NEWSLABOUR

N_42
March 2025

RSM Spain
Labour Department
Newsletter

THE POWER OF BEING UNDERSTOOD
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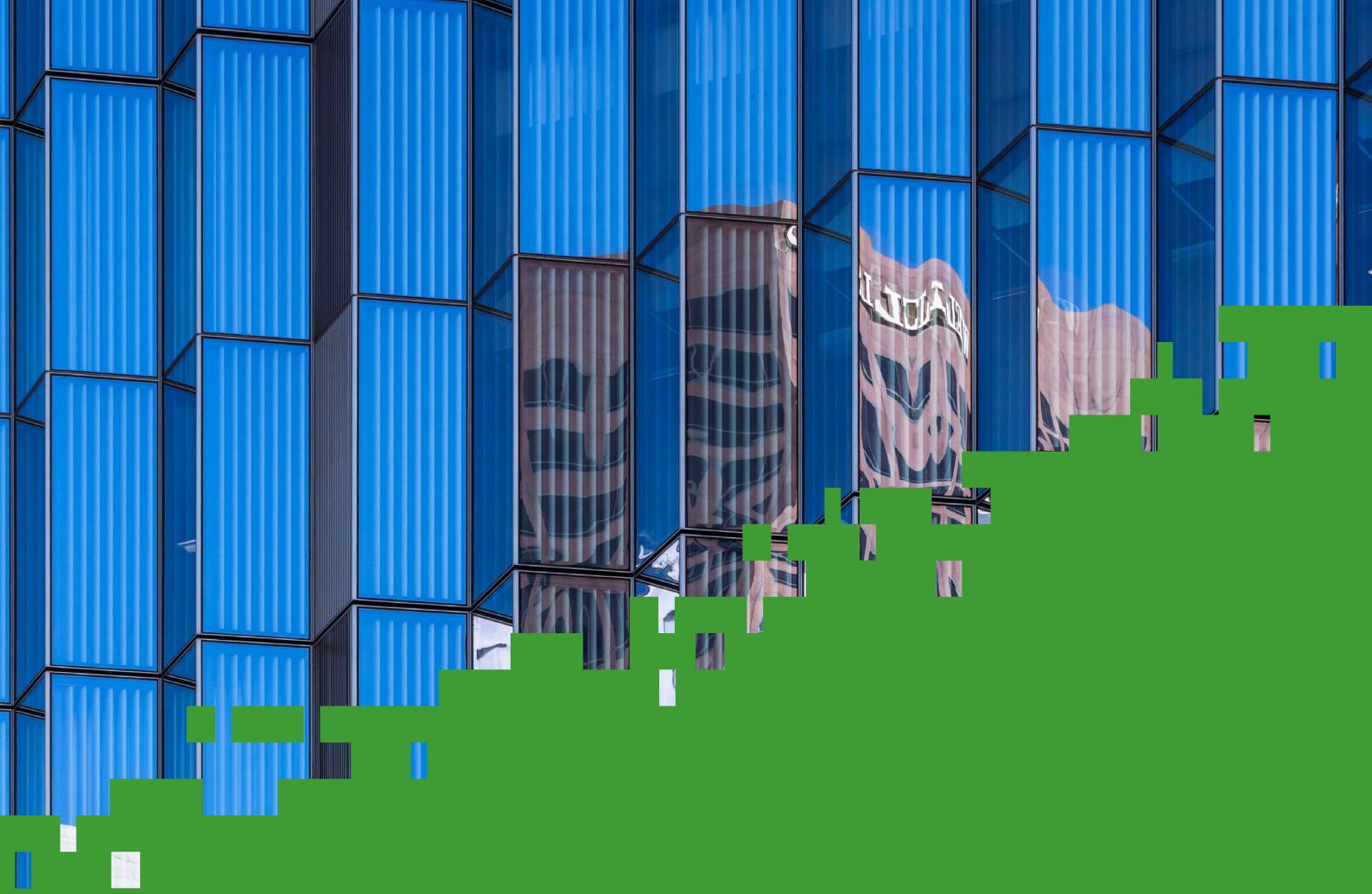

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Editorial

Ignacio Hidalgo, Miguel Capel and Eduardo Gómez de Enterría..

