company, calculated in accordance with the criteria agreed on for such purposes. Likewise, there shall be agreement as to whether or not said salary supplements are subject to consolidation, whereby those supplements related to the work post or the situation and income of the company shall not be consolidated, barring agreement to the contrary.
4. All tax and Social Security charges to be borne by the worker shall be paid by him/her, all pacts to the contrary being null and void.
5. Compensation and absorption shall be operative when the salaries actually paid, as a whole and in annual computation, are more favourable towards the workers than those established in the regulatory or conventional order of reference.

## **Article 27. Minimum Wage.**

1. Subject to consultation with labour unions and employers' associations, the Government shall set a minimum inter-professional wage every year, bearing in mind:
  - a) The consumer price index.
  - b) The average national productivity attained.
  - c) The increase of labour participation in national income.
  - d) General economic circumstances.

Likewise, a six-month revision shall be established in the event that forecasts on the price index cited are not met.

The revision of the minimum inter-professional wage shall not affect the structure or the amount of professional salaries if these in the annual computation as a whole are superior.

2. The minimum inter-professional wage is inalienable in its amount.

### **Article 28. Equality of Compensation between Sexes.**

The employer is obliged to pay the same compensation for the rendering of services of equal value, directly or indirectly, whatever the nature thereof, whether involving salary or non-salary items, without any discrimination by reason of sex in any of the elements or conditions thereof.

### **Article 29. Liquidation and Payment.**

1. The liquidation and payment of salaries shall be punctual and documented on the date and in the place agreed on or in accordance with practices and customs. The period of time to which the payment of periodical compensations refers to may not exceed one month.

The worker and, with his/her authorization, his/her legal representatives, shall have the right to receive advances to the account of work already done, without being obliged to wait for the appointed day of payment.

The documentation of wages shall be done by means of an individual payslip given to the worker, justifying payment thereof. Salary receipts shall adjust to the form approved by the Ministry of Labour and Social Security, unless another form is established reflecting the different amounts received by the worker as well as the deductions legally proceeding with the due clarity and separation through Collective Bargaining Agreement or, in its absence, by agreement between the company and the workers' representatives.

The liquidation of the salaries that correspond to those rendering services in fixed-discontinuous jobs shall be carried out subject to the procedures and guarantees established in Section 2 of Article 49, in the event of the conclusion of each period of activity.

2. The right to salaries on commission shall arise the moment the deal, placement or sale in which the worker may have intervened is closed and paid, and shall be liquidated and paid at the end of the year, unless otherwise agreed on.

The worker and his/her legal representatives may at any time request notification on the part of the books referring to such accruals.

3. Interest for late salary payment shall be 10 percent of the amount owed.

4. The salary, as well as the delegated payment of Social Security benefits, may be made by the employer in legal tender or by cheque or any other similar mode of payment through credit entities, subject to prior notice to the works committee or the workers' delegates.

### **Article 30. Impossibility of Service.**

Should the worker not be able to render his/her services once the contract is in force because the employer delayed in giving him/her work due to impediments attributable to this party, the worker shall conserve the right to his/her salary and cannot be obliged to compensate the money lost with another job done at another time.

### **Article 31. Bonuses.**

The worker has the right to two bonuses or extraordinary payments a year, one of them at Christmas and the other on the month agreed on by the collective bargaining agreement or by agreement between the employer and the workers' legal representatives. The amount of such bonuses shall likewise be fixed by collective bargaining.

This notwithstanding, it shall be possible to agree in collective bargaining to bonus pro-ratas divided into twelve monthly amounts.

### **Article 32. Salary Guarantees.**

1. Salary credits for the last thirty days of work in an amount not to exceed the double of the minimum inter-professional wage shall enjoy preference over any other credit, although this may be backed by pledge or mortgage.

2. Salary credits shall enjoy preference over any other credit with respect to the objects prepared by the workers while these are owned or are in the possession of the employer.

3. Credit for unprotected salaries in the preceding sections shall have the status of singularly privileged, in the amount resulting from multiplying three times the minimum inter-professional wage by the number of days of salary pending payment, and shall enjoy preference over any other credit, except those credits with rights in rem, in the cases in which these are preferential in accordance with the Law. Indemnifications for termination in the amount corresponding to the legal minimum calculated over a base that does not exceed three times the minimum wage shall have the same consideration.

4. The timeline for the exercise of the rights of preference on salary credit is one year, to be counted from the moment in which the salary should have been received. Such rights are extinguished once this term elapses.

5. The preferences acknowledged in the preceding sections shall be applicable to all cases in which the employer has not declared him/herself in receivership and the

pertinent loans concur with another or others on his/her property. In the event of bankruptcy, the provisions of the Bankruptcy Law regarding the classification of credit, enforcement and distraint shall be applicable.

### **Article 33. The Salary Guarantee Fund.**

1. The Salary Guarantee Fund, a regional agency depending on the Ministry of Labour and Social Affairs, with a legal personality and the capacity to work for the fulfilment of its purposes, shall pay the workers the amount of the salaries pending payment due to employers' insolvency, suspension of payments, bankruptcy or bankruptcy proceedings.

For the aforementioned purposes, the amount considered as salary in conciliation proceedings or in the legal resolution for all the items to which Article 26.1 refers, as well as the salaries for processing in the cases where such is proceeding, shall be considered salaries. For one or another item, jointly or separately, the Fund cannot pay an amount superior to that resulting from multiplying three times the daily minimum inter-professional wage, including the proportional part of bonuses, by the number of days of salary pending payment, to a maximum of one hundred and fifty days.

2. In the cases from the preceding section, the Salary Guarantee Fund shall pay the indemnifications acknowledged as the consequence of a sentence, order, act of legal conciliation or administrative resolution in favour of the workers as a result of termination or extinction of contracts, in accordance with Articles 50, 51, and 52 of this Law, and the extinction of contracts in accordance with Article 64 of Law 22/2003 dated 9 July on Bankruptcy, as well as indemnifications due to the extinction of temporary or specific-duration contracts in cases where this is legally proceeding. In all the cases with the maximum limit of one year, the daily wage serving as the basis of calculation may not exceed three times the minimum inter-professional wage, including the proportional part of bonuses.

For the sole purpose of payment by the Salary Guarantee Fund for cases of termination or extinction of contracts as per Article 50 of this Law, the amount of the indemnification shall be calculated on the basis of thirty days per year of service, with the limit fixed in the preceding paragraph.

3. In receivership proceedings, starting from the moment in which there is knowledge of the existence of work credits or the possibility of their existence is presumed, the Judge, by operation of law or upon the petition of a party, shall call upon the Salary Guarantee Fund, without which requirement this shall not assume the set forth out in the preceding sections. The Fund shall appear in the case as having collateral legal liability for the payment of the credits mentioned, being able to plead what befits it in law, without prejudice to the possibility that, once this is undertaken, it may continue as a creditor in the case.

4. The Fund shall assume the obligations specified in the preceding numbers, subject to the investigation of the case to verify if such is proceeding.

For the reimbursement of the amounts paid, the Salary Guarantee Fund shall necessarily subrogate the rights and actions of the workers, preserving the credit privilege conferred upon them by Article 32 of the Law. Should the said credits concur with those that the workers may conserve for the part not paid by the Fund, these shall be paid in the proportion of their respective amounts.

5. The Salary Guarantee fund shall finance itself with the contributions made by the employers referred to in Section 2 of Article 1 of this law, whether these are public or private.

The rate of contribution shall be set by Government on the salaries serving as the basis for the calculation of the contribution in order to attend to the contingencies deriving from work accidents, occupational illnesses and unemployment in the Social Security System.

6. For the purposes of this article, the employer's insolvency shall be understood to exist when, upon the urging of enforcement in the manner established by the Law on Labour Procedure, work credits are not satisfied. The resolution reflecting the declaration of insolvency shall be dictated subject to hearing with the Salary Guarantee Fund.

7. The right to request the Salary Guarantee Fund for the payment of the benefits resulting from the preceding sections shall expire one year from the date of the act of conciliation, sentence, order or resolution from the labour authorities acknowledging the debt due to salaries or fixing the amount of indemnifications.

This interval shall be interrupted by the exercise of the actions of enforcement or acknowledgement of the credit in receivership proceedings and by the other legal forms of interruption of expiry.

8. In companies with less than twenty-five workers, the Salary Guarantee Fund shall pay 40 percent of the legal indemnification corresponding to the workers whose labour relations have been extinguished as the result of the case investigated in application of Article 51 of this Law or for the reason contemplated in paragraph c) of Article 52, or in accordance with Article 64 of Law 22/2003 dated 9 July, on Bankruptcy.

The calculation of the amount of this payment shall be made on the basis of indemnifications adjusted to the limits provided for in Section 2 of this article.

9. The Salary Guarantee Fund shall be considered as a party in the handling of arbitration proceedings, for the purposes of assuming the obligations provided for in this article.

## **Section 5. Working Time**

### **Article 34. The Working Day.**

1. The duration of the working day shall be that agreed upon in the collective bargaining agreements or work contracts.

The maximum duration of the ordinary working day shall be forty hours a week of actual work on average in the yearly computation.

2. The irregular distribution of the working day throughout the year may be established through collective bargaining or, in its absence, through agreement between the company and the workers' representatives. Said distribution must, in any case, respect the minimum periods of daily and weekly rest provided for in this Law.

3. Between the end of one working day and the beginning of the next, there shall be at least twelve hours.

The actual number of ordinary working hours may not exceed nine daily, unless another distribution of daily working time is established by collective bargaining or, in its absence, agreement between the company and the workers' representatives, respecting, in any case, the rest period between working days.

Workers less than eighteen years of age may not work more than eight actual hours a day, including, as applicable, the time devoted to training and, if they work for several employers, the hours worked with each of them.

4. Whenever the duration of the continuous working day exceeds six hours, a rest period of not less than fifteen minutes shall be established during the same. This rest period shall be considered as time of actual work when thus established by the collective bargaining agreement or work contract.

In the case of workers less than eighteen years of age, the rest period shall have a minimum duration of thirty minutes and shall be established whenever the duration of the continuous working day exceeds four hours and a half.

5. Working time shall be calculated so that both at the beginning and at the end of the working day, the worker is at his work post.

6. The company shall prepare the working calendar every year and is obliged to display a copy thereof in a visible place in every work centre.

7. The Government, upon the proposal of the Ministry of Labour and Social Security, and subject to consultation with the most representative Labour Unions and Employers' Associations, may establish extensions or limitations in the organization and duration of the working day and of the rest periods for those sectors and jobs that so require due to their peculiar characteristics.

8. The worker shall have the right to adapt the duration and distribution of the working day in order to implement his/her right to the reconciliation of personal, family and working life in the terms established in the collective bargaining agreement or in the agreement to which he arrives with the employer, respecting, as applicable, what is set forth therein.

### **Article 35. Overtime.**

1. Those hours of work done over the maximum duration of the ordinary working day, determined as set forth in the preceding article, shall be considered overtime. Through collective bargaining agreement or, in its absence, individual contract, a choice shall be made between payment for overtime in a set amount, which in no case may be inferior to the value of the ordinary working hour, or payment in terms of equivalent periods of paid rest. In the absence of agreement in this respect, it shall be understood that overtime done shall be compensated through rest within the four months following its execution.

2. The number of overtime hours may not be superior to eighty a year, unless provided for in Section 3 of this article. For those workers who, owing to the modality or duration of their contract, have a working day inferior in yearly computation to the general working day of the company, the maximum yearly number of overtime hours shall be reduced by the same proportion as that existing between both types of working days.

For the purposes of what is set forth in the preceding paragraph, overtime hours that have been compensated through rest within the four months following shall not be counted.

The Government may suppress or reduce the maximum number of overtime hours for a specific period of time, either generally or for certain sectors of activity or territories, in order to increase the opportunities of placement for workers in a status of compulsory unemployment.

3. For the purposes of the maximum duration of the ordinary working day, the excess of hours worked to prevent or repair accidents and other extraordinary and urgent damages shall not be taken into account, even for the computation of the maximum number of overtime hours authorized, without prejudice to their compensation as overtime.

4. Overtime work shall be voluntary, unless its execution has been agreed on in collective bargaining agreements or in individual work contracts within the limits of Section 2 of this article.

5. For the purposes of overtime calculation, the working day for each worker shall be recorded from day to day and summed up in the period set for the payment of compensations, with copy of the summary furnished to the worker in the pertinent payslip.

### **Article 36. Night-time Work, Work in Shifts and Working Rhythm.**

1. For the purposes of what is set forth in the present Law, work done between ten o'clock at night and six o'clock in the morning shall be considered night-time work. Employers regularly resorting to night-time work shall inform the labour authorities thereof.

The working day for night-time workers may not exceed eight hours daily on average in a reference period of fifteen days. The said workers may not perform overtime.

For the application of what is set forth in the preceding paragraph, that worker normally spending a part of his working day not inferior to three hours during the night-time period, as well as that worker who may be foreseen to do a part of his work not inferior to one third of his working day in annual terms during the night-time period, shall be considered a night-time worker.

The provision established in the second paragraph of Article 34 Section 7 of this Law shall be applicable. Likewise, the Government may establish limitations and guarantees for night-time work in addition to those provided for in the present article in certain activities, or for specific categories of workers, depending on the risks to their health and safety that such work may imply.

2. Night-time work shall have a specific compensation to be determined in the collective bargaining agreement, unless the salary has been established considering that the work is nocturnal by its own nature, or compensation for this job in terms of rest may have been agreed on.

3. All forms of teamwork organization by which workers successively occupy the same work posts in accordance with a certain continuous or discontinuous rhythm, implying the need for the worker to render his services at different hours during a certain period of days or weeks, shall be considered work in shifts.

In companies with continuous twenty-four-hour production processes, account shall be taken of shift rotation in the organization of work shifts, and no worker shall be on night shift for more than two consecutive weeks, barring voluntary assignment.

Companies which, owing to the nature of their activity, work in shifts including Sundays and holidays, may either do this with teams of workers performing their activity for whole weeks, or by contracting personnel to complete the teams necessary for one or more days a week.

4. Night-time workers and workers working in shifts must at all times enjoy a level of health and safety protection adapted to the nature of their jobs, including the appropriate protection and prevention services equivalent to those of the other workers in the company.

The employer shall guarantee that the night-time workers s/he employs avail of free health check-ups before they are assigned to night-time work, and, subsequently, at regular intervals, in the terms established in the specific regulations on the subject. Night-time workers acknowledged to have health problems linked to their night-time work shall have the right to be assigned to a daytime work post existing in the company for which they are professionally capable. The change of work post shall be carried out as provided for by Articles 39 and 41 of the present Law, as applicable.

5. The employer organizing the work in the company according to a certain rhythm must take the general principle of adapting the job to the person into account,

particularly with a view towards attenuating monotonous and repetitive work depending on type of activity and health and safety requirements for workers. The said requirements shall be taken particularly into account when determining the rest periods during the working day.

### **Article 37. Weekly Breaks, Holidays and Leaves.**

1. Workers shall have the right to an uninterrupted minimum weekly break of one day and a half that may be accumulated for periods of up to fourteen days, which, as a general rule, shall include Saturday afternoon or, as applicable, Monday morning and the whole day of Sunday. The duration of the weekly work period for persons younger than eighteen shall be at least two days without interruption.

The provisions contained in Section 7 of Article 34 shall be applicable to the weekly break as regards extensions and reductions, as well as the establishment of alternative systems of rest periods for specific activities.

2. Working holidays shall be paid and not recoverable, and may not exceed fourteen a year, of which two shall be local working holidays. In any case, the festivities of Christmas, New Year, 1<sup>st</sup> of May as Labour Day, and the 12<sup>th</sup> of October as the National Day of Spain shall be respected nationwide.

With respect to the festivities set forth in the preceding paragraph, Government may transfer all national holidays taking place during the week to Monday, with the rest period corresponding to the holidays that coincide with Sunday being transferable to the Monday immediately after, in any case.

Within the annual limit of fourteen holidays, Regional Governments may indicate those festivities which, by tradition, are proper to them, substituting for the purpose those of national scope that are determined by regulation and, in any case, those holidays transferred to Mondays. They may likewise make use of the authority to transfer festivities to Monday provided for in the preceding paragraph.

Should any Regional Government not be able to hold one of its traditional festivities because a sufficient number of national holidays does not coincide with a Sunday, for the year that such occurs, it may add one more recoverable holiday, up to the maximum of fourteen.

3. Subject to prior notice and justification, workers may be absent from work with a right to compensation for the following amounts of time, and for the following reasons:

a) Fifteen calendar days in case of marriage.

b) Two days for the birth of a child and for the death, accident or serious illness, hospitalization or surgical operation without hospitalization, but requiring home rest, of relatives of up to second degree of consanguinity or affinity. Should the worker need to travel for the purpose, the interval shall be four days.

c) One day for moving in change of residence.

d) For the indispensable time required to comply with an inexcusable duty of public and personal character, including the exercise of active suffrage. Where a specific period is reflected in a legal or conventional norm, such provision shall be respected as regards the duration of the absence and its economic compensation.

Where compliance with the duty previously referred to implies the impossibility of rendering the due service by more than 20 percent of the work hours in a period of three months, the company may place the affected worker in the status of leave regulated in Section 1 of Article 46 of this Law.

Should the worker receive an indemnification for compliance with the duty or exercise of the office, the amount thereof shall be discounted from the salary to which he would have a right in the company.

e) To perform union or personnel representation functions under the terms legally or conventionally established.

f) For the indispensable time required to undergo pre-natal check-ups and childbirth preparation techniques that have to be done during the working day.

4. Female workers shall have the right to one hour of absence from work to breast-feed an infant of less than nine months. This may be divided into two fractions. The duration of such leave shall be increased proportionally in cases of multiple childbirth.

Women, at their choice, may substitute this right for a reduction of their working day by half an hour for the same purpose, or accumulate this into complete days under the terms provided for by the collective bargaining agreement or by the agreement arrived at with the employer, respecting, as applicable, what is set forth in collective bargaining.

This leave may be enjoyed by either the mother or the father, in the event that both work.

4. bis. In case of the birth of premature infants or children who, for any reason, have to remain hospitalized after childbirth, the mother or the father shall have the right to be absent from work for one hour. Likewise, they will have the right to reduce their working day by up to a maximum of two hours, with the proportional reduction in salary. The enjoyment of this leave shall be subject to the provisions contained in Section 6 of this article.

5. Whoever, for reasons of legal custody, is charged with the direct care of a child less than eight years of age or a person with a physical, psychic or sensory handicap who does not perform any paid activity, shall have the right to a reduction of working day, with the proportional decrease in salary of between, at least, one eighth, and at most, half of its duration.

Whoever needs to take charge of the direct care of a family member of up to the second degree of consanguinity or affinity, who, for reasons of age, accident or illness, cannot fend for him/herself and who does not perform any paid activity shall have the same right.

The reduction of working day envisioned in the present section is an individual right of workers, whether men or women. Nonetheless, if two or more workers from the same company give rise to this right on account of the same person, the employer may limit its simultaneous exercise for justified reasons of company operation.

6. It shall fall upon the worker to specify the timetable and determine the period of enjoyment of the breast-feeding leave and the reduction of working day provided for in Sections 4 and 5 of this article within her ordinary working day. The worker must give the employer fifteen days prior notice of the date on which she shall return to her ordinary work schedule.

Any discrepancies arising between the employer and the worker regarding specification of timetable and the determination of periods affected set forth in Sections 4 and 5 of this article shall be resolved by the competent jurisdiction through the procedure set forth in Article 138 bis of the Law on Labour Procedure.

7. Workers who are victims of gender violence shall have the right to the reduction of their working day with the proportional decrease of salary or the reorganization of working time through schedule adaptation, application of flexible timetables or other forms of work rescheduling used in the company, in order to make effective use of their due protection or their right to integrated social assistance.

These rights may be exercised in the terms established by the collective bargaining agreements or the agreements between the company and the workers' representatives for these specific cases, or in accordance with the agreement between the company and the affected worker. In their absence, it shall fall upon the worker to specify these rights, whereby the rules established in the preceding section shall be applicable, including those relative to the resolution of discrepancies.

### **Article 38. Yearly Holidays.**

1. The period for paid yearly holidays not subject to substitution by economic compensation shall be that agreed on in the collective bargaining agreement or individual contract. In no case shall the duration thereof be less than thirty calendar days.

2. The period or periods for their enjoyment shall be fixed by mutual agreement between the employer and the worker, in accordance with what is established in the Collective Bargaining Agreements regarding yearly holiday planning, as the case may warrant.

In the event of disagreement between the parties, the competent jurisdiction shall set the date thereof and its decision shall not be subject to appeal. The procedure shall be brief and shall have preference.

3. The holiday calendar shall be set in each company. The worker shall know the dates that correspond to him at least two months before such holidays begin.

Where the holiday period set in the company holiday calendar referred to in the preceding paragraph coincides in time with a temporary incapacity arising from pregnancy, childbirth or natural breast-feeding, or with the period of suspension of the work contract provided for in Article 48.4 of this Law, the worker shall have the right to enjoy holidays on a date other than that of the temporary incapacity or of the enjoyment of leave corresponding to him/her by application of the said precept at the end of the period of suspension, even though the calendar year to which they correspond may have finished.

### **CHAPTER III**

## **Modification, Suspension and Extinction of the Work Contract**

### **Section 1. Functional and Geographical Mobility**

#### **Article 39. Functional Mobility.**

1. Functional mobility within the company has no restrictions other than those required by the academic or professional qualifications necessary to render the service and belong to the professional group. In the absence of professional group definitions, functional mobility may be implemented between equivalent professional categories.

2. Functional mobility to perform functions not corresponding to the professional group or equivalent categories shall only be possible if technical or organizational reasons justifying it exist, and only for the time indispensable to attend to these. Should inferior functions be entrusted to the workers, this must be justified by compelling or unforeseeable production needs. The employer must communicate this situation to the workers' representatives.

3. Functional mobility shall be implemented without undermining the worker's dignity and compromising his/her professional training and promotion, and shall originate the right to the compensation proper to the functions actually performed, unless inferior functions are involved, in which case the worker's original compensation shall be maintained. The reasons for objective dismissal for cases of ineptitude or lack of adaptation may not be invoked where functions other than those that are habitual are performed as a result of functional mobility.

4. If, as a result of functional mobility, functions superior to those of the professional group or equivalent categories are performed for a period in excess of six months in the course of a year or eight months in the course of two years, the worker may claim the pertinent promotion, if the provisions of the Collective Bargaining Agreement or, in any case, the coverage of the vacancy corresponding to the functions s/he carries out do not oppose this, as per the rules on promotion applicable in the company, without prejudice to claims on the pertinent difference in salary. Such instances shall be accruable. The worker may file claim before the competent jurisdiction against the refusal of the company, subject to a report of the Committee or, as applicable, of the workers' delegates.

Collective bargaining may establish periods other than those set forth in this article for the purpose of demanding the coverage of vacancies.

5. A change of functions other than those agreed on that is not included in the cases provided for in this article shall require the agreement of the parties or, in its absence, submission to the rules provided for in the event of substantial modification of working conditions, or those established in the Collective Bargaining Agreement for such a purpose.

#### **Article 40. Geographical Mobility.**

1. The transfer of workers who may not have been contracted specifically to render services in companies with mobile or itinerant work centres to a different work centre of the same company that demands a change of residence shall require the existence of economic, technical, organizational or production reasons justifying it, or recruitments related to the company activity.

The causes to which this article refers shall be understood present where the adoption of the measures proposed contributes to improve the situation of the company through a more appropriate organization of its resources that favours its competitive position on the market or a better response to the requirements of demand.

The decision for transfer must be notified by the employer to the worker as well as to his/her legal representatives at least thirty days in advance of its effective date.

Once the decision for transfer has been notified, the worker shall have the right to choose between the transfer, receiving a compensation for expenses, or the extinction of his/her contract, receiving an indemnification of twenty days of salary per year of service, pro-rated for the periods of time inferior to one year, with a maximum of twelve monthly payments. The compensation referred to in the first case shall include both his/her own expenses and those of the family members in his/her care, under the terms agreed upon between the parties, which shall never be less than the minimum limits established in the collective bargaining agreements.

Without prejudice to the enforceability of the transfer within the timeline of incorporation mentioned, the worker who has not opted for the extinction of his/her contract and who does not agree with the company decision may challenge it before the competent jurisdiction. The sentence shall declare the transfer justified or unjustified and, in this latter case, shall acknowledge the worker's right to be reinstated in the original work centre.

Should the company implement transfers for the purpose of circumventing the provisions contained in the next section of this article during successive periods of ninety days in a number inferior to the thresholds therein indicated without new reasons justifying such action, such new transfers shall be considered as implemented by way of legal fraud and shall be declared null and void.

2. The transfer referred to in the foregoing section must be preceded by a period of consultation of not less than fifteen days with the workers' legal representatives where it

affects the entire work centre whenever this employs more than five workers, or when, without affecting the entire work centre, within a period of ninety days, it involves at least:

- a) Ten workers in companies that employ less than one hundred workers.
- b) Ten percent of the number of workers in the company in those employing between one hundred and three hundred workers.
- c) Thirty workers in companies that employ three hundred or more workers.

The said consultation period shall deal with the reasons for the company decision and the possibility of preventing or reducing its effects, as well as the measures necessary to attenuate its consequences for affected workers.

Notice must be given to the work authorities regarding the opening of the consultation period and the positions of the parties after its conclusion. During the consultation period, the parties shall negotiate in good faith with a view to arriving at an agreement.

The said agreement shall require the approval of the members of the Works Committee or Committees, the workers' delegates, as applicable, or union representatives if any, representing the majority of these as a whole.

After the end of the consultation period, the employer shall give the workers notice of his/her decision on the transfer, which shall be governed for all purposes by what is set forth in Section 1 of this article.

Notwithstanding what is set forth in the preceding paragraph, the labour authorities, in view of the positions of the parties and provided that the economic or social consequences of the measure so justify, may order the extension of the timeline for incorporation referred to in section 1 of this article and the consequent paralyzation of the effect of the transfer for a period of time which in no case may be superior to six months.

Labour dispute claims may be filed against the decisions referred to in the present section, without prejudice to the individual action provided for in Section 1 of this article. The filing of the dispute shall paralyze the processing of individual suits initiated until it is resolved.

The agreement with the workers' legal representatives during the consultation period shall be understood not to restrict the right of the workers concerned in the exercise of the option contemplated in paragraph 4, Section 1 of this article.

3. If, due to transfer, one of the spouses changes residence, the other, where both are workers from the same company, shall have the right to be transferred to the same town, if a work post exists there.

3 bis). The worker who is a victim of gender violence and who is obliged to abandon her work post in the place where she was rendering her services in order to effectively claim protection or her right to integrated social assistance shall have a preferential right

to occupy another work post in the same professional group or equivalent category that the company may have vacant, in any other from among its work centres.

In such cases, the company shall be obliged to notify the worker of the vacancies existing at such a moment, or those that may arise in the future.

The transfer of change of work centre shall have an initial duration of six months, during which the company shall be obliged to reserve the work post that the worker previously occupied.

Once this period is finished, the worker may choose between returning to her previous work post or continuing in the new assignment. In this latter case, the mentioned obligation to reserve such work post shall be extinguished.

4. Due to economic, technical, organizational or production reasons, or hires related to the business activity, the company may temporarily transfer its workers, requiring them to live in a town other than their usual place of residence, paying, in addition to their salaries, their travel expenses and allowances.

Workers must be informed of such transfers with sufficient time prior to its effect, which may not be less than five working days in the case of transfers of a duration superior to three months. In this latter case, the worker shall have the right to a leave of four working days in his original domicile for every three months of transfer, with those trips for which the employer pays the expenses not counting as such.

The worker may appeal against the transfer order without restricting its enforceability in the same terms provided for in the case of transfers in Section 1 of this article.

Those displacements, the duration of which exceeds twelve months in a period of three years, shall be dealt with as stipulated in this Law for transfers, for all intents and purposes.

5. Workers' legal representatives shall have the priority of permanence in the work posts referred to in this article.

#### **Article 41. Substantial Modifications to Working Conditions.**

1. Where demonstrated economic, technical, organizational or production reasons exist, the company management may resolve substantial modifications to working conditions. Those modifications affecting the following items shall be considered as substantial modifications to working conditions:

- a) Working day.
- b) Timetable.
- c) Regime of work in shifts.
- d) Compensation system.

e) Work and performance system.

f) Functions, where these exceed the limits set by Article 39 of this Law for functional mobility.

The causes to which this article refers shall be understood present where the adoption of the measures proposed contributes to improve the situation of the company through a more appropriate organization of its resources that favours its competitive position on the market, or a better response to the requirements of demand.

2. Substantial modifications to working conditions may be of individual or collective nature.

The modification of those working conditions enjoyed by workers individually shall be considered of individual nature.

The modification of those conditions acknowledged to the workers by virtue of collective agreement or pact, or enjoyed by these with collective effects by virtue of a unilateral decision of the employer, shall be considered of collective nature. The modification of the conditions established in the collective bargaining agreements regulated in Heading III of the present Law may only take place by agreement between the company and the workers' representatives and with respect to the items referred to in paragraphs b), c), d) and e) of the preceding section.

Notwithstanding what is set forth in the preceding paragraph, in no case shall functional and working timetable modifications be considered of collective nature for the purposes of what is set forth in Section 4 of this article where, in a period of ninety days, they affect a number of workers less than:

a) Ten workers in companies that employ less than one hundred workers.

b) Ten percent of the number of workers in the company in those occupying between one hundred and three hundred workers.

c) Thirty workers in companies that employ three hundred or more workers.

3. Notice of the decision to substantially modify individual working conditions must be given by the employer to the affected worker and his/her legal representatives at least thirty days in advance of its effective date.

In the cases provided for in paragraphs a), b) and c) of Section 1 of this article, and without prejudice to what is set forth in Article 50, Section 1 a), if the substantial modification turns out detrimental to the worker, s/he shall have the right to rescind his/her contract and receive an indemnification of twenty days of salary per year of service pro-rated monthly for periods of less than a year, with a maximum of nine months.

Without prejudice to the enforceability of the modification within the timeline of effect previously mentioned, the worker who has not opted for the rescission of his/her contract and who does not agree with the company decision may challenge it before the

competent jurisdiction. The sentence shall declare the modification justified or unjustified and, in this latter case, shall acknowledge the worker's right to be reinstated under his/her previous working conditions.

Should the company implement substantial modifications in working conditions for the purpose of circumventing the provisions contained in the next section of this article for successive periods of ninety days in a number inferior to the thresholds referred to in the last paragraph of section 2, without new reasons justifying such action, such new modifications shall be considered as implemented by way of legal fraud and shall be declared null and void.

4. The decision to substantially modify working conditions of a collective nature must be preceded by a period of consultation lasting not less than fifteen days with the workers' legal representatives. The said consultation period shall deal with the reasons for the company decision and the possibility of preventing or reducing its effects, as well as the measures necessary to attenuate its consequences for the affected workers.

During the consultation period, the parties shall negotiate in good faith with a view to arriving at an agreement.

Said agreement shall require the approval of the majority of the members of the works committee or committees, the workers' delegates, as applicable, or union representatives, if any, representing the majority of these as a whole.

After the end of the consultation period, the employer shall give the workers notice of his/her decision on the modification, which shall take effect once the interval referred to in Section 3 of this article elapses.

Labour dispute claims may be filed against the decisions referred to in the present section, without prejudice to the individual action provided for in Section 3 of this article. The filing of the dispute shall paralyze the processing of the individual suits initiated until it is resolved.

Agreement with the workers' legal representatives during the consultation period shall be understood not to restrict the right of the workers concerned in the exercise of the option provided for in the second paragraph of Section 3 of this article.

5. As regards transfers, the provisions contained in the specific rules established in Article 40 of this Law shall be observed.

## **Section 2. Guarantees Owing to Change of Employer**

### **Article 42. Subcontracting Works and Services.**

1. Employers contracting or subcontracting with others the execution of works or services corresponding to the activity proper to these must verify that such contractors are up to date in their Social Security contribution payments. For the purpose, they shall request in writing, identifying the company concerned, a negative certification as to

unpaid dues with the General Social Security Treasury, which must issue the said certificate within a non-extendable interval of thirty days without excuse, in the terms established by regulations. Once this interval elapses, the petitioning employer shall be exonerated of liability.

2. The main employer shall jointly respond for the salary obligations assumed by the contactors and subcontractors with their workers and those referring to Social Security during the period of validity of such contract during the year following the termination of his/her job order, unless the interval previously set forth with respect to Social Security has elapsed.

There shall be no liability for the acts of the contractor where the activity contracted refers exclusively to the building or repair that the head of a family may contract with respect to his home, as well as where the owner of the works or the industry does not contract such execution on behalf of a business activity.

3. The workers of the contractor or subcontractor must be informed by their employer in writing of the identity of the main company to which they are rendering services at any given time. Such information shall be facilitated before the start of the pertinent services rendered and shall include the name or corporate name of the main employer, his/her corporate domicile and his/her tax identification number. Likewise, the contractor or subcontractor shall inform the General Social Security Treasury of the identity of the main company in the terms determined by regulations.

4. Without prejudice to the information on projections regarding subcontracting to which Article 64 of this Law refers, where the company enters into contract for the execution of works or services with a contracting or subcontracting company, it shall inform its workers' legal representatives of the following data:

a) Name or corporate name, domicile and tax identification number of the contracting or subcontracting company.

b) Purpose and duration of the contract.

c) Place of execution of the contract.

d) As applicable, the number of workers to be employed in the work centre of the main company by virtue of the contract or subcontract.

e) Measures envisioned for the coordination of activities from the viewpoint of occupational risk prevention.