Labour news is constantly appearing and, just like every month, we inform you of this news through #NewsLabour.

In this edition, as always, we deal with the latest judgements on labour cases, with an article about a judgement related to a case that has led to a great deal of discussion: The need to offer a worker a preliminary hearing when the company has decided to dismiss such worker for disciplinary reasons.

We also recall the amendments made by Act 1/2025, which will come into force on 3 April 2025, and, related to this, you should not miss the #CaseoftheMonth on the impact such measures will have on labour proceedings.

Constantly informing and updating our readers. ■

And, as always, we remain at your entire disposal!

Please contact me if you would like further information about this issue.

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> The courts in a nutshell

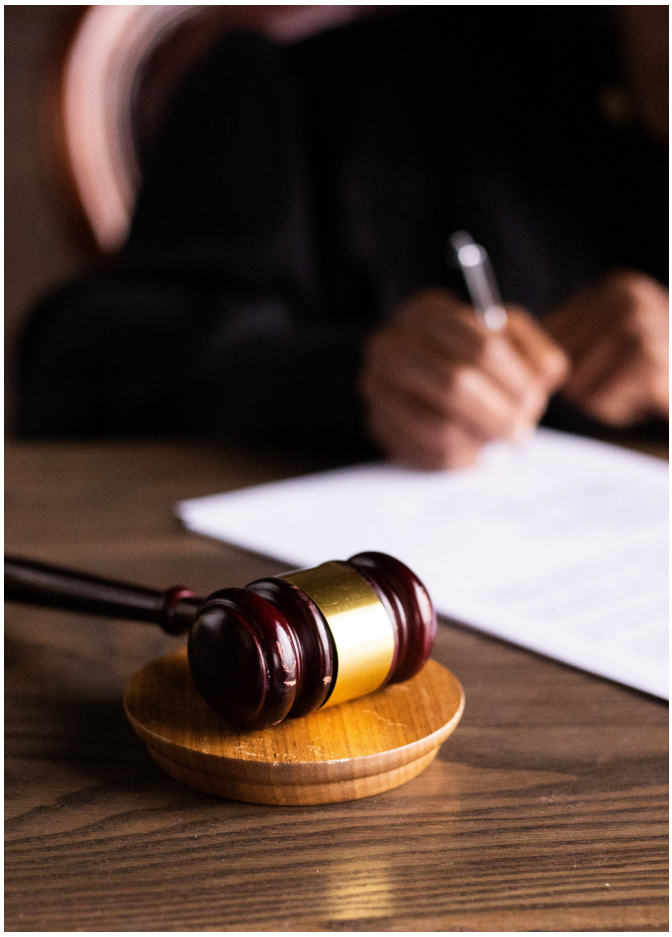
What's new on the block?

As always, every month we can find judgements and legal news that particularly draw our attention due to their special features or importance; we provide an overview of some of them below:

Daniel Santamarina

The judgement of the Labour Division of the National Court of 3 March 2025: Is a clause valid if it punishes an employee by forfeiting or reducing his/her bonus in the event of a prior disciplinary penalty?

The National Court ruled that the clauses in Incentive Plans were null and void if they punished an employee by forfeiting or reducing his/her bonus due to considering they implied (i) an additional penalty not specifically included in the disciplinary system of the collective bargaining agreement in the case and (ii) a penalty being imposed on the worker that is prohibited according to Article 58.3 of the Spanish Labour Relations Act.



The judgement of the High Court of Justice of Galicia of 30 January 2025: Dismissal due to subsequent ineptitude of a home help assistant after a situation of temporary disability.

The High Court of Justice of Galicia ruled that the dismissal due to an employee's subsequent ineptitude was fair, sustaining that since she was limited to not handling loads heavier than 10 kg, the high percentage of physical exertion required for her work, along with the excessive organisational and economic need required for the company to make suitable adjustments to her job, would not be feasible without changing the service that was being rendered by the company.