Where the main company, contractor or subcontractor continuously share a same work centre, the first party must avail of a register reflecting the previous information with respect to all the companies cited. This book shall remain at the disposal of the workers' legal representatives.

5. The contracting or subcontracting company shall likewise inform their workers' legal representatives regarding the same data referred to in Section 3 above and letters b) to e) of Section 4 before the start of contract execution.

6. Where they have no legal representation, the workers of the contracted and subcontracted companies shall have the right to address questions regarding the conditions of execution of the work activity to the main company's workers' representatives while they share the same work centre and lack representation.

The provision contained in the preceding paragraph shall not be applicable to workers' complaints regarding the company on which they depend.

7. When continuously sharing work centre, the legal representatives of the workers from the main company and the contracting and subcontracting companies may meet in order to coordinate amongst themselves with regard to the conditions of execution of the work activity in the terms stipulated in Article 81 of this Law.

The representation capacity and scope of action of the workers' representatives as well as their hourly credits shall be determined by the laws in force and, as warranted, by the collective bargaining agreements applicable.

#### **Article 43. Cession of Workers.**

1. The contracting of workers for their temporary cession to another company may only be undertaken through duly authorized temporary work companies under the legally-established terms.

2. In any case, the illegal cession of workers covered by the present article is understood to take place where any of the following circumstances are present: that the purpose of the service contracts between the companies is limited to a mere deployment of the workers of the ceding company to the benefiting company, or that the ceding company has no stable activity or organization of its own, or that it does not avail of the means necessary to undertake its activity, or does not exercise the functions inherent to its status as an employer.

3. Employers, whether ceding or benefiting, who infringe what is set forth in the preceding sections, shall respond jointly for the obligations contracted with their workers and with Social Security, without prejudice to the other liabilities, including criminal liabilities, that may be proceeding for such actions.

4. Workers subjected to illicit traffic shall have the right to acquire permanent status in the ceding or benefiting company at their choice. The rights and obligations of the worker in the benefiting company shall be those corresponding to a worker rendering services in the same or in an equivalent work post under ordinary conditions, although seniority shall be computed from the start of the illegal cession.

#### **Article 44. Company Succession.**

1. The change of ownership in a company, a work centre or an independent production unit, shall not by itself extinguish a labour relationship, the new employer substituting the previous one in his/her labour and Social Security rights and obligations, including

commitments for pensions, under the terms provided for in the specific regulations and, in general, in whatever obligations this may have acquired from the ceding employer as regard additional social protection.

2. For the purposes of what is set forth in the present article, company succession shall be considered to exist when the conveyance affects an economic entity that maintains its identity, understood as a set of means organized for the purpose of carrying out an economic, essential or accessory activity.

3. Without prejudice to what is set forth in the laws on Social Security, the ceding and the benefiting employer, in the conveyances that take place *intervivos*, shall respond jointly for three years for the labour obligations arising prior to the conveyance that may not have been fulfilled.

The ceding and benefiting employers shall also respond jointly for the obligations arising after the conveyance if the cession is declared an offence.

4. Barring agreement to the contrary established once the succession is consummated through company agreement between the benefiting company and the workers' representatives, the labour relations of the workers affected by the succession shall continue to be governed by the collective bargaining agreement applicable in the company, work centre or independent production unit conveyed at the moment of the cession.

This applicability shall be maintained until the date of expiry of the original collective bargaining agreement, or until another new collective bargaining agreement applicable to the economic entity conveyed comes into force.

5. Where the company, work centre or production unit that is the subject of conveyance preserves its autonomy, change of ownership by the employer shall not by itself extinguish the mandate of the workers' legal representatives, who shall continue to exercise their functions in the same terms and under the same conditions previously obtaining.

6. The ceding and benefiting employers must inform the legal representatives of their respective workers affected by the change of ownership of the following data:

- a) Projected date of conveyance;
- b) Reasons for conveyance;
- c) Legal, economic and social consequences of the conveyance for the workers, and
- d) Measures projected with respect to the workers.

7. Should the workers have no legal representatives, the ceding and benefiting employers must facilitate the information mentioned in the preceding section to the workers affected by the conveyance.

8. The ceding employer is obliged to facilitate the information mentioned in the preceding sections with sufficient time in advance before the execution of the conveyance. The benefiting employer is obliged to communicate this information with sufficient time in advance and, in any case, before its workers are affected in their employment and working conditions by the conveyance.

In cases of company merger and separation, the ceding and benefiting employer are, in any case, obliged to provide the information indicated upon the publication of the call to the general meetings to adopt the pertinent resolutions.

9. The ceding or benefiting employer projecting to adopt labour measures in relation to its workers by reason of the cession shall be obliged to initiate a period of consultation with the workers' legal representatives regarding the measures projected and their consequences for the workers. Said consultation period must be held with sufficient time in advance before the measures are implemented. During the consultation period, the parties shall negotiate in good faith with a view to arriving at an agreement. Where the measures projected consist of collective transfers or of substantial collective modifications of working conditions, the procedure for the period of consultations referred to by the preceding paragraph shall adjust to what is set forth in Articles 40.2 and 41.4 of the present Law.

10. The obligation to inform and consult established in the present article shall apply regardless of whether the decision on the conveyance has been adopted by the ceding and benefiting employers or by the companies exercising control over them. Any justification of the sort based on the fact that the company making the decision did not facilitate the information necessary shall not be taken into consideration for such purposes.

### **Section 3. Contract Suspension**

#### **Article 45. Causes and Effects of Suspension.**

1. Work contracts may be suspended for the following reasons:

a) Mutual agreement between the parties.

b) The reasons validly reflected in the contract.

c) Workers' temporary incapacity.

d) Maternity, paternity, risk during pregnancy, risk during the natural breast-feeding of a child of less than nine months, and pre-adoptive as well as permanent or simple adoption or fostering of minors of less than six years or minors older than six years where these are handicapped minors, or minors who, owing to their circumstances and personal experiences, or because they come from abroad, may have special difficulties in social and family insertion, duly accredited by the competent social services, in compliance with the Civil Code or the civil laws of the Regional Government regulating this, as long as its duration is not less than one year, although provisional.

- e) Compliance with military service or with the substituting social service.
  - f) The exercise of representative public office.
  - g) The worker's privation of liberty, while no sentence condemning him/her exists.
  - h) Suspension of salary and employment for disciplinary reasons.
  - i) Temporary force majeure.
  - j) Economic, technical, organization or production reasons.
  - k) Compulsory leave.
  - l) Owing to the exercise of the right to strike.
  - m) Legal closure of the company.
  - n) Owing to the decision of a worker obliged to abandon her work post as the result of having been a victim of gender violence.
2. Suspension exonerates employee and employer from the mutual obligations of working and compensating work.

#### **Article 46. Leaves.**

1. Leaves may be voluntary or mandatory. Mandatory leaves, which give employees a right to the preservation of their post and the calculation of seniority during their validity, shall be granted for appointment or election to public office that renders attendance at work impossible. Readmission must be requested within the month following cessation from public office.
2. A worker with at least one year of seniority in the company shall have the right to be acknowledged the possibility of voluntary leave for a period not less than four months and no greater than five years. This right may only be exercised one more time by the same worker if four years have transpired since the end of the preceding leave.
3. Workers shall have the right to a leave lasting not more than three years to attend to the care of each child, whether natural or adopted or being fostered, whether permanently or as a pre-adoptive measure, although these may be provisional, to be counted from the date of birth or, as applicable, from the legal or administrative resolution.

Workers shall also have the right to a leave of not more than two years, unless a greater period is established by collective bargaining, in order to attend to the care of a family member of up to the second degree of consanguinity or affinity who, for reasons of age, accident, illness or handicap, cannot fend for him/herself and who does not perform any paid activity.

The leave envisioned in the present section, the duration of which may be fractioned, is an individual right of workers, whether men or women. Nonetheless, if two or more workers from the same company give rise to this right on account of the same person, the employer may limit its simultaneous exercise for justified reasons of company operation.

Where a new subject originates the right to a new period of leave, the start of this shall put an end to the leave currently being enjoyed, as applicable.

The period in which the worker remains in a situation of leave as established in this article shall be computed for purposes of seniority, and the worker shall have the right to attend professional training courses that the employer calls him to participate in, particularly on the occasion of his/her reinstatement. During the first year, s/he shall have the right to the reservation of his/her work post. After the said period, the reservation shall refer to a work post of the same professional group or equivalent category.

Nonetheless, where the worker forms part of a family officially acknowledged as numerous, the reservation of his/her work post shall extend up to a maximum of 15 months in the case of a numerous family of general category, and 18 months in the case of the special category.

4. Workers exercising union functions of provincial or superior scope may likewise request to be admitted to the situation of leave in the company during the exercise of their representative office.

5. The worker on leave only holds a preferential right to reinstatement in the vacancies of a category equal or similar to his/hers that may exist or arise in the company.

6. The situation of leave may extend to other cases agreed upon in collective bargaining, with the regime and effects provided for therein.

#### **Article 47. Contract Suspension for Economic, Technical, Organizational or Production Reasons or Reasons deriving from Force Majeure.**

1. The work contract may be suspended upon the initiative of the employer for economic, technical, organizational or production reasons, subject to the procedure set forth in Article 51 of this Law in its regulations on implementation, except in what refers to indemnifications, which shall not be proceeding.

The authorization of this measure shall be proceeding when it may be reasonably inferred from the documents of the case that such a temporary measure is necessary to overcome a circumstantial situation in the company activity.

In this case, the interval referred to in Section 4 of Article 51 of this Law regarding the duration of the consultation period shall be reduced to half and the justifying documentation shall be that strictly necessary in the terms that may be determined by regulations.

2. Likewise, work contracts may be suspended for reasons deriving from force majeure, subject to the procedure set forth in Article 51.12 of this Law and the regulations for its implementation.

#### **Article 48. Suspension with Reservation of Work Post.**

1. Upon the termination of the legal reasons for suspension, the worker shall have the right to reinstatement in his reserved work post in all the cases referred to by Section 1 of Article 45, except in those indicated in paragraphs a) and b) of the same section and article, in which agreements shall be observed.

2. In the event of temporary incapacity, after this situation is extinguished by the declaration of permanent disability to the degrees of total permanent incapacity for the usual occupation, absolute incapacity for any work, or great disability, when, in the judgment of the rating organ, the situation of the worker's incapacity will foreseeably be subject to revision owing to improvement permitting his/her reinstatement in the work post, the suspension of the labour relationship shall subsist with reservation of the work post for a period of two years to be counted from the date of the resolution by which permanent disability was declared.

3. In the cases of suspension owing to military service or the substitutory social service, exercise of representative public office or provincial or superior union functions, the worker must rejoin his work post within a maximum timeline of thirty calendar days from the cessation in the service, office or function.

4. In the event of childbirth, the suspension shall have a duration of sixteen weeks without interruption, which may be extended by two weeks more for each child starting from the second in the case of multiple childbirth. The period of suspension shall be distributed at the option of the interested party, provided that six weeks are immediately subsequent to the birth of the child. Should the mother die, independently of whether or not she works, the other parent may make use of all or, as applicable, the remaining part of the period of suspension counted from the date of the birth of the child, without deducting the part of the leave that the mother may have enjoyed prior to childbirth. In the event that the child dies, the period of suspension shall not be reduced unless the mother requests to be readmitted to her work post once the six months of mandatory rest are over.

Notwithstanding the above, and without restriction to the six weeks of mandatory rest for the mother immediately after childbirth, in the event that both parents work, the mother, upon starting the rest period due for maternity, may elect to have the other progenitor enjoy a certain uninterrupted part of the rest period after childbirth, either simultaneously or successively with the rest period of the mother. The other parent may continue to use the period of suspension for maternity initially ceded, although at the time projected for the reinstatement of the mother at work, she is in a situation of temporary incapacity.

Should the mother not have the right to suspend her professional activity with a right to benefits in accordance with the rules regulating the said activity, the other parent shall have the right to suspend his work contract for the period that should have corresponded

to the mother, which shall be compatible with the exercise of the right acknowledged in the following article.

In cases of premature childbirth and in those cases in which, for any other reason the newborn infant has to remain hospitalized after the childbirth, the period of suspension may be computed from the date of hospital discharge upon the petition of the mother or, by default, of the father. The six weeks' mandatory suspension of the contract of the mother after childbirth is excluded from the computation.

In cases of premature childbirth with low birth weight and those others in which the newborn child, owing to some clinical condition, may need hospitalization for a period superior to seven days, the period of suspension shall be extended by as many days as the newborn infant is hospitalized, to a maximum of thirteen additional months, in the terms in which the regulations provide.

In the cases of adoption and fostering, in accordance with Article 45.1.d) of this Law, the suspension shall have a duration of sixteen weeks without interruption, extendable in the event of multiple adoption or fostering by two weeks for each minor starting from the second. At the worker's choice, the said suspension shall take effect either starting from the legal resolution formalizing the adoption or the provisional or final administrative or legal decision for fostering, without the same minor being able to give rise to a right to various periods of suspension in any case.

In the event that both parents work, the suspension period shall be distributed at the choice of the interested parties, who may enjoy it simultaneously or successively, always as uninterrupted periods with the limits set forth.

In cases of simultaneous enjoyment of rest periods, the sum of these may not exceed the sixteen weeks provided for in the preceding paragraphs or the weeks corresponding in case of childbirth, adoption or multiple fostering.

In the event of disability of the child or of the adopted or fostered minor, the suspension of the contract referred to in this section shall have an additional duration of two weeks. In the event that both parents work, this additional period shall be distributed at the choice of the interested parties, who may enjoy it simultaneously or successively, always as uninterrupted periods.

The periods to which the present section refer may be enjoyed under the full or part-time regime, subject to agreement between the employers and the workers affected, in the terms that may be determined by regulations.

In cases of international adoption where the parents' previous displacement to the country of origin of the adopted child is necessary, the suspension period provided for each case in the present section may be started up to four weeks before the resolution formalizing the adoption.

The workers shall benefit from any improvement in working conditions to which they may have had a right during the suspension of the contract in the cases referred to in this section, as well as in those contemplated in the following section and in Article 48 bis.

5. In case of risk during the pregnancy or during the natural breast-feeding period, in the terms contained in Article 26 of Law 31/1995 dated 8 November, on the Prevention of Occupational Risks, the suspension of the contract shall end on the day that the suspension of the contract owing to biological maternity begins, or the lactating child turns nine months old, respectively, or, in both cases, when the impossibility for the worker to be reinstated in her previous work post or another post compatible with her status disappears.

6. In the case provided for in letter n) of Article 45, Section 1, the period of suspension shall have an initial duration that may not exceed six months, unless it turns out from the actions of legal custody that the effect of the victim's right to protection requires the continuity of the suspension. In this case, the judge may extend the suspension for periods of three months, to a maximum of eighteen months.

#### **Article 48. bis. Suspension of the Work Contract due to Paternity.**

In cases involving the birth, adoption or fostering of a child, in accordance with Article 45.1.d) of this Law, the worker shall have a right to the suspension of his contract for thirteen consecutive days, which may be extended in the case of multiple childbirth, adoption or fostering by two more days for each child starting from the second. This suspension is independent of the shared enjoyment of the rest periods granted for maternity, regulated by Article 48.4.

In the case of childbirth, the suspension exclusively corresponds to the other parent. In cases of adoption or fostering, this right shall correspond exclusively to one of the parents at the election of the interested parties; nonetheless, where the rest period regulated by Article 48.4 is enjoyed in its totality by one of the parents, the right to suspension due to paternity may only be exercised by the other.

The worker exercising this right may do so during the period between the end of the legally or conventionally stipulated leave granted for the birth of a child, or starting from the legal resolution formalizing adoption, or the administrative or legal decision on child fostering, and the end of the contract suspension regulated by Article 48.4, or immediately after the end of the said suspension.

The contract suspension to which this article refers may be enjoyed under full-time regime or under the regime of a part-time working day of a minimum of 50 percent, subject to previous agreement between the employer and the worker and as may be determined by regulations.

The worker shall give the employer the due advance notice of his exercise of this right under the terms established in the collective bargaining agreements, as applicable.

#### **Article 49. Contract Extinction.**

1. The work contract shall be extinguished:

- a) By mutual agreement between the parties.
- b) For the reasons validly reflected in the contract, unless these constitute a manifest abuse of rights on the part of the employer.
- c) By expiration of the time agreed on or the completion of the work or service that is the subject of the contract. Except in cases of substitution and training contracts, at the end of the contract, the worker shall have the right to receive an indemnification in an amount equivalent to the proportional part of the amount that would ensue from paying eight days of salary per year of service, or the amount established in the specific applicable regulation, as the case warrants.

Specific-duration contracts that have a set maximum interval of duration, including practicum and training contracts, subscribed for a duration inferior to the legally-established maximum, shall be understood as automatically extended up to the end of the said period where no express repudiation or extension has been filed and the worker has continued to render services.

Once the said maximum duration has expired or the works or service that are the subject of the contract have been executed, if there has been no complaint and service has continued, the contract shall be considered as tacitly extended for an indefinite period of time, barring proof to the contrary accrediting the temporary nature of the service.

Should the work contract of specific duration be superior to one year, the party formulating repudiation is obliged to give the other a minimum fifteen-day advance notice of its termination.

- d) By the resignation of the worker, with the due advance notice that collective bargaining agreements or the customs of the place indicate.
- e) By the death or serious, total, or absolute permanent disability of the worker, without prejudice to the provisions contained in Article 48.2.
- f) By the worker's retirement.
- g) By the death, retirement – in the cases set forth in the pertinent regime of Social Security – or incapacity of the employer, without prejudice to the provisions contained in Article 44, or by the extinction of the legal personality of the contracting party.

In the case of death, retirement or incapacity of the employer, the worker shall have the right to the payment of an amount equivalent to one month of salary.

In cases of the extinction of the legal personality of the contracting party, the procedures set forth in Article 51 of this Law shall be observed.

- h) Due to force majeure finally rendering work impossible, provided that its existence has been duly verified in accordance with what is set forth in Section 12 of Article 51 of this Law.

i) Due to mass dismissal based on economic, technical, organizational or production reasons, provided that such has been duly authorized in accordance with the provisions of this Law.

j) Through the desire of the worker, based on a contractual breach by the employer.

k) By the worker's dismissal.

l) For legally valid objective reasons.

n) Owing to the decision of a worker permanently obliged to abandon her work post as the result of having been a victim of gender violence.

2. In the event of extinction of the contract, the employer, in informing the workers of the repudiation or, as applicable, in giving prior notice of the extinction thereof, shall attach a proposed document of liquidation of the amounts owed.

The worker may request the presence of a workers' legal representative at the signing of the quitclaim, reflecting therein its signature in the presence of a workers' legal representative, or that the worker has not made use of this possibility. Should the employer impede the presence of the representative at the signing of the quitclaim, the worker may reflect this in the receipt itself, for the pertinent purposes.

#### **Article 50. Extinction by Willingness of the Worker.**

1. The following shall be just causes for the worker to request the extinction of the contract:

a) Substantial modifications in working conditions to the detriment of his/her professional training or dignity.

b) Lack of payment or continuous delays in the payment of the salary agreed on.

c) Any other serious breach of obligations on the part of the employer, except for cases of force majeure, as well as his/her refusal to reinstate the worker in his/her previous working conditions in the cases provided for by Articles 40 and 41 of the present Law, where a legal sentence has declared the same unjustified.

2. In such cases, the worker shall have a right to the indemnifications applicable to wrongful dismissal.

#### **Article 51. Mass Dismissal.**

1. For the purposes of what is provided for in the present Law, mass dismissal shall be understood as the extinction of work contracts based on economic, technical, organizational or production reasons where, in a period of ninety days, the extinction affects at least:

- a) Ten workers in companies that employ less than one hundred workers.
- b) 10 percent of the number of workers in the company in those employing between one hundred and three hundred workers.
- c) Thirty workers in companies that employ three hundred or more workers.

The reasons to which the present article refers are understood to be present where the adoption of the measures proposed contributes – if the adduced measures are economic – towards overcoming a negative economic situation in the company, or, if these are technical, organizational or production measures, towards guaranteeing the future feasibility of the company and of employment in it through a more adequate organization of its resources.

The extinction of work contracts affecting the totality of the company work force shall likewise be understood as mass dismissal, provided that the number of workers affected is superior to five, where this occurs as a result of the total cessation of its business activity based on the same reasons that were previously indicated.

In computing the number of contract extinctions to which the first paragraph of this article refers, account shall likewise be taken of any others occurring during the period of reference by the initiative of the employer, by virtue of other reasons not inherent to the person of the worker, different from those set forth in paragraph c) of Section 1, Article 49 of this Law, provided that their number is at least five.

Should the company implement contract extinctions under the provisions contained in Article 52 c) of this Law in a number inferior to the thresholds therein set forth, without any new reasons justifying such action, in successive periods of ninety days for the purpose of circumventing the provisions contained in the present article, such new extinctions shall be considered as implemented by way of legal fraud and shall be declared null and void.

2. The employer intending to implement mass dismissal is obliged to request authorization for the extinction of the work contracts concerned in accordance with the procedures of employment regulation provided for in this Law and in the regulations for its implementation. The procedure shall be initiated by application to the competent labour authorities and the simultaneous opening of a period of consultation with the workers' legal representatives.

The notification to the labour authorities and the workers' legal representatives should be accompanied by all the documents necessary to demonstrate the reasons motivating the case and the justifications for the measures to be adopted, in the terms determined by the regulations.

Notice of the opening of the consultation period shall be served in writing by the employer to the workers' legal representatives, a copy of which shall be sent to the labour authorities along with the application.

3. Once the application is received, the labour authorities shall verify that it meets all requirements, demanding that it be remedied by the employer within a period of ten

days should this not be the case, and warning that, if s/he does not do so, s/he will be held to have desisted from his/her application, resulting in the shelving of the case.

The labour authorities shall give notice that the case is initiated to the unemployment benefits managing entity and shall obtain mandatory report from the Labour and Social Security Inspection regarding the reasons motivating it and any others that may be necessary in order to resolve it with sufficient bases. Reports must be coured within a non-extendable timeline of ten days and must be in the hands of the labour authorities before the end of the consultation period referred to in Sections 2 and 4 of the present article. These shall incorporate them into the case once this is finished.

If, during the processing of the case, the labour authorities were to obtain knowledge of measures adopted on the part of the employer that may render the result of any pronouncement ineffective, these may obtain the immediate paralyzation thereof from the employer and the competent authorities.

Where the extinction affects more than 50 percent of the workers, account shall be given to the workers' legal representatives, and as well to the competent authorities, of the sale of the company property by the employer, except for those goods making up its normal traffic.

4. The consultation with the workers' legal representatives, who shall exercise the status of interested party in the processing of the case for employment regulation, shall have a duration of not less than thirty calendar days, or fifteen in the case of companies composed of less than fifty workers, and shall deal with the reasons motivating the case and the possibility of preventing or reducing its effects, as well as the measures necessary to attenuate its consequences for the workers affected and make the continuity and feasibility of the business project possible.

In any case, in companies composed of fifty workers or less, the documents initiating the case shall be accompanied by a plan projecting the measures previously indicated.

During the consultation period, the parties shall negotiate in good faith with a view to arriving at an agreement.

The said agreement shall require the approval of the majority of the members of the Works Committee or Committees, the workers' delegates, as applicable, or union representatives, if any, representing the majority of these as a whole.

At the end of the consultation period, the employer shall inform the labour authorities of the results thereof.

5. Where the consultation period concludes with an agreement between the parties, the labour authorities shall proceed to dictate a resolution within a period of fifteen calendar days authorizing the extinction of labour relations. If the said period elapses without express pronouncement, the extinctive measure shall be understood as authorized under the terms contemplated in the agreement.

Notwithstanding what is set forth in the preceding paragraph, were the labour authorities to appreciate the existence of fraud, bad faith, coercion or abuse of law in the

conclusion of the agreement, either by operation of law or upon the petition of a party, they shall remit the case to the legal authorities, suspending the timeline for dictating resolution, for the purposes of a possible declaration of nullity. They shall act in the same manner where, by operation of law or upon the petition of the unemployment benefits managing entity, it is considered that the agreement may have the purpose of unduly obtaining benefits on the part of the affected workers due to the non-existence of motivating reasons for the legal situation of unemployment.

6. If the consultation period concludes without agreement, the labour authorities shall dictate a resolution totally or partly allowing or disallowing the employer's application. The resolution shall be dictated within a period of fifteen calendar days from the notice given to the labour authorities of the conclusion of the consultation period. If, after the said period elapses, no express pronouncement has been made, the extinctive measure shall be understood as authorized in the terms of the application.

The resolution of the labour authorities shall be justified and congruent with the employer's application. The authorization shall be proceeding where, from the documents figuring in the case, it may be reasonably deduced that the measures proposed by the company are necessary for the purposes set forth in Section 1 of this article.

7. Workers' legal representatives shall have the priority of permanence in the company in the cases referred to in this article.

8. The workers whose contracts are extinguished in keeping with the provisions of the present article shall have the right to an indemnification of twenty days of salary per year of service, with the periods of time inferior to one year pro-rated monthly, to a maximum of twelve months.

9. The workers, through their legal representatives, may likewise request the opening of the case to which the present article refers if it may be rationally presumed that non-opening by the employer may cause them damages impossible or difficult to remedy.

In such a case, the competent labour authorities shall determine the actions and reports that may be necessary to resolve the case, respecting the timelines set forth in the present article.

10. ...

11. In the event of the legal sale of the entire company or part of it, the provision contained in Article 44 of this Law shall exclusively be applicable when what is being sold includes the elements necessary and, by themselves, sufficient, in order to continue the business activity.

If, despite the fulfilment of the foregoing condition, the new employer decides not to continue, or to suspend the activity of the previous employer, s/he shall be obliged to justify this in a case for employment regulation opened for the purpose.

12. The existence of force majeure as a motive for the extinction of work contracts shall be verified by the labour authorities, whatever the number of workers affected, subject to a case processed in accordance with the provisions contained in this section.

The case shall be initiated through application by the company, accompanied by the means of evidence it considers necessary and simultaneous notice sent to the workers' legal representatives, who shall exercise the status of interested party throughout the entire case procedure.

The resolution of the labour authorities shall be dictated within a period of five days from application, subject to the indispensable preliminary actions and reports, and shall take effect from the date of the fact originating the force majeure.

The labour authorities verifying the instance of force majeure may agree that all or part of the indemnifications corresponding to the workers affected by contract extinction be paid by the Salary Guarantee Fund, without prejudice to its right to claim recovery from the employer.

13. The provisions contained in Law 30/1992 dated 26 November, on the Legal Regime of Public Administration and Ordinary Administrative Procedure, shall be applicable in what is not provided for by the present article, particularly as regards resources.

All actions to be undertaken and notifications to be served to the workers shall be done through their legal representatives.

14. The obligation to inform and to document provided for in the present article shall apply regardless of whether the decision regarding mass termination has been taken by the employer or by the company exercising control over the employer. Any justification from the employer based on the fact that the company making the decision did not facilitate the information necessary may not be taken into consideration for such purposes.

15. When dealing with cases of employment regulation of companies not under receivership procedures that include workers aged fifty-five or more who do not have the status of policyholders as of 1 January 1967, the obligation to pay the contributions intended for the financing of a special agreement with respect to the workers previously mentioned shall exist, in the terms provided for by the General Law on Social Security.

## **Article 52. Contract Extinction for Objective Reasons.**

Contracts may be extinguished:

a) Owing to the worker's known or observed ineptitude subsequent to his actual placement in the company. Any ineptitude existing prior to the completion of a probationary period may not be subsequently raised after the said completion.

b) Owing to the worker's lack of adaptation to technical modifications made on his work post, where said changes are reasonable and at least two months have elapsed since the modification was introduced. The contract shall be suspended for the time necessary up to a maximum of three months when the company offers a reconversion or professional improvement course borne by the official agency or its own competent body enabling him/her to make the required adaptation. The worker shall be paid the equivalent of the average salary that he has been receiving during the course.

c) Where the objectively-accredited need exists to eliminate work posts for any of the reasons provided for in Article 51.1 of this Law, in a number inferior to what is set forth therein. Towards such a purpose, the employer shall base the decision to extinguish contracts on economic reasons, so as to help overcome negative economic situations, or on technical, organizational or production reasons, in order to overcome the difficulties hampering the good operation of the company, whether owing to its competitive position on the market or to the requirements of demand, through a better organization of resources.

Workers' representatives shall have the priority of permanence in the company in the case referred to in this section.

d) Owing to absences from work, even where these are justified but intermittent, when they amount to 20 percent of the working days of two consecutive months, or 25 percent for four discontinuous months within a twelve-month period, provided that the total index of absenteeism in the work force of the work centre exceeds 5 percent during the same time periods.

For the purposes of the preceding paragraph, absences due to strike throughout the legal duration of this, the exercise of workers' legal representation activities, work accidents, maternity, pregnancy risk, illnesses caused by pregnancy, childbirth or breast-feeding, leaves and holidays, and non-occupational illnesses or accidents shall not be computed as absences when the admission to treatment has been granted by the official health services and has a duration of more than twenty consecutive days; nor shall the absences motivated by the physical or psychological situation arising from gender violence accredited by the social assistance or health services, as applicable, be computed.

e) In the case of contracts for an indefinite period of time directly entered into by the Public Administration or by not-for-profit entities towards the execution of certain public plans and programs without stable economic endowments, financed through annual budgetary or out-of-budgetary allocations as a consequence of final external income, due to the insufficiency of the pertinent endowment to maintain the work contract concerned.

Where the extinction affects a number of workers equal or superior to that set forth in Article 51.1 of this Law, the procedure provided for in the said article is to be followed.

### **Article 53. Form and Effect of Extinction for Objective Reasons.**

1. The adoption of the extinction agreement under the terms contemplated in the preceding article requires the observation of the following requirements:

a) Notice in writing to the worker expressing the cause.

b) To place an indemnification of twenty days per year of service at the disposal of the worker simultaneous to the delivery of the written notice, with the periods of time inferior to one year pro-rated by months to a maximum of twelve months.

Where the extinguishing decision is based on Article 52. c) of this Law, alleging economic reasons, and that, as a result of such economic situation, the indemnification referred to in the preceding paragraph cannot be placed at the disposal of the worker, the employer may desist from doing this, reflecting it in the written communication, without prejudice to the right of the worker to demand from him/her its payment when the extinguishing decision takes effect.

c) The concession of an interval of thirty days' prior notice counted from the delivery of the personal notification to the worker up to the extinction of the work contract. In the case envisioned in Article 52. c), a copy of the written prior notice shall be given to the workers' legal representative for his/her information.

2. During the period of prior notice, the worker or his/her legal representative, if dealing with a handicapped person who has such, shall have the right to a leave of six hours weekly, so as to seek new employment, without the loss of his/her compensation.

3. This may file an appeal against the decision for extinction, as though disciplinary dismissal were involved.

4. Where the employer does not comply with the requirements established in Section 1 of this article, or the extinguishing decision of the employer is motivated by any of the reasons for discrimination prohibited by the Constitution or the Law, or has taken place in violation of the fundamental rights and public freedoms of the worker, the extinguishing decision shall be null and void, with the legal authorities being obliged to declare this by operation of law. Failure to grant prior notice shall not annul the extinction, although the employer shall be obliged to pay the salaries corresponding to such period, regardless of other effects that may be proceeding. The subsequent observance by the employer of the requirements not fulfilled shall not in any case constitute remedy for the original extinctive act, but a new agreement of extinction with effect starting from its date.

The extinguishing decision shall also be void in the following cases:

a) That of workers during a period of work contract suspension owing to maternity, pregnancy risk, natural breast-feeding risk, illnesses caused by pregnancy, childbirth or natural breast-feeding, adoption or fostering or paternity referred to in letter d) of Section 1, Article 45, or if the worker is notified on such a date that the timeline for prior notice ends within the said period.

b) That of pregnant workers, starting from the date of the start of the pregnancy up to the beginning of the period of suspension referred to in letter a), and that of workers who have requested one of the leaves referred to in sections 4, 4 bis and 5 of Article 37, or are enjoying these leaves, or have requested or are enjoying the leaves provided for in Section 3 of Article 46; and that of workers who are victims of gender violence and exercising the rights to reduction or reorganization of their working time, geographical mobility, or change of work centre or suspension of labour relations, in the terms and conditions acknowledged in this Law.

c) That of workers after reinstatement at work at the end of the periods of contract suspension for maternity, adoption, fostering or paternity, provided that more than nine months have not elapsed from the date of birth, adoption or fostering of the child.

What is set forth in the preceding letters shall be applicable unless the extinguishing decision is declared admissible in these cases for reasons not related to the pregnancy or the exercise of the right to the leaves and permissions pointed out.

5. The declaration of nullity, admissibility or inadmissibility of the extinguishing decision by the legal authorities shall produce effects equal to those indicated for disciplinary dismissal, with the following modifications:

a) In the event of admissibility, the worker shall have the right to the indemnification provided for in Section 1 of this article, consolidating this, if it has been received, and shall be considered unemployed for a reason that cannot be attributed to him/her.

b) If the extinction is declared inadmissible and the employer proceeds to reinstatement, the worker shall be obliged to return the indemnification received. Should reinstatement be substituted by economic compensation, said indemnification shall be deducted from this amount.

#### **Article 54. Disciplinary Dismissal.**

1. The work contract may be extinguished by the decision of the employer through dismissal based on a serious and culpable breach by the worker.