The judgement of the High Court of Justice of the Basque Country of 8 January 2025: A penalty of suspension of employment and wages for 30 days due to posting offensive comments against the company and its workers' representative on the social media X.

The High Court of Justice of the Basque Country considered that posting offensive tweets and comments against the workers' representatives and, therefore, the company on social media implied an exaggerated and unjustified need for expression that could only be considered as a clear lack of respect towards the other workers and the representatives.

Bearing in mind the foregoing, the court deemed that the sanction imposed on the worker was suitable and proportional, since the worker had exceeded the limits related to dignity, honour and other fundamental rights by posting critical and offensive comments about the company and its representatives. ■

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> Practical law

The preliminary hearing and unfair disciplinary dismissal

Roberto Villón

There are many companies that decide to take immediate and forceful action when faced with a very serious offence committed by a worker. However, the recent judgement of the High Court of Justice of the Balearic Islands (STSJIB number 82/2025 of 12 February 2025) recalled the following fundamental guarantee:

What happens if the company fails to offer the worker a possibility to defend him/herself before notifying his/her disciplinary dismissal? Is it sufficient to inform the union delegate of the measure the company intends to adopt? What could the legal repercussions be if this prior requirement is not met?

We are faced with a crucial issue for business management. Moreover, it is not only important that the offence must be serious and culpable, but it is also indispensable to observe the proceedings and the minimum guarantees referred to in the recent judgement of the Supreme Court, such as the time granted to the worker to submit his/her pleadings against the facts he/she is accused of.

The judgement analysed here dealt with the dismissal of a worker who was accused of stealing a perfume tester, which had been recorded on the surveillance cameras. However, instead of holding a preliminary hearing of the worker, the company decided to notify the situation to the union delegate and a few days later it sent the disciplinary dismissal letter.

It could be understood that such hearing would be unnecessary due to the irrefutable proof that a labour offence had been committed, (such as the infringement of good faith or theft); hence allowing the company to immediately dismiss the worker. However, the judgement of the High Court of Justice of the Balearic Islands of 12 February 2025 ruled the opposite, clarifying that the preliminary hearing is in fact required and necessary to meet the requirements stipulated in both Spanish regulations and case law, and in order to observe International Conventions.

What do the recent regulations and case law state?

Article 7 of Convention 158 of the International Labour Organisation (ILO), directly applicable according to the judgement of the Supreme Court of 18 November 2024, stipulates that the worker must be offered a possibility to defend him/herself when any disciplinary dismissal takes place.

> The judgement analysed here dealt with the dismissal of a worker who was accused of stealing a perfume tester, which had been recorded on the surveillance camera.

What situations could arise in the case of disciplinary dismissal?

- The company holds a preliminary hearing with the worker, hence fulfilling the regulations.
- The company only notifies the union delegate, as took place in this case.
- The company does not hold any procedure for a preliminary hearing.

What is the result of each situation?

In the first situation, since the formal requirements have been met prior to sending the dismissal letter, it could then be analysed whether or not the facts imply a reason to justify the employment contract being terminated.

However, in the second situation, (pleadings provided by the union delegates), the court recalled that only the worker can delegate this right to his/her union, which did not happen in the case analysed here.

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In fact, the court clarified that this hearing is personal and non-transferable and the union delegate may only undertake this role if the worker expressly delegates it

What criteria did this judgement add?

Although the dismissal was before the judgement was ruled by the Supreme Court of 18 November 2024, the High Court of Justice considered that the doctrine of the High Court of Justice of the Balearic Islands had already sustained that this requirement must be met in its judgement of 13 February 2023; therefore the company should have known and observed such guarantee.

Moreover, it stands out that the union delegate's pleadings were generic and did not replace the specific ones that the worker could have raised directly at the hearing.

How should the employer act in these kinds of situations?

It is always advisable to offer the worker the possibility of a hearing before adopting the final decision on his/her dismissal. This duly documented hearing not only guarantees compliance with international regulations but also protects the validity of the disciplinary proceedings.

Breach of this obligation would lead to the dismissal being ruled unfair, (unless there are reasons for objective nullity or situations that violate the worker's fundamental rights, which would result in the dismissal being null and void), with the economic consequences implied due to the worker's reinstatement or compensation, which happened in this case since the company was ordered to pay the worker more than €73,000.