2. The following shall be considered instances of contractual breach:

a) Repeated offences, and unjustified absences or lack of punctuality at work.

b) Indiscipline or disobedience at work.

c) Verbal or physical offences to the employer, the persons working in the company, or the family members who live with these.

d) The violation of good faith in contract, as well as abuse of confidence in one's performance of work.

e) Continued and voluntary decrease in normal or agreed-on work performance.

f) Habitual drunkenness or drug dependency where this has negative repercussions at work.

g) Harassment by reason of racial or ethnic origin, religion or convictions, disability, age or sexual orientation and sexual or sexist harassment to the employer or the persons working in the company.

#### **Article 55. Form and Effects of Disciplinary Dismissal.**

1. Notice of dismissal must be given in writing to the worker, reflecting the facts that justify it and the date on which it will take effect.

Other formal requirements for dismissal may be established by collective bargaining agreement.

Should the worker be a workers' legal representative or a union delegate, an inter partes hearing in which, apart from the interested party, the other members of the representative body to which s/he belongs, if any, shall be in order.

If the worker is affiliated to a union and the employer has been made aware, this shall grant prior hearing to the union delegates of the section corresponding to the said union.

2. Should the dismissal be undertaken without observing what is set forth in the preceding section, the employer may undertake a new dismissal in which s/he complies with the requirements omitted in the preceding one. Such new dismissal, which may only take effect starting from its date, must be undertaken within an interval of twenty days counted from the day of the first dismissal. In doing this, the employer shall place all the salaries accrued during the intervening days at the disposal of the worker, keeping him registered in the Social Security during such a time.

3. The dismissal shall be declared admissible, inadmissible or null.

4. The dismissal shall be considered admissible if the breach alleged by the employer in his/her written notice is verified. It shall be inadmissible otherwise, or if it does not adjust in form to what is set forth in Section 1 of this article.

5. Dismissals motivated by any of the reasons for discrimination prohibited by the Constitution or by Law, or violating the basic rights and public freedoms of the worker, shall be null and void.

Dismissals shall also be null and void in the following cases:

a) That of workers during a period of work contract suspension owing to maternity, pregnancy risk, natural breast-feeding risk, illnesses caused by pregnancy, childbirth or natural breast-feeding, adoption or fostering or paternity that letter d) of Section 1, Article 45 refers to, or of workers notified on such a date that the timeline for prior notice ends within the said period.

b) That of pregnant workers, starting from the date of the start of the pregnancy up to the beginning of the period of suspension that letter a) refers to, and workers who have requested one of the leaves referred to in sections 4, 4 bis and 5 of Article 37, or are enjoying these leaves, or have requested or are enjoying the leaves provided for in Section 3 of Article 46; and workers who are victims of gender violence exercising the rights to reduction or reorganization of their working time, geographical mobility, or change of work centre or suspension of labour relations, in the terms and conditions acknowledged in this Law.

c) That of workers after reinstatement at work at the end of the periods of contract suspension for maternity, adoption, fostering or paternity, provided that more than nine months have not elapsed from the date of birth, adoption or fostering of the child.

What is set forth in the preceding letters shall be applicable unless the dismissal is declared admissible in these cases for reasons not related to the pregnancy or the exercise of the right to the leaves and permissions pointed out.

6. Voided dismissal shall produce the immediate reinstatement of the worker, along with the payment of those wages that s/he stopped receiving.

7. Admissible dismissal shall confirm the extinction of the work contract signed with the worker, without originating rights to indemnification or back-pay.

#### **Article 56. Inadmissible Dismissal.**

1. Where the dismissal is declared inadmissible, within a period of five days from notification of the sentence, the employer may choose between the worker's reinstatement, with the back-pay provided for in paragraph b) of this Section 1, or the payment of the following economic items that must be set forth:

a) An indemnification of forty-five days of wages per year of service, with the periods of time consisting of less than one year pro-rated by months, up to a maximum of forty-two months.

b) An amount equal to the sum of the wages the worker stopped receiving from the date of dismissal up to the notification of the sentence declaring it inadmissible, or until the worker has found another employment, if such placement takes place before the said sentence and the employer is able to demonstrate the amount received for its deduction from the back-pay.

2. In the event that the option between reinstatement or indemnification corresponds to the employer, the work contract shall be understood as extinguished at the date of dismissal where the employer acknowledges the inadmissibility of the same and offers the indemnification set forth in paragraph a) of the preceding section, placing it at the disposal of the worker in the Labour Court and giving him/her notice thereof.

If the worker accepts the indemnification, or if s/he does not accept it and the dismissal is declared inadmissible, the amount referred to in paragraph b) of the preceding section shall be limited to the wages accrued from the date of the dismissal up to the date of its deposit in the Labour Court, unless the deposit is made within the forty-eight hours following the dismissal, in which case, no amount shall accrue.

For these purposes, the acknowledgement of inadmissibility may be made by the employer from the date of dismissal up to the date of the conciliation.

3. Should the employer not opt for either reinstatement or indemnification, the former shall be understood as proceeding.

4. Should the worker dismissed be a workers' legal representative or a union delegate, the option shall always be his/hers. Should s/he not make any choice, it shall be understood to be in favour of reinstatement. Where the express or presumed option is in favour of reinstatement, this shall be mandatory.

#### **Article 57. Payment by the State.**

1. Where the sentence declaring the inadmissibility of the dismissal is dictated after more than sixty working days from the date on which demand was filed, the employer may claim the payment of the economic receivables due to the worker for the time in excess of those sixty days referred to in paragraph b) of Section 1, Article 56, from the State.

2. In those cases of dismissal where, as per the present article, back-pay owing to legal process is borne by the State, it shall also bear the contributions to Social Security corresponding to the said wages.

#### **Section 5. Receivership Proceedings**

##### **Article 57. bis. Receivership Proceedings.**

In case of receivership, with regard to mass modification, suspension, extinction of work contracts and corporate succession, the specific procedures provided for in the Bankruptcy Law shall apply.

### **CHAPTER IV**

#### **Workers' Offences and Sanctions**

##### **Article 58. Workers' Offences and Sanctions.**

1. Workers may be sanctioned by the company management on the basis of non-compliance at work in accordance with the scale of offences and sanctions established in legal provisions or in the applicable collective bargaining agreements.

2. The evaluation of offences and the corresponding sanctions imposed by company management shall always be subject to revision before the competent jurisdiction. Sanctions for serious and very serious offences shall require notification thereof in writing to the worker, reflecting the date and the facts on which they are based.

3. No sanctions consisting of reduction in holidays or any other decrease in the rights of the worker to rest or docks in pay may be imposed.

### **CHAPTER V**

#### **Timelines for Expiry**

## **Section 1. Expiry of Suits Based on the Contract**

### **Article 59. Expiry.**

1. Legal action based on the work contract with no special term indicated shall expire a year after its termination.

For these purposes, the contract shall be considered terminated:

- a) On the day that the duration agreed on or set by legal provisions or collective bargaining agreements expires.
  - b) On the day that the continued rendering of services ends, where this continuity has existed by virtue of express or tacit extension.
2. If the suit is filed to demand economic receivables or the fulfilment of single-term obligations that cannot take place after the contract is extinguished, the term of one year shall be counted from the day on which the suit may be filed.
3. The term for filing suits against dismissal or the dissolution of temporary contracts shall expire twenty days after the day on which this may have occurred. The days shall be working days and the term of expiry valid for all purposes.

The term of expiry shall be interrupted by the presentation of petition for conciliation before the competent public agency of mediation, arbitration and conciliation.

4. The provisions of the preceding section shall be applicable to suits against employers' decisions regarding geographical mobility and substantial modification of working conditions. The term shall be computed from the day after the date of notification of the employer's decision, after the end of the consultation period, as the case warrants.

## **Section 2. Expiry of Infringements and Offences**

### **Article 60. Expiry.**

1. Any infringements committed by the employer shall expire after three years, except as regards Social Security.
2. With respect to workers, minor offences shall expire after ten days, serious offences after twenty days, and very serious offences sixty days from the date on which the company has knowledge of their having been committed and, in any case, six months after their having been committed.

## **HEADING II**

### **On Workers' Rights to Collective Representation and Meeting in the Company**

#### **CHAPTER I**

##### **On the Right to Collective Representation**

###### **Article 61. Participation.**

In keeping with the provisions contained in Article 4 of this Law, and without restriction to other forms of participation, workers have the right to participate in the company through the organs of representation governed by this Heading.

###### **Section 1. Organs of Representation**

###### **Article 62. Workers' Delegates.**

1. The representation of workers in companies or work centres with less than fifty and more than ten workers corresponds to workers' delegates. There may likewise be a workers' delegate in those companies or centres with between six and ten workers, if these so decide by majority.

The workers shall elect workers' delegates by direct free personal secret suffrage in the following numbers: up to thirty workers, one; from thirty-one to forty-nine workers, three.

2. Workers' delegates shall jointly exercise the representation to which they were elected with respect to the employer and shall have the same competences as those established for works committees.

Workers' delegates shall observe the rules established on professional secrecy in Article 65 of this Law for members of works committees.

###### **Article 63. Works Committees.**

1. The works committee is the professional representative body of all the workers in the company or work centre established for the defence of their interests, and shall be formed in every work centre with a census of fifty or more workers.

2. Companies with two or more work centres in the same province or in neighbouring municipalities, the censuses of which do not individually come up to fifty workers but jointly do, shall form a joint works committee. Where some centres may have fifty workers and others from the same province do not, the former shall constitute a works committee of their own, and all the latter shall form another.

3. The formation and operation of an Inter-centre Committee with a maximum of thirteen members designated from among the components of the different centre committees may only be agreed on by collective bargaining.

In forming the inter-centre committee, the proportional representation of unions shall be maintained in accordance with overall electoral results.

Such inter-centre committees may not attribute themselves functions other than those expressly granted to them by the collective bargaining agreement resolving their creation.

#### **Article 64. Competences.**

1. The works committee shall have the following competences:

1. To receive information, which shall be facilitated to it at least every quarter, on the general evolution of the economic sector to which the company belongs, the situation of production and sales in the entity, its production program, the probable evolution of employment in the company, and the employer's provisions regarding the signing of new contracts, indicating the number of these and the modalities and types of contract to be used, including part-time contracts, on the performance of additional hours by the part-time workers contracted, and the premises of subcontracting.

It shall also have the right to receive information at least once a year regarding the application of the right to equal treatment and opportunities between men and women in the company, which shall include data on the proportion of men and women on the different occupational levels, along with information, as the case warrants, on measures that may have been adopted to promote equality between men and women in the company, and, if an equality plan has been projected, on the application thereof.

2. To receive the basic copy of the contracts referred to in paragraph a) of Section 3, Article 8, and the notification of extensions and dissolutions thereof within a term of ten days following the date on which these take place.

3. To know the balance, profit and loss accounts, management report and – should the company take the form of a stock or share company – the other documents made available to the stockholders, under the same conditions as these.

4. To issue a report prior to enforcement by the employer of the decisions s/he adopts on the following matters:

a) Work force restructuring and total or partial, permanent or temporary cessations in this.

b) Reductions in the working day as well as total or partial transfer of installations.

c) Professional training plans of the company.

d) The implantation or revision of organizational and work control systems.

e) Time studies, the establishment of bonus or incentive systems and work post evaluations.

5. To issue reports when the merger, absorption or modification of the company's legal status implies some effect inciding on the volume of employment.

6. To know the written forms of work contract used in the company as well as the documents regarding the termination of labour relations.

7. To be informed of all sanctions imposed on very serious offences.

8. To know, at least on a quarterly basis, the statistics regarding absenteeism and its motives, work accidents and professional illnesses and their consequences, accident indices, periodic or special studies on the work environment, and prevention mechanisms employed.

9. To exercise the tasks of:

a) Vigilance in the fulfilment of the labour, Social Security and employment regulations in force, as well as all other standing pacts, conditions and practices of the company, formulating, as the case warrants, the appropriate legal action with respect to the employer and the competent agencies or Courts.

b) Vigilance and control over the safety and hygiene conditions in the company's work procedures, with the specific emphases provided for in this regard by Article 19 of this Law.

c) Vigilance for the respect and application of the principle of equal treatment and opportunities between men and women.

10. To participate in the management of the social work established in the company for the benefit of the workers or their family members, as set forth in the collective bargaining agreement.

11. To collaborate with company management towards the establishment of whatever measures may procure the maintenance and increase of productivity, as agreed on in collective bargaining agreements.

12. To inform its constituents on all the subjects and questions set forth in number 1 in what directly or indirectly may affect labour relations.

13. To collaborate with company management in establishing and initiating conciliation measures.

2. The reports to be drawn up by the Committee in the light of the competences acknowledged to it in Sections 4 and 5 of number 1 above must be prepared in an interval of fifteen days.

**Article 65. Professional Capacity and Secrecy.**

1. As a professional body, the works committee is acknowledged the capacity to exercise administrative or legal action by the majority decision of its members in everything involving the scope of its competences.

2. The members of the works committee, and this as a whole, shall observe professional secrecy in everything regarding paragraphs 1, 2, 3, 4 and 5 of Section 1 of the preceding article, even after they stop belonging to the works committee, and particularly as regards all those questions that management expressly indicates as reserved. In any event, no type of document given by the company to the committee may be used outside the strict scope thereof for purposes other than those that motivated their turnover.

#### **Article 66. Composition.**

1. The number of members making up the works committee shall be determined in accordance with the following scale:

a) From fifty to one hundred workers, five.

b) From one hundred and one to two hundred and fifty workers, nine.

c) From two hundred and fifty-one to five hundred workers, thirteen.

d) From five hundred and one to seven hundred and fifty workers, seventeen.

e) From seven hundred and fifty-one to one thousand workers, twenty.

f) From one thousand workers onward, two for every thousand or fraction thereof, to the maximum of seventy-five.

2. The works committee or work centre shall elect a chairman and a committee secretary from among its members and shall draw up its own rules on procedure, which may not contravene the provisions of law, furnishing copy thereof to the labour authorities for registration purposes, and to the company.

The committees shall meet every two months, or whenever one-third of its members or one-third of the workers it represents so petitions.

#### **Article 67. Advocacy of Elections and Electoral Mandate.**

1. The most representative labour organizations, those having at least ten percent among the representatives in the company, or the workers of the work centre by majority agreement, may advocate elections for workers' delegates and works committee members. Unions with the capacity to advocate elections shall have the right of access to the registers of the Public Administration containing data on the registration of companies and the enlistment of workers, to the extent necessary to carry out such a purpose in their respective areas.

The proponents shall notify the company and the public office subordinate to the labour authorities of their proposal to hold elections with a minimum advance notice of at least one month prior to the start of the electoral process. In the said notification, the proponents must exactly identify the company and the work centre in which the electoral process is intended to be held, as well as the date it is to start, which shall be that of the organization of the polling station, and which, in any case, cannot begin before one month or after three months counted from the registration of the notice in the public office subordinate to the labour authorities. Within the following working day, this public office shall display the prior notifications presented on its bulletin board, furnishing copy thereof to the unions that may request it.

Only subject to majority agreement between the most representative unions or the unions considered representative in accordance with Organic Law 11/1985 dated 2 August, on the Freedom of Association, may the holding of general elections in one or several functional areas or territories be advocated. Said agreements must be communicated to the public office subordinate to the labour authorities for their deposit and publication.

Where elections are advocated to renew representation owing to the end of a mandate, such advocacy may only be initiated on the date three months prior to the expiry of such mandate.

Partial elections may be advocated due to resignations, revocations or adjustments in representation due to an increased work force. Collective bargaining agreements may make provisions for the need to accommodate workers' representation to any significant decreases in work force that may take place in the company. By default, the said accommodation may be carried out by virtue of an agreement between the company and the workers' representatives.

2. The breach of any of the requirements set forth in this article for the advocacy of elections shall invalidate the electoral process in question; this notwithstanding, the omission of notification to the company may be substituted by copy furnished of the notification presented to the public office subordinate to the labour authorities, provided that this is done at least twenty days before the starting date of the electoral process set forth in the written proposal.

The waiver of the advocacy subsequent to the notification sent to the public office depending on the labour authorities shall not impede the electoral process from taking place, provided that all the requirements for its validity are complied with.

In the event that advocates for elections in a company or work centre coincide, for the purposes of initiating the electoral process, the first call to be registered shall be considered valid, except in those cases in which the union majority in the company or work centre with a works committee has presented a different date, in which case this latter shall prevail, provided that such calls comply with the requirements established. In this latter case, the advocacy must be accompanied by a certified communiqué on the said advocacy of elections sent to those who may have coursed another or other previous petitions.

3. The duration of the mandate for workers' delegates and works committee members shall be four years, with the understanding that they shall remain in office exercising their competences and guarantees until such as time as new elections may be advocated and held.

Workers' delegates and works committee members may only be revoked during their mandate by the decision of the workers who elected them, through a meeting called for the purpose upon the petition of at least one-third of their voters, and by the absolute majority of these, through direct free personal secret suffrage. This notwithstanding, such revocation cannot be carried out during collective bargaining proceedings, nor may it be reformulated until after at least six months.