Recommendations:

- Draw up a disciplinary action protocol that includes the individual preliminary hearing.
- Always document such hearing and the worker's pleadings.
- Ask your legal advisor before adopting any disciplinary decisions.

Please do not hesitate to contact us if you need advice on this matter or you have any queries about some of the aspects we have explained above!s! ■

Please contact me if you would like further information about this issue.

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> Case of the month

A critical overview of act 1 of 2 january 2025 on measures for an efficient judicial service. Does act 1/2025 distort labour proceedings? Does it infringe the principle of concentration that is so characteristic of the labour jurisdiction?

Joaquín Rodríguez

Act 1 of 2 January 2025, on measures for an efficient judicial service, will come into force on 3 April 2025, which brings with it very important new aspects that were already subject to an in-depth analysis in Newslabour of January 2025. The aforementioned regulation was approved with the aim of streamlining and modernising the Spanish judicial system and at the same time promoting mediation and other conciliation mechanisms to settle disputes, which will certainly result in being beneficial for the deteriorated actions of the judicial authorities.

> The law includes different amendments that, in my opinion, contravene the principles of the parties' equality and concentration

However, some of the legislative amendments implemented by the aforementioned law **break away from the essence that has always characterised labour proceedings**, which will undergo a similar procedural and regulatory secularisation to what can be found in other jurisdictional systems, such as the civil or contentious-administrative ones. However, due to the very nature of labour relations, these cannot be deemed the same as, nor even similar to, other legal relations that exist in our field and that are the exclusive competence of other jurisdictions different from the labour jurisdiction; a situation that, to a large extent, prevents and hinders such procedural similarity.

However, in spite of this, the law includes different amendments that, in my opinion, contravene the principles of the parties' equality and concentration, both of which are the basis of labour proceedings, distorting, in essence, the unpredictable and unexpected nature that has always characterised the labour jurisdiction. We can find a clear example in the amendment of **Article 82 of Act 36 of 10 October 2011, regulating the Labour Jurisdiction**, the new text of which stipulates that the court will require the documental or expert evidence the parties intend to use ten days before the hearing. In other words, the documental or expert evidence must be provided at least ten days before the hearing is held and, once submitted, the court will be responsible for providing it to the other party.

It can be easily understood that this fact will imply a rupture of the principle of concentration and the parties' equality, as we have understood it up to now, pursuant to the prior text of the aforementioned Article 82, **causing a situation of procedural inequality of one party over the other**. This means that, when one of the parties submits the evidence online and the court sends it to the other party, the latter may not have yet submitted its evidence due to the term of ten days not having elapsed. It is obvious this situation will lead to a clear benefit for the latter to submit its evidence since it will have an advantage by knowing the arms its opponent will attempt to use. A way to overcome this unwanted situation could be not sending the evidence to the other party until ten days before the date when the hearing will be held, in other words, once the term of ten days has expired. However, unfortunately this will not happen in most cases due to the operational system of the courts.

Incidentally, the legislative reform will put an end to some very widespread practices among the legal operators, such as ourselves, who perform a large part of our professional activity in the labour jurisdiction, because clients quite often come up with a document that was not known until the time of the trial and that we need to hastily include in the list of evidence just minutes before entering the

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courtroom; or we need to withdraw a document from the list of evidence due to the pleadings made by the other party. When the law comes into force, it will certainly end this common practice that is so deeply rooted in the labour jurisdiction.