4. Should a vacancy in the works committee or in the work centre come to exist for any reason, it shall automatically be covered by the next worker on the list to which the substituted member belongs. Where the vacancy refers to workers' delegates, it shall automatically be covered by the worker who, in the election, obtained the number of votes immediately following the last person elected. The substitute shall hold office for the remaining time of the mandate.

5. Notice of substitutions, revocations, resignations and extinctions of mandate shall be sent to the public office subordinate to the labour authorities, to the employer, and also published on the bulletin board.

#### **Article 68. Guarantees.**

Except for what is provided for in the collective bargaining agreements, works committee members and workers' delegates, as the legal representatives of the workers, shall have the following guarantees:

a) Opening of an inter partes case in the event of sanctions for serious or very serious offences, where, apart from the interested parties, the works committee or other workers' delegates shall be heard.

b) Priority of permanence in the company or work centre with respect to the other workers in cases of suspension or extinction for technological or economic reasons.

c) Not being dismissed or sanctioned during the exercise of his/her functions or during the year following the expiry of his/her mandate, unless this is caused by revocation or resignation, provided that the dismissal or sanction is based on the acts of the worker in the exercise of his/her mandate of representation, and thus, without prejudice to what is set forth in Article 54. Likewise, s/he may not be discriminated in his/her economic or professional promotion precisely by reason of the exercise of such representation.

d) Freely expressing – jointly, if the committee is concerned – his/her opinions on matters concerning the sphere of his/her representation, being able to publish and distribute publications of labour or social interest without disrupting the normal progress of work, communicating this to the company.

e) Each committee member or workers' delegate shall avail of a credit of paid monthly hours for the exercise of their representative functions, in accordance with the following scale: workers' delegates or works committee members:

1. Up to one hundred workers, fifteen hours.
2. From one hundred and one to two hundred and fifty workers, twenty hours.
3. From two hundred and fifty-one to five hundred workers, thirty hours.
4. From five hundred and one to seven hundred and fifty workers, thirty-five hours.
5. From seven hundred and fifty-one workers onward, forty hours.

The accumulation of hours on the part of the different works committee members and, as applicable, of the workers' delegates, in one or several members, may be negotiated in collective bargaining, by which these may be relieved from work, without prejudice to their compensation.

## **Section 2. Electoral Procedures**

### **Article 69. Elections.**

1. Workers' delegates and works committee members shall be elected by all the workers through direct free personal secret suffrage, which may be cast by post in the manner established by the provisions for the implementation of this Law.

2. All the workers of the company or work centre older than sixteen years of age and having a seniority of at least one month in the company shall be voters, and workers aged eighteen with a seniority in the company of at least six months shall be eligible for office, except in those activities where, due to personnel mobility, a shorter period is agreed on in collective bargaining agreement, to the minimum limit of three months of seniority.

Foreign workers may be voters and eligible for office where they meet the conditions referred to in the preceding paragraph.

3. Candidacies to the elections for workers' delegates and works committee members may be presented by the legally constituted labour unions or by the coalitions composed of two or more of these, which must have a specific denomination to which the results of the coalition shall be attributed. Workers backing their candidacy with a number of signatures from voters of their same centre and professional group, as applicable, equivalent to at least three times the number of posts to be covered, may likewise present their candidacy.

### **Article 70. Voting for Delegates.**

In electing workers' delegates, each voter may give his vote to a maximum number of candidates from among those proclaimed equivalent to the number of candidate posts to be covered. Those obtaining the greatest number of votes shall be elected. In the event of a tie, the more senior worker in the company shall be elected.

#### **Article 71. Elections for the Works Committee.**

1. In companies composed of more than fifty workers, the census of voters and eligible candidates shall be distributed into two professional groups, one composed of technicians and administrative staff and another of specialized, non-qualified workers.

By collective bargaining agreement, and depending on the professional composition of the sector of productive activity or of the company, a new professional group adapted to such composition may be established. In such a case, the electoral regulations of the present Heading shall be adapted to the said number of professional groups. The posts on the committee shall be proportionally distributed in each company in accordance with the number of workers forming the professional electoral groups mentioned. Should the division result in fractioned quotients, the fractioned unit shall be awarded to the group obtaining the higher fraction, and if these are equal, the awarding shall be done by lots.

2. As regards works committee members, elections shall adjust to the following rules:

a) Each voter may give his vote to a single one among the lists presented for committee members corresponding to his professional group. These lists shall contain at least as many names as there are posts to be covered. This notwithstanding, the waiver of any candidate presented in some of the election lists before the date of the elections shall not imply the suspension of the electoral process nor the annulment of the said candidacy, even though it is incomplete, provided that the affected list reflects a number of candidates equivalent to at least sixty percent of the posts to be covered. Each list shall reflect the acronym of the union or group of workers presenting it.

b) Those lists that have not obtained a minimum of 5 percent of the votes for each professional group shall not have a right to the allocation of representatives in the works committee.

Each list shall be attributed the number of posts that correspond to it through the system of proportional representation, according to the quotient resulting from dividing the number of valid votes by the number of posts to be covered. Should there be an excess post or posts, these shall be allocated to the list or lists having a greater remainder of votes.

c) The candidates within each list shall be elected in accordance with the order in which they appear in the candidacy.

3. In the event of failure to observe any one of the aforementioned rules, the election of the affected candidate/s may be subject to annulment.

**Article 72. Representatives of Workers rendering Services in Fixed-discontinuous Jobs and Non-permanent Workers.**

1. Those rendering services in fixed-discontinuous jobs and workers bound by specific-duration contracts shall be represented by the organs established under this Heading together with the permanent workers on the work force.

2. Thus, for the purposes of determining number of representatives, the following shall be considered:

a) Those rendering services in fixed-discontinuous jobs and workers bound by specific-duration contracts in excess of one year shall count as permanent workers.

b) Workers contracted for a term of up to one year shall be computed in accordance with the number of days worked during the one-year period before the elections were called. Every two hundred days worked or fraction thereof shall be computed as one worker.

**Article 73. Polling Stations.**

1. One polling station for every professional group of 250 voting workers or fraction thereof shall be set up in the company or work centre.

2. The polling station shall take charge of watching over the entire electoral process, presiding over the balloting, scrutinizing the ballots, drawing up the pertinent certificate and resolving any complaints that arise.

3. The station shall be composed of its chairman, who shall be the most senior worker in the company, and two members, who shall be the oldest and youngest voter. This latter shall act as secretary. Substitutes shall be designated for those workers, who shall succeed the members of the station in the order indicated according to seniority or age.

4. None of the members of the station may be a candidate. If this is the case, s/he shall be replaced by his/her substitute.

5. Each candidate or candidacy, as applicable, may appoint one inspector per station. Likewise, the employer may appoint one employer's representative to watch over the voting and the scrutiny.

**Article 74. Functions of the Station.**

1. Once notice of the intention to hold elections is given to the company, within a period of seven days, this shall inform the workers who must set up the station as well as the workers' representatives thereof, simultaneously notifying the proponents.

The polling station shall be formally constituted through a certificate issued for the purpose on the date set by the proponents in their notification of intention to hold elections, which shall be the date that the electoral process begins.

2. Where this involves elections for workers' delegates, the employer, within the same period, shall send the members of the polling station the work force census, which, for these purposes, shall be presented on a standard form.

The polling station shall fulfil the following functions:

- a) It shall publish the work force census among the workers, indicating who the voters are.
- b) It shall determine number of representatives and the deadline for the presentation of candidacies.
- c) It shall receive and proclaim the candidacies presented.
- d) It shall indicate the election date.
- e) It shall draw up the certificate of scrutiny within a period not to exceed three calendar days.

The timelines for each phase shall be set forth by the station according to reasonable criteria, as circumstances allow; however, in any case, there shall be no more than ten days between its constitution and the date of the elections.

In the case of elections in work centres composed of up to thirty workers in which a single workers' delegate is elected, twenty-four hours must elapse between the constitution of the station and the acts of voting and proclaiming the candidates-elect, whereby in any case the station must publicly announce the time of the elections with sufficient time in advance. Should any complaint be filed, this shall be reflected in the certificate, along with the resolution taken by the station.

3. Where elections for works committee members are involved, once the polling station is formed, the employer shall be asked for the work force census and shall draw up the list of voters with the means that this shall facilitate him/her. This shall be made public on the bulletin boards, where it shall be exhibited for a period of not less than seventy-two hours.

The station shall resolve any incident or complaint presented regarding inclusions, exclusions or corrections up to twenty-four hours after the end of the exhibition of the list. It shall publish the final list within the following twenty-four hours. Next, the station or group of stations shall determine the number of committee members to be elected, applying the provisions contained in Article 66.

Candidacies shall be presented during the nine days following the publication of the final list of voters. The proclamation shall be made within the two working days following the end of the said timeline, and published on the bulletin boards referred to.

Complaints against the resolution of proclamation may be raised in the course of the following working day, with the station resolving the case on the working day after.

There shall be at least five days between the proclamation of candidates and the elections.

#### **Article 75. Elections for Delegates and Works Committees.**

1. Elections shall be held in the work centre or work place during the working day, taking into account the rules governing voting by post.

The employer shall facilitate the means necessary for the normal conduct of elections and of the entire electoral process.

2. Voting shall be free, secret, personal and direct, with ballots of equal characteristics, size, colour, printing and paper quality deposited in sealed boxes.

3. Immediately after the voting has been held, the polling station shall publicly proceed to the counting of votes, with the Chairman reading the ballots aloud.

4. A certificate of the results of the scrutiny shall be drawn up in accordance with a standard form, where incidents and protests produced shall be reflected, as applicable. Once the certificate has been drawn up, it shall be signed by the members of the station, the inspectors, and the employer's representative, if there is any. Immediately afterwards, the polling stations of one and the same company or centre shall issue the certificate of the overall election results in a joint session.

5. The chairman of the station shall send copies of the certificate of scrutiny to the employer and to the candidates' inspectors as well as to the representatives-elect.

The election results shall be published on the bulletin boards.

6. The original of the certificate, along with the null votes and the ballots challenged by the inspectors, and the certificate of constitution of the station, shall be presented to the public office subordinate to the labour authorities within an interval of three days by the Chairman of the station, who may delegate this task in writing to another member thereof. The public office subordinate to the labour authorities, on the working day immediately after, shall proceed to publish a copy of the certificate on the bulletin boards, furnishing copy thereof to the unions that so request it, and shall inform the company of the presentation of the certificate corresponding to the electoral process that has taken place in the company to the said public office, indicating therein the date of the deadline to challenge it, keeping the ballots in deposit until the deadlines for challenges elapse. Ten working days after the publication, the public office subordinate to the labour authorities shall proceed or not proceed to register the electoral certificates.

7. It falls upon the public office subordinate to the labour authorities to register the certificates as well as to issue true copies thereof and, upon the petition of the union concerned, copies of the certificates accrediting its representative capacity for the purposes of Articles 6 and 7 of Organic Law 11/1985 dated 2 August, on the Freedom

of Association. The said certificates shall reflect whether or not the union holds the status of most representative or representative, unless the exercise of the pertinent functions or authority requires the specification of the particular representative power. Likewise, the public office subordinate to the labour authorities may issue certificates of the election results to the unions that request them for the pertinent purposes.

The public office subordinate to the labour authorities may only refuse to register certificates where these concern certificates not issued on the standardized official form, where these lack notification of the advocacy of elections to the public office, the signature of the polling station Chairman, and where there is omission or illegibility of any data in the certificates impeding electoral computations.

In these cases, the public office subordinate to the labour authorities, within the following working day, shall require the polling station Chairman to proceed to the pertinent remedy within an interval of ten working days. Notice of the said requirement shall be given to the unions that have obtained representation and to the rest of the candidacies. Once remedy is made, this public office shall proceed to register the electoral certificate concerned. Should the said interval transpire without remedy having been made, or should this not be made in due form, the public office subordinate to the labour authorities shall proceed, within an interval of ten working days, to refuse registration, notifying the unions that may have obtained representation and the station chairman thereof. Should the refusal of registration be due to the absence of notification to the public office subordinate to the labour authorities on the advocacy of elections, no requirement to remedy shall be proceeding, such that once the flaw is verified by the said public office, it shall immediately proceed to refuse registration, notifying the polling station Chairman, the unions that may have obtained representation and the rest of the candidacies thereof.

The resolution refusing registry may be challenged before the labour courts.

#### **Article 76. Complaints on Electoral Matters.**

1. Challenges on electoral matters shall be processed in accordance with the arbitration proceedings regulated by this article, except for refusals of registration, complaints about which may be directly formulated before the competent jurisdiction.

2. All those having legitimate interest, including the company when such interest may be present, may challenge the elections, the decisions adopted by the station and any other action thereof throughout the electoral process, basing their charges for such purpose on the existence of serious flaws that may affect the guarantees of the electoral process and alter its results, on the lack of capacity or legitimacy of the candidates elected, discrepancy between the certificate and the progress of the electoral process and on the lack of correlation between the number of workers figuring in the election certificate and the number of elected representatives. Challenges to the acts of the polling stations shall require the filing of a complaint during the working day after the act, and must be resolved by the station on the next working day, except for what is set forth in the last paragraph of Article 74.2 of the present Law.

3. The arbiters shall be those designated in accordance with the procedures regulated in this section, except for cases in which the parties to arbitration proceedings agree to the designation of another arbiter.

The arbiter or arbiters shall be appointed from amongst Law graduates, labour relations graduates or equivalent degree-holders, in accordance with the principles of neutrality and professionalism, by the unanimous agreement of the most representative unions on the national or regional levels, as proceeding, and those having ten percent or more of the delegates and works committee members in the pertinent provincial, functional or company area. Should there be no unanimous agreement among the unions previously set forth, the competent labour authorities shall establish the manner of appointment, bearing in mind the principles of impartiality of the arbiters, the possibility of their being challenged, and the participation of the unions in their appointment.

The duration of the mandate of arbiters shall be five years, subject to renovation.

The Labour Administration shall facilitate the use of its human and material resources by the arbiters, to the extent necessary for them to perform their functions.

4. Arbiters shall abstain from the following cases, being subject to challenge should they fail to do so:

a) Holding personal interests in the case concerned.

b) Being the administrator of an interested company or entity, or having a litigation with any of the parties.

c) Being a blood relative to the fourth degree or being related by marriage to the second with respect to any of the interested parties, the administrators of interested entities or companies and the consultants, legal representatives or attorneys intervening in the arbitration, as well as sharing a professional office or being associated to these for consultancy, for representation or as an attorney.

d) Having an intimate friendship or manifest enmity with any of the persons mentioned in the preceding section.

e) Having service relations with a physical or legal person directly interested in the case, or having rendered professional services of any kind in any circumstances or place during the last two years.

5. The arbitration proceedings shall begin with written instrument addressed to the public office subordinate to the labour authorities in which elections were advocated and, as applicable, to whoever may have presented candidates to the elections being challenged. This instrument, which shall reflect the facts being challenged, shall be presented within a period of three working days counted from the day after that on which the facts occurred or the complaint was resolved by the station. In the case of challenge initiated by unions who have not presented candidacies in the work centre where the election was held, the three days shall be computed from the day on which the item subject to appeal becomes known. If acts occurring on election day or

afterwards are challenged, the interval shall be ten working days counted from the admission of the certificates into the public office subordinate to the labour authorities.

Until the arbitration proceedings and, as applicable, the subsequent legal challenge ends, the processing of any new arbitration proceedings shall be paralyzed, The constitution of arbitration shall interrupt expiry deadlines.

6. The public office subordinate to the labour authorities shall send the written instrument to the arbiter on the working day subsequent to its receipt, along with a copy of the administrative electoral case. If any electoral certificates were presented for registration, their processing shall be suspended.

Twenty-four hours afterwards, the arbiter shall call the interested parties to appear before him/her, which shall take place during the next three working days. Should the parties come to an agreement prior to appearing before the arbiter appointed as set forth in section three of this article, designating a different arbiter, they shall notify the public office subordinate to the labour authorities thereof so that it may convey the administrative electoral case to this arbiter, continuing the rest of the procedures with him.

Within the three working days after the proceedings and subject to the previous investigation of the admissible evidence in accordance with law, which may include a visit to the work centre and a request for the needed collaboration of the employer and the Public Administration, the arbiter shall pronounce his/her award. The award shall be in writing and justified, and shall rule by law on the challenge to the electoral process and, as applicable, the registration of the certificate, and notice thereof shall be given to the interested parties and to the public office subordinate to the labour authorities. If the election has been challenged, the office shall proceed to register or refuse to register the certificate, in accordance with the contents of the award.

The arbitration award may be challenged before the Labour Courts through the pertinent procedural modality.

## **CHAPTER II**

### **On the Right to Assembly**

#### **Article 77. Workers' Assemblies.**

1. In compliance with what is set forth in Article 4 of this Law, the workers of one and the same company or work centre have the right to meet in assembly.

The assembly may be called by the workers' delegates, the works committee, or by a number of workers not less than 33 percent of the work force. The assembly shall be jointly chaired, in any event, by the works committee or by the workers' delegates, who shall be responsible for the normal progress thereof, as well as for the presence of persons not belonging to the company in the assembly. It may only deal with matters that have been previously included in the agenda. The chairmanship shall inform the employer of the call to order and the names of the persons not belonging to the

company who are going to attend the meeting, and shall agree with this party on the pertinent measures for preventing detriment to the normal activity of the company.

2. If, owing to work in shifts, insufficiency of the premises or any other circumstance, the entire work force cannot meet simultaneously without damaging or altering the normal progress of production, the various partial meetings that it may be necessary to hold shall be considered as a single meeting and bear the date of the first meeting.

#### **Article 78. Meeting-place.**

1. The meeting-place shall be the work centre, if its conditions so allow, and the meeting shall take place outside of working hours, unless otherwise agreed with the employer.

2. The employer shall facilitate the work centre for the holding of the meeting, except in the following cases:

a) If the provisions of this Law are not fulfilled.

b) If less than two months have elapsed since the last meeting held.

c) If damages produced in incidents that have occurred in some previous meeting are still outstanding or compensation for them has still not been established.

d) Legal closure of the company.

Meetings to inform about collective bargaining agreements applicable shall not be affected by paragraph b).

#### **Article 79. Call to Order.**

The call to order, setting forth the agenda proposed by the proponents, shall be sent to the employer at least forty-eight hours in advance, whereby receipt thereof must be confirmed.

#### **Article 80. Voting.**

Where the adoption of resolutions affecting the entire group of workers is submitted to the assembly by the proponents, the personal, free, direct and secret favourable vote of half plus one of all the workers in the company or work centre, including votes sent by post, shall be required for their validity.

#### **Article 81. Premises and Bulletin Board.**

Appropriate premises where workers' delegates or the works committee can conduct their activities and communicate with the workers shall be placed at their disposal, along with one or more bulletin boards, in companies or work centres, providing that

their characteristics so permit. The legal representatives of the workers of contracting and subcontracting companies continuously sharing a common work centre may make use of the said premises under the terms that they agree on with the company. Possible discrepancies shall be resolved by the labour authorities, subject to the prior report of Work Inspection.

### **HEADING III**

## **On Collective Negotiation and Collective Bargaining Agreements**

### **CHAPTER I**

#### **General Provisions**

#### **Section 1. Nature and Effects of Agreements**

#### **Article 82. Concept and Effectiveness.**

1. Collective bargaining agreements, as the result of the negotiations undertaken by workers' and employers' representatives, embody the expression of the agreements freely adopted by these by virtue of their collective independence.
2. Through collective bargaining agreements in their respective areas, workers and employers regulate their working and productivity conditions. Likewise, they may regulate peaceful coexistence in the workplace through the obligations agreed on.
3. The collective bargaining agreements regulated by this Law are binding upon all employers and workers included within their scope of application, throughout the entire time of their validity.

Without prejudice to the above, collective bargaining agreements of a scope superior to the company shall establish the conditions and procedures by which its salary system may not be applicable to those companies with an economic stability that may be damaged as the result of such application.

If the said collective agreements do not contain the cited clause of non-applicability, this latter may only exist by agreement between the employer and the workers' representatives if the economic situation of the company so requires. Should no agreement exist, the discrepancy shall be resolved by the Parity Commission on the Agreement. New salary conditions shall be determined by agreement between the company and the workers' representatives. In the absence of this, they may be entrusted to the Parity Commission on the agreement.

4. Collective bargaining agreements replacing a previous agreement may rule on the rights acknowledged in that other. In such a case, the ruling contained in the new agreement shall be completely applicable.

### **Article 83. Negotiation Units.**

1. Collective bargaining agreements shall have the scope of application agreed upon by the parties.

2. Through inter-professional agreements or collective bargaining agreements, the most representative labour unions and employers' associations of national or regional character may establish the structure of collective negotiation as well as set the rules to resolve the conflicts of concurrence between agreements from different areas and the principle of the complementary character of the different contracting units, always establishing, in this latter case, the non-negotiable items in the lesser scope.

3. The said workers' and employers' organizations may likewise prepare agreements on specific matters. These agreements, as well as the inter-professional agreements referred to in Section 2 of this article, shall enjoy the treatment accorded by this Law to collective bargaining agreements.

### **Article 84. Concurrence.**

During its validity, a collective bargaining agreement may not be affected by what is set forth in agreements of a different scope, barring a pact to the contrary as provided for in Section 2 of Article 83 and barring what is set forth in the following section.

In any event, despite what is set forth in the preceding article, on a certain scale superior to that of the company, those unions and employers' associations meeting the requirements of legitimacy contained in Articles 87 and 88 of this Law may negotiate resolutions or agreements affecting what is set forth in agreements of a superior scale, provided that said decision obtains the support of the majorities required to constitute the negotiating commission in the pertinent negotiation unit.

In the case set forth in the preceding paragraph, the probationary period, contract modalities, except in those aspects of adaptation to the scope of the company, professional groups, the disciplinary regime and the minimum standards on safety and health at work and geographical mobility, shall be considered non-negotiable items on inferior scales.

### **Article 85. Content.**

1. Within the respect for Law, collective bargaining agreements may regulate matters of an economic, labour and associative nature and, in general any other matters as may affect working conditions and the field of workers' and their representative organizations' relations with the employer and employers' associations, including procedures for resolving the discrepancies arising during the consultation periods provided for in Articles 40, 41, 47 and 51 of this Law. The arbitration awards that may

be dictated for these purposes shall have the same effect and treatment as the resolutions emerging from consultation periods, being subject to challenge in the same terms as the awards dictated to resolve controversies deriving from the application of the agreements.

Without restriction to the freedom of the parties to determine the content of collective bargaining agreements, in negotiating these, the duty shall exist, in any case, to negotiate measures aimed at promoting equality in treatment and opportunities between men and women at work or, as applicable, equality plans having the scope and content projected in Chapter III of Heading IV of the Organic Law for the Effective Equality between Men and Women.

2. Through collective bargaining, it shall be possible to articulate procedures for the information and monitoring of objective dismissals within the pertinent scope.

Likewise, without restricting the freedom of contract acknowledged to the parties, the duty to negotiate equality plans in companies having more than two hundred and fifty workers shall be given expression through collective negotiation, as follows:

a) In collective bargaining agreements on the company level, the duty to negotiate shall be formalized within the framework of the negotiation of the said agreements.

b) In collective bargaining agreements of a level superior to that of the company, the duty to negotiate shall be formalized through the collective bargaining undertaken in the company, under the terms and conditions established in the agreements referred to, aimed at complementing the said duty to negotiate through the pertinent rules on such complementary nature.

3. Without restriction to the freedom of contract referred to in the preceding paragraph, collective bargaining agreements shall reflect at least the following content:

a) Determination of the negotiating parties.

b) Human, functional, territorial and temporal coverage.

c) Conditions and procedures for the non-application of the salary regime established therein with respect to the companies included in the scope of the agreement where this is superior to the company level, in fulfilment of what is set forth in Article 82.3.

d) Form and conditions for repudiating the agreement, as well as period of prior notice for said repudiation.

e) Appointment of a paritary commission on the representation of the negotiating parties so as to deal with whatever questions are referred to them, and determination of the procedures for resolving discrepancies within the said commission.

**Article 86. Validity.**

1. It is up to the negotiating parties to establish the duration of the agreements, possibly being able to agree upon different periods of validity for each topic or homogenous group of topics within the same agreement.

2. Barring pacts to the contrary, collective bargaining agreements shall be extended from one year to another in the absence of express repudiation by the parties.

3. Should an agreement be repudiated, its clauses on obligations shall lose their validity until such a time as an express agreement is achieved.

Once the duration agreed on has elapsed, the regulatory content of the agreement shall be valid in the terms established in the agreement itself. In the absence of a pact, the regulatory content of the agreement shall remain valid.

4. An agreement that succeeds another previous agreement supersedes this latter completely, except for the aspects expressly maintained.

## **Section 2. Legitimacy**

### **Article 87. Legitimacy.**

The following shall be legitimized to negotiate:

1. In the case of company agreements or agreements of lesser scope: the works committee, workers' delegates, as applicable, or the union representatives if these exist.

In agreements affecting the totality of the workers in the company, it shall be necessary for such union representatives altogether to form the majority of the committee members. In other agreements, the workers included in their scope must have adopted an express resolution with the requirements set forth in Article 80 of this Law, designating the union representatives implanted in such a scope for negotiation purposes.

It shall be necessary in any case for both parties to acknowledge each other as interlocutors.

2. In agreements of a scope superior to the above:

a) The unions considered most representative nationwide as well as the union entities affiliated, federated or confederated to them in their respective fields.

b) The unions considered most representative regionally with respect to agreements that do not transcend the said territorial scope as well as the union entities affiliated, federated or confederated to them in their respective fields.

c) Unions having a minimum of 10 percent of the members of the works committee or workers' delegates in the geographic and functional scope concerned in the agreement.

3. In the agreements to which reference is made in the preceding number, the employers' associations that, within the geographical and functional scope of the agreement, represent 10 percent of the employers in the sense of Article 1.2 of this Law, provided that these employ an equal percentage of the workers affected.

4. The following shall likewise be legitimized in the agreements of national scope: the unions of the Regional Autonomy considered most representative in fulfilment of the provisions of Section 1, Article 7 of the Organic Law on Freedom of Association and the employers' associations of the Regional Autonomy meeting the requirements set forth in additional provision six of this Law.

5. Any union, union federation or union confederation, and any employers' association meeting the requirements of legitimacy shall have the right to form part of the negotiating commission.

### **Article 88. The Negotiating Commission.**

1. In agreements of company or inferior scope, the negotiating commission shall be composed of the employer or his/her representatives, on one hand, and the workers' representatives as provided for in Article 87, Section 1, on the other hand.

In those agreements having a coverage superior to the company, the negotiating commission shall be validly constituted, without restriction to the right of all the subjects legitimized to participate therein in proportion to their representativity, when the unions, federations or confederations and the employers' associations referred to in the preceding article represent at least, respectively, the absolute majority of the members of the works committee and workers' delegates, as applicable, and the employers employing the majority of the workers affected by the agreement.

2. The designation of the members of the commission shall correspond to the negotiating parties, who, by mutual agreement, may designate a chairman, and avail of the assistance of consultants in the deliberations, who shall intervene with a voice, but without a vote.

3. In agreements of company coverage, neither of the parties shall exceed the number of twelve members; in those of a superior coverage, the number of representatives from each party shall not exceed fifteen.

4. The negotiating commission may freely designate a chairman with a voice, but without a vote. In the event that they opt for non-election, the parties shall reflect the procedures to be employed for moderating the sessions in the minutes of the constituting session of the commission, and one representative from each group shall sign the minutes corresponding to these, along with the secretary.

## **CHAPTER II Procedures**

## **Section 1. Processing, Application and Interpretation**

### **Article 89. Processing.**

1. The workers' or employers' representatives advocating the negotiation shall give notice thereof to the other party, setting forth in detail, in writing, the legitimacy they exercise in accordance with the preceding articles, the coverages of the agreement, and the items subject to negotiation. A copy of this communication shall be sent to the pertinent labour authorities for registration purposes, as per the territorial scope of the agreement.

The party receiving the notice may only refuse to initiate negotiations for legal or conventionally-established reasons, or where this does not involve revising an agreement already expired, without prejudice to what is set forth in Articles 83 and 84. In any event, the response must be justified and set forth in writing.

Both parties are obliged to negotiate under the principle of good faith.

In the event that there is violence to persons as well as property and both parties verify its existence, the negotiation in course shall immediately be suspended until such incidents disappear.

2. The negotiating commission shall be constituted within a maximum period of one month from the receipt of the notice. The party receiving it shall respond to the proposal for negotiation, whereupon both parties may establish a calendar or negotiation plan.

3. The resolutions of the commission shall, in any case, require the favourable vote of the majority of each representative delegation.

4. At any moment of the deliberations, the parties may agree upon the intervention of a mediator designated by them.

### **Article 90. Validity.**

1. The collective bargaining agreements to which this Law refers have to be consigned in writing, under pain of nullity.

2. The agreements must be presented to the competent labour authorities for the sole purpose of registration within a period of fifteen days from their having been signed by the negotiating parties. Once they are registered, they shall be sent to the competent public agency for mediation, arbitration and conciliation for deposit.

3. Within a maximum period of ten days from the presentation of the agreement to the register, the labour authorities shall see to its mandatory publication free of charge in the "Boletín Oficial del Estado" [Official Gazette] or, depending on its territorial scope, in the Official Gazette of the pertinent Regional Government or province.

4. The agreement shall come into force on the date agreed on by the parties.
5. If the labour authorities consider that some agreement violates the laws in force or seriously injures the interest of third parties, it shall address the competent jurisdiction by operation of law, which shall adopt the measures proceeding towards the purpose of remedying the alleged anomalies, subject to the hearing of the parties.
6. Without prejudice to what is set forth in the preceding section, the labour authorities shall see to the observance of respect for the principle of equality in collective bargaining agreements that may contain direct or indirect gender discrimination.

For such purposes, it may obtain assessment from the Women's Institute or from the regional government agencies on equality, in keeping with territorial scope. Where the labour authorities may have addressed the competent jurisdiction on considering that the collective bargaining agreement possibly contains discriminatory clauses, it shall make the matter known to the Women's Institute or to the regional government agencies on equality, depending on territorial scope, without prejudice to what is set forth in Article 95, Section 3 of the Law on Labour Procedure.

#### **Article 91. Application and Interpretation.**

Regardless of the functions attributed by the parties to paritary commissions to know and resolve upon conflicts arising from the general application and interpretation of collective bargaining agreements, rulings shall be dictated by the competent jurisdiction.

Notwithstanding what has been set forth, in collective bargaining agreements and in the agreements referred to by Article 83.2 and 83.3 of this Law, procedures such as mediation and arbitration may be established to solve the collective disputes arising from the application and interpretation of collective bargaining agreements.

The agreements achieved through mediation and arbitration awards shall enjoy the legal effect and processing due to the collective bargaining agreements regulated by the present Law, provided that those who adopted the agreement or endorsed the arbitration compromise enjoy the legitimacy enabling them to resolve a collective bargaining agreement in the context of the dispute, as provided for by Articles 87, 88 and 89 of this Law.

These agreements and awards shall be subject to challenge based on the motives and in accordance with the procedures envisioned for collective bargaining agreements. In particular, arbitration awards may be appealed in the event that the requirements and formalities stipulated for arbitration proceedings have not been observed in their conduct, or where the award rules on points that were not subject to its decision.

These procedures may likewise be used in individual disputes where the parties expressly submit to them.

#### **Section 2. Adhesion and Extension**

## **Article 92. Adhesion and Extended Coverage.**

1. In their respective negotiation units, the parties legitimized to negotiate may, by mutual agreement, adhere to the totality of a collective bargaining agreement in force, provided that they are not affected by another, informing the competent labour authorities thereof for registration purposes.

2. The Ministry of Labour and Social Affairs or the regional government agency competent on the matter may extend the provisions of a collective bargaining agreement in force to a group of companies and workers, or to an activity sector or subsector, with the effects provided for in Article 82.3 of this Law, owing to the damages that may be caused to these by the impossibility of subscribing a collective bargaining agreement in the said area of the type contemplated in this Heading III, due to the absence of parties legitimized for the purpose.

The decision to extend such coverage shall be adopted subject to the petition of a party, through the procedures that the regulations may determine, the duration of which may not exceed three months, whereby the absence of express resolution within the interval established shall have the effect of disallowing the petition.

Those who are legitimized to advocate collective bargaining in the pertinent area in accordance with the provisions contained in Articles 87.2 and 87.3 of this Law shall have the capacity to initiate the procedure of extension.

## **HEADING IV Labour Offences**

### **CHAPTER I General Provisions**

**Article 93 to 96.**

### **CHAPTER II Supplementary Law**

**Article 97. Sanctions.**

Heading IV repealed in full by the sole abolishing provision contained in Royal Legislative Decree 5/2000 dated 4 August.

## **ADDITIONAL PROVISIONS.**

**One.**

Repealed by Law 63/1997 dated 26 December.

## **Two. Training Contracts Signed with Handicapped Workers**

1. Companies signing training contracts with handicapped workers shall have the right to a reduction of 50 percent of the corporate Social Security contribution for common contingencies during the validity of the contract.
2. The handicapped workers contracted for training shall not count for the purpose of determining the maximum number of these contracts that companies may enter into based on their work force.
3. Companies signing training contracts with handicapped workers shall have the right to a reduction of 50 percent of the corporate Social Security contributions stipulated for training contracts.
4. The specific features envisioned for training contracts in Article 7 of Royal Decree 1368/1985 dated 17 July regulating the special labour relations of handicapped workers working in Special Employment Centres shall continue to be applicable to training contracts signed with handicapped workers working in Special Employment Centres.