The fact is that, depending on the standpoint from where the legislative reform is analysed, we can consider **the amendments implemented by Act 1/2025 are necessary in order to modernise and streamline the archaic judicial system** or as a measure to guarantee that all the evidence is available and is sufficiently revised before the hearing, which could help ensure more orderly and fairer proceedings bearing in mind that sometimes a sufficient assessment of the evidence has not taken place due to the operational system of the hearing or the large volume of evidence submitted, hence important aspects are ignored and without considering that they could be determining factors for the judgement to be ruled on the legal action. I can agree that Act 1/2025 will partly result in greater procedural guarantees because more time will be allowed to review, study and assess the other party's evidence. Nevertheless, certain precautions must be taken so that a more serious problem is not caused than the one the law was intended to remedy. ■

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> Judgement of the month

Dismissal carried out prior to the new successful bidder acquiring the contract does not cancel the obligation of subrogation

Lara Conde

Judgement 174 of 5 March 2025 ruled by the Supreme Court (appeal number 4728/2023) dealt with a case in which it was analysed whether or not there was an obligation for the new successful bidder to take over the workers affected by a collective redundancy process carried out by the previous concessionaire just a few days before taking over the concession.

What happened in this case?

The previous concessionaire carried out a collective redundancy process for production reasons involving all of its staff due to losing the contract, the labour relationships being terminated on 15 December 2021.

The new successful bidders took over the concession on 17 December 2021 and recruited 11 workers who had worked for the previous concessionaire until 15 December 2021, in addition, at a later time, (5 January 2022, 27 January 2022 and 27 April 2022), they recruited 3 more workers who were employed by the previous concessionaire and acquired different kinds of materials used to render the concession service.

In other words, the new contractors acquired the previous concessionaire's equity elements and recruited a significant number of its workers.

How have the lower courts ruled on this case?

The judgement of the lower court partially admitted the workers' claim, deeming there had been a business transfer and ruled that the new concessionaire's decision not to take over all such workers was unfair. For such purpose, it considered that the termination due to the dismissal carried out by the plaintiffs was unfair because it infringed Article 44 of the Spanish Labour Relations Act and Directive 2001/23/EC.

The High Court of Justice considered that the need to take over the workers requires that the labour relationships to be taken over must be in force and deemed that, in this case, they were not because they had been terminated by means of a collective redundancy process, the reason for which had merely been the termination of the concession contract; such dismissals were considered illegal and hence the subrogation was not applicable.

What issues were discussed in this case?

The plaintiff lodged an appeal to the Supreme Court (cassation) for unification of doctrine, alleging in one of its grounds that there was an obligation for the company entering into the concession contract to take over the defendants.

The core issue of the contradiction hence lay in determining whether the loss of a contract is a sufficient reason for dismissal based on production and leading to the cancellation of the new contractor's subrogation obligation.

How did the Supreme Court rule on this case??

After analysing the relevant tangible and intangible elements that needed to be considered to assess whether or not there was a transfer, the Supreme Court sustained the following 4 crucial points:

- In sectors where the activity is mainly based on labour, as occurred in the case examined here, a group of workers who perform a common long-term activity could imply an economic unit and, in this case, the new entrepreneur did not only continue the activity in question but also took over an "essential" part of the previous entrepreneur's staff.
- The regulations governing business transfers are aimed at preventing the transferred workers from being in a worse situation than they were in before, solely due to such transfer, and clearly seek to maintain the jobs of workers in these situations.
- The rules regulating business transfers are mandatory and the guarantees contained therein are not decided either by the assignor or the assignee, nor the workers' representatives or even the workers themselves.

Please contact me if you would like further information about this issue.

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- A business transfer cannot be used as a reason for dismissal, either by the assignor or the assignee, in other words, the transfer cannot terminate per se the labour relationship nor can it be used as a reason to justify dismissal.

Therefore, bearing in mind the foregoing, it deemed that the regulations on subrogation must be applied since there are essential elements involved to do so, the companies being unable to use dismissal in a fraudulent manner in order to avoid application of the regulations governing business transfers.

Please do not hesitate to contact our Labour Department if, after reading this article, you have any questions about this specific subject or any other similar to it in your labour situation. ■

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> > Legislative news

The labour reforms included in Act 1/2025 on measures for an efficient public judicial service will now come into force!

Guillermo Guevara

New aspects related to labour matters have been included in Act 1/2025, specifically by amending various articles of the Spanish Labour Relations Act and the Act regulating the Labour Jurisdiction, which were already discussed in the January edition of #NewsLabour.

However, it should be recalled what some of these aspects consist of since they will come into force on 3 April 2025.

Verbal judgements

Although this was a possibility that already existed before this reform, it has been reinforced by virtue of the new text of Article 50 of the Act regulating the Labour Jurisdiction.

On the date of this article, it is not common practice for judgements to be ruled verbally. However, it must be seen whether or not this will become more common in the Spanish courts after this amendment.

Infringement of good procedural faith

Article 75 of the Act regulating the Labour Jurisdiction, which includes the procedural duties of the parties, has undergone a very minor amendment consisting of an increase in the fine that can be imposed on anyone who infringes good procedural faith from €180 to €600.

Submitting copies of claims and appeals

As its name clearly implies, this law is aimed at increasing the efficiency of the Spanish judicial system and seeks to eliminate practices that are not suitable in modern times and have been slowly disappearing, such as submitting copies of the claims or appeals filed in the labour jurisdiction.

Submitting evidence prior to the trial

The new text of Article 82 of the Act regulating the Labour Jurisdiction has included a reform that substantially changes labour proceedings, as we have explained in detail in this edition's #CaseoftheMonth.

Specifically, as of 3 April 2025, the obligation will come into force that documental and expert evidence must be submitted ten days before the trial.

Please contact me if you would like further information about this issue.

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Separation of the conciliation and trial proceedings

There will now be a possibility for the conciliation proceedings to be held separately before the trial, at the request of a party or officially by the public prosecutor of the judicial authorities.

Sanction for not attending the conciliation proceedings

By means of an amendment of Article 84 of the Act regulating the Labour Jurisdiction, a fine of up to €600 may be imposed if the defendant fails to attend the conciliation proceedings.

Appeal to the Supreme Court (cassation) for unification of doctrine

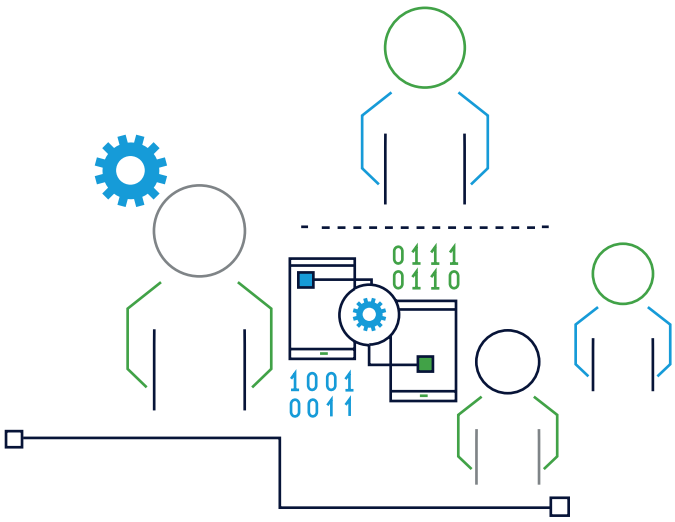
The appeals to the Supreme Court (cassation) for unification of doctrine have been subject to various changes, the most important and most interesting of these being the inclusion of the term "interest in lodging an appeal to the Supreme Court (cassation)", which is something that will be required as of 3 April 2025 so that the appeals lodged can be admitted for the relevant procedures.

Specifically, the new text of Article 219 of the Act regulating the Labour Jurisdiction states that it will be considered there is interest in lodging an appeal to the Supreme Court (cassation) in the following cases:

- When there are circumstances that require a new ruling by the court.a.
- When the issue has significant importance or impact.
- When the discussion raised is important for forming case law.

Lastly, it should be recalled that, as stated in Article 210 of the Act regulating the Labour Jurisdiction, the Governing Chamber of the Supreme Court may decide, by adopting an agreement (published in the Official State Gazette (BOE)), on the maximum extension and other conditions for the writs to carry out the formalities and to challenge an appeal, we must hence be ready to act when such publication takes place in order to guarantee that the appeals we lodge in the Supreme Court (cassation) for unification of doctrine comply with all the formal requirements.

If you have found the explanations in this article interesting and you would like more specific information or you have any doubts about the aspects that have been subject to amendment, please do not hesitate to contact RSM's Labour Department, where we will be delighted to answer all your questions. ■



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