## **Three.**

Repealed by Law 63/1997 dated 26 December.

## **Four. Items for Compensation**

The modifications introduced by the present Law into the legal regulation of salaries shall not affect the items for compensation acknowledged to the workers up to 12 June 1994, the date on which Law 11/1994 dated 19 May came into force. These shall persist under the same terms then obtaining until such a time as a salary system is established by collective bargaining that involves the disappearance or modification of the said items.

## **Five. Top Management Personnel**

The compensations for top management personnel shall enjoy the salary guarantees provided for in Articles 27.2, 29, 32 and 33 of this Law.

## **Six. Employers' Institutional Representation**

For the purposes of exercising institutional representation in defence of the general interests of employers before the Public Administration and other national or regional

entities and agencies that may require it, the employers' associations having 10 percent or more of the companies and workers shall be understood to enjoy this representative capacity on the national level.

Likewise, regional employers' associations with a minimum of 15 percent of employers and workers in the region may also be represented. Employers' associations integrated into national federations or confederations do not fall under this case.

Employers' organizations enjoying the status of most representative in accordance with this additional provision shall have the capacity to obtain temporary cession of the use of real public property under the terms legally established for the purpose.

### **Seven. Regulation of Working Conditions by Branch of Activity**

Government may regulate working conditions by branch of activity for the economic sectors of production and territorial demarcations in which no collective bargaining agreement exists upon the proposal of the Ministry of Labour and Social Security, subject to the consultations with the employers' associations and union organizations that it may consider pertinent, without prejudice to what is set forth in Article 92 of this Law, which shall always be the priority procedure.

### **Eight. Labour Code**

Government, upon the proposal of the Ministry of Labour and Social Security, shall compile the different organic and ordinary laws which, along with the present, regulate labour affairs, into a single text called the Labour Code, arranging them into separate Headings, one for each Law, with the correlative numbers, and fully respecting their literal texts.

Likewise, all the general labour provisions regarding work force recruitment shall be incorporated successively and periodically to the said Labour Code through the procedure stipulated by Government, in accordance with the category of the regulations incorporated.

### **Nine. Reimbursable Advances**

The reimbursable advances on sentences appealed provided for by the Law dated 10 November 1942 may amount to up to 50 percent of the amount acknowledged in favour of the worker in the sentence.

### **Ten. Collective Bargaining Agreement Clauses Regarding Ordinary Retirement Age**

Clauses making the extinction of work contracts possible when the worker reaches ordinary retirement age as established in the regulations of Social Security may be stipulated in collective bargaining agreements, provided that the following requirements are fulfilled:

a) This measure must be linked to objectives coherent with the policy on employment expressed in the collective bargaining agreement, such as the improvement of employment stability, the transformation of temporary into permanent contracts, the maintenance of employment, the hiring of new workers, or any others aimed at promoting employment quality.

b) The worker affected by the extinction of the work contract must have covered the minimum period of contribution, or a greater period if this has been agreed upon in the collective bargaining agreement, and must fulfil the other requirements demanded by the laws on Social Security in order to have a right to a retirement pension in its contributory modality.

### **Eleven. Accreditation of Representative Capacity**

For the purposes of issuing the certificates accrediting the nationwide representative capacity envisioned in Article 75.7 of this Law, the Regional Governments to which the execution of functions regarding the deposit of certificates on the elections of workers' representative bodies has been transferred must convey copies of the registered electoral certificates to the national public office on a monthly basis.

### **Twelve. Prior Notice.**

Government may reduce the minimum period of one month's prior notice provided for in the second paragraph of Article 67.1 of this Law in those sectors of activity with a high personnel mobility, subject to prior consultation with the unions that represent at least 10 percent of the workers' representatives in this functional sector and the employers' associations with 10 percent of the affected employers and workers in the same functional sector.

### **Thirteen. Extrajudicial Settlement of Conflicts**

In the event that, even without having agreed to a procedure for resolving discrepancies during consultation periods in the applicable collective bargaining agreement, extrajudicial organs or procedures for the solution of conflicts in the pertinent territorial area have been established in accordance with Article 83 of this Law, the parties to the said consultation periods may, by mutual agreement, submit their controversy to the said bodies.

### **Fourteen. Substitution of Workers on Leave to Care for Family Members**

The substitution contracts signed to replace workers who are in the situation of leave referred to in Article 46.3 of this Law shall give rise to a reduction in the corporate Social Security contributions for common contingencies in the percentages specified below where the said contracts are signed with unemployment fund beneficiaries on the contributory or assistance level who have been receiving benefits for more than one year:

- a) 95 percent during the first year of leave of the worker being replaced.
- b) 60 percent during the second year of leave of the worker being replaced.
- c) 50 percent during the third year of leave of the worker being replaced.

The benefits cited are not applicable to recruitments affecting the spouse, ascendants, descendants and other relatives of the employer or of persons holding management posts by blood or affinity up to and including the second degree, or members of the administrative organs of companies under the legal form of a corporation and contracts entered into with these latter.

Contracts entered into by virtue of what is set forth in this provision shall be governed by the provisions contained in Article 15.1 c) of this Law and the regulations for its implementation.

#### **Fifteen. Application of Limits to Contract Succession in Public Administration**

The provisions of Article 15.5 of this Law shall be applicable to the area of Public Administration and its regional agencies, without prejudice to the application of the constitutional principles of equality, merit and capability in the access to public employment, for which reason these shall not be an obstacle to the obligation to cover the work posts concerned through ordinary procedures, as established in the applicable regulations.

#### **Sixteen.**

Repealed by Law 43/2006 dated 29 December.

#### **Seventeen. Discrepancies Regarding Reconciliation**

The discrepancies that may arise among employers and workers in relation to the exercise of the legally or conventionally acknowledged right to reconcile personal, family and working life shall be resolved by the competent jurisdiction through the procedure set forth in Article 138 bis of the Law on Labour Procedures.

### **Eighteen. Calculation of Indemnifications in Specific Cases of Reduced Working Days**

1. In the cases of reduced working days contemplated in Article 37, Sections 4 bis, 5 and 7, the salary to take into account for the purposes of calculating the indemnifications stipulated in this Law shall be that which corresponds to the worker without considering the reduction of the working day made, provided that the maximum interval legally established for such a reduction has not elapsed.

2. Likewise, the provisions contained in the preceding paragraph shall be applicable to the cases of part-time exercise of the rights established in paragraph ten of Article 48.4 and Article 48 bis.

## **TRANSITORY PROVISIONS.**

### **One. Apprenticeship Contracts**

Regardless of what is provided for in Article 11.2, paragraph d), workers who have been bound to the company by a training contract that has not exhausted the maximum period of three years may only be hired again by the same company through an apprenticeship contract for the time remaining from those three years, whereby the duration of the training contract shall count for the purposes of determining the salary that corresponds to the apprentice.

### **Two. Contracts signed before 8 December 1993**

Contracts for practicum, training, part-time work and fixed-discontinuous jobs signed prior to 8 December 1993, on which date Royal Decree-Law 18/1993 dated 3 December came into force, shall continue to be governed by the regulations by virtue of which they were entered into.

The provisions contained in the present Law shall be applicable to the contracts signed under Royal Decree-Law 18/1993 dated 3 December, except for what is set forth in the second paragraph d), Section 2 of Article 11.

### **Three. Contracts signed before 24 May 1994**

Temporary contracts to promote employment signed under Royal Decree 1989/1984 dated 17 October, entered into prior to 24 May 1994, on which date Law 10/1994 dated 19 May on Urgent Measures to Promote Employment came into force, shall continue to be governed by the regulations by virtue of which they were entered into.

Temporary contracts, the maximum duration of three years of which may have expired between 1 January and 31 December 1994, which have been subject to an extension of less than eighteen months, may be made subject to a second extension until they exhaust the said period.

#### **Four. Validity of Regulatory Provisions**

In everything that does not oppose what is set forth in the present Law, replacement contracts and partial retirement shall continue to be governed by what is set forth in Articles 7 to 9 and 11 to 14 of Royal Decree 1991/1984 dated 31 October, regulating part-time contracts, replacement contracts and partial retirement.

#### **Five. Validity of Regulations on Working Days and Rest Periods**

The regulations on working day and rest periods contained in Royal Decree 2001/1983 shall remain in force up to 12 June 1995, without prejudice to their adjustment by government to the provisions contained in Articles 34 to 38, subject to prior consultation with the affected employers' and labour organizations.

#### **Six. Labour Ordinances**

The Labour Ordinances currently in force shall continue to apply as *ius dispositivum* up to 31 December 1994 where they are not substituted by collective bargaining agreement, unless otherwise provided for with regard to their validity by an agreement of the sort stipulated in Article 83.2 and 83.3 of this Law.

Without prejudice to what is set forth in the preceding paragraph, the Ministry of Labour and Social Security is authorized to totally or partially abolish the labour regulations and ordinances in advance, or to extend the validity of the pertinent ordinances to sectors presenting problems of coverage up to 31 December 1995, in keeping with the procedure stipulated in the next paragraph.

Their abolition shall be carried out by the Ministry of Labour and Social Security subject to a previous report from the National Consultative Commission on Collective Bargaining Agreements as regards the coverage of the content of the Ordinance by collective negotiation. To such a purpose, it shall be evaluated as to whether there is a

collective bargaining agreement providing sufficient regulation on the matters in which the present Law refers to collective negotiation in the area of the pertinent Ordinance.

Should the commission issue a negative report as to such coverage and should parties legitimized for collective negotiation exist in the scope covered by the Ordinance, the commission may call upon them to negotiate a collective bargaining agreement or a resolution on specific matters that can eliminate the coverage flaws. In the event of a lack of agreement during the said negotiation, the commission may resolve to submit the resolution of the controversy to arbitration.

Concurrence in agreements or resolutions in substitution of the Ordinances by collective bargaining agreements that are valid in the pertinent areas shall be governed by the provisions contained in Article 84 of this Law.

### **Seven. Extinctions before 12 June 1994**

All extinctions of labour relations that have taken place prior to 12 June 1994, the date on which Law 11/1994 dated 19 May came into force, shall be governed in their substantive and procedural aspects by the regulations in force on the date in which such may have taken place.

Proceedings initiated prior to 12 June 1994 under the provisions of Articles 40, 41 and 51 of this Law as per its previous edition shall be subject to the application of the regulations in force on the date of their commencement.

### **Eight. Elections of Workers' Representatives**

1. Elections to renew the workers' representatives elected during the last period of computation before this Law comes into force may be held for fifteen months counting from 15 September 1994, with the pertinent mandates being extended for all purposes until the holding of new elections, whereby what is set forth in Article 12 of Law 9/1987 dated 12 June, on organs of representation, determination of working conditions and the participation of personnel in the service of the Public Administration shall not be applicable during this period.

2. A calendar for holding elections in the pertinent functional and territorial areas throughout the period indicated in the preceding paragraph may be determined by majority resolution of the most representative unions.

These calendars shall be communicated to the public office at least two months before the start of the electoral processes respectively referred to. The public office shall publish the calendars without prejudice to the processing of the pertinent written advocacies of elections in accordance with Article 67.1 of the present Law. The publication of these calendars shall not be subject to the provision contained in the fourth paragraph of Article 67.1 of this Law.

The elections shall be held in the different work centres as projected in the calendar and in the prior notices thereof, except in those centres where the workers, by majority agreement, may have chosen to advocate elections on a different date, provided that the pertinent advocacy in writing has been sent to the public office within the fifteen days following the submission of the calendar.

Those elections advocated prior to the deposit of the calendar shall prevail over the same in the event that they were advocated after 12 June 1994, provided that they were formulated by the workers of the pertinent work centre or by resolution of the unions holding the majority of the representatives in the work centre or, as applicable, in the company. This same rule shall apply to those elections advocated prior to the day indicated, in the event that on the said date the electoral process may not have concluded.

3. The extension of the functions of the workers' delegates and works committee members and its effects shall fully apply when the period indicated in number 1 of this transitory provision has fully elapsed.

### **Nine. Institutional Participation**

The period of three years for requesting the presence of a union or an employers' organization in an organ of institutional participation to which the first additional provision of the Organic Law on the Freedom of Association refers shall be counted as starting on 1 January 1995.

### **Ten. Transitory Incapacity and Temporary Disability**

Whoever, on 1 January 1995, is found in a situation of transitory incapacity for work or temporary disability, whatever the contingency giving rise to such, shall be subject to the application of the previous legislation until such a time as these situations end.

### **Eleven. Leaves before 13 April 1995 owing to the care of children**

Situations of leave owing to the care of children, valid on 13 April 1995, the date that Law 4/1995 dated 23 March comes into force, by virtue of the provisions contained in Law 3/1989 dated 3 March, shall be governed by what is provided for in this Law, provided that on the said date of validity, the worker on leave is within the first year of the period of leave or of that period superior to one year to which the right to the reservation of the work post and the computation of seniority may have been extended by collective or individual agreement.

Otherwise, the leave shall be governed by the regulations valid at the time the worker began to enjoy it, up to its termination.

## **PROVISION FOR REPEAL.**

### **Sole Provision.**

All provisions opposing what is set forth in this Law are hereby repealed, specifically the following:

- a) Law 8/1980 dated 10 March, on the Workers' Statute.
- b) Law 4/1983 dated 29 June, on the maximum legal working day of forty hours a week, and minimum yearly holidays of thirty days.
- c) Law 32/1984 dated 2 August, on the modification of certain articles of Law 8/1980 dated 10 March, on the Workers' Statute.
- d) Articles 6, 7 and 8 of Law 8/1988 dated 7 April, on Labour Offences and Sanctions.
- e) The first article of Law 3/1989 dated 3 March, extending maternity leave and establishing measures to favour equality of treatment for women at work.
- f) The second additional provision of Law 4/1990 dated 29 June, on the General State Budget for 1990.
- g) Law 2/1991 dated 7 January, on the Right of Workers' Representatives to Information about Recruitment Matters.
- h) Article 1 of Law 8/1992 dated 30 April, on the modification of the system of leaves granted by Laws 8/1980, on the Workers' Statute, and 30/1984, on Measures for Civil Service Reform, regarding the adoptive parents of a child five years old or less.
- i) Law 36/1992 dated 28 December, on the Modification of the Workers' Statute as regards indemnification in cases of contractual extinction due to employers' retirement.
- j) Law 10/1994 dated 19 May, on Urgent Measures to Promote Employment, except for additional provisions four, five, six and seven.
- k) Chapter I, Articles 20 and 21 of Chapter III, additional provision one, two and three, transitory provisions one, two and three, and final provisions three, four and seven of Law 11/1994 dated 19 May, modifying certain articles of the Workers' Statute, the Articulated Text of the Law on Labour Procedure and the Law on Labour Offences and Sanctions.
- l) Articles 36, 40, 41, 42 and 43 and additional provision sixteen of Law 42/1994 dated 30 December, on Tax, Administrative and Labour Measures.

m) Articles 1 and 3, the sole additional provision and the first paragraph and first item of the second paragraph of the sole transitory provision of Law 4/1995 dated 23 March, on the Regulation of Parental and Maternity Leave.

## **FINAL PROVISIONS.**

### **One. Self-employment**

Self-employment shall not be subject to labour laws, except in those aspects expressly provided for by legal precepts.

### **Two. The National Consultative Commission on Collective Bargaining Agreements**

A national consultative commission is created, which shall have the function of counselling and consulting the parties to collective labour negotiations with regard to the formulation and determination of functional areas of agreements. The Ministry of Labour and Social Security shall dictate the pertinent provisions for its constitution and operation, independently or in connection with some other Institution of analogous functions already existing. The said commission shall always function on the tripartite level and shall proceed to prepare a catalogue of activities to serve as indicator in determining the functional areas of collective bargaining, which it shall keep updated. The operations and decisions of this commission shall always be understood not to restrict the attributions that may correspond to the jurisdiction and the labour authorities in the terms set forth by Law.

### **Three. Regulations for the Application of Heading II**

The Government, subject to the prior consultations with the employers' associations and labour organizations that it may consider pertinent, shall dictate the regulations necessary for the application of Heading II of the present Law to those companies belonging to sectors of activity in which the number of workers who are not permanent or workers less than eighteen may be significant, as well as to the groups where permanent mobility, pronounced dispersal, or certain displacements linked to normal practice exist due to the nature of their activities, and where other circumstances concur to make their inclusion within the scope of application of Heading II aforementioned advisable. In any case, the said regulations shall respect the basic content of the procedures of representation in the company.

The National Institute of Statistics shall prepare, maintain updated, and publish the census of companies and active population employed in accordance with the guidelines set by the national institute of mediation, arbitration and conciliation.

#### **Four. Rate of Contribution to the Salary Guarantee Fund**

The rate of contribution for financing the Salary Guarantee Fund may be revised by Government depending on the needs of the Fund.

#### **Five. Provisions for Implementation**

Government shall dictate the provisions necessary for the implementation of this Law.