

SOLPEC 3

Enunciados de la PEC

PRIMERA PARTE: PERIODO DE PRUEBA, CAPACIDAD PARA CONTRATAR Y NULIDAD DEL CONTRATO

SUPUESTO 1:

Tu asesoría está especializada en el asesoramiento técnico-jurídico de empresas. En la actualidad tienes pendiente de resolver las siguientes consultas en materia de periodo de prueba:

- A. La empresa "A" te ha preguntado si sería posible incorporar una cláusula contractual fijando el periodo de prueba a los técnicos titulados de 10 meses. En la actualidad esta empresa cuenta con 50 trabajadores.

PROPUESTA DE SOLUCIÓN: depende. La respuesta a esta consulta se hace depender de lo que establezca el convenio colectivo que, en esta específica materia, tiene atribuida la facultad de poner regular el lapso probatorio sin ceñirse a los márgenes temporales indicados en el art.14 ET. En resumen, se podría incluir ese periodo de 10 meses siempre que el convenio así lo establezca (o indique un plazo superior a éste); en caso contrario (silencio del Convenio o remisión a la ley) no sería lícito, pues el art.14 ET que se aplica supletoriamente fija un periodo máximo de 6 meses para los técnicos titulados.

- B. La empresa "B" te consulta si puede extinguir la relación laboral durante la prueba convenida con un trabajador que se encuentra en situación de incapacidad temporal como consecuencia de un proceso gripal. En el contrato se había previsto que la incapacidad temporal interrumpiría el cómputo del plazo probatorio.

PROPUESTA DE SOLUCIÓN: aunque es posible que esta cuestión se matice por parte de nuestros tribunales a la luz de la Ley 15/22, de 12 de julio, integral para la igualdad de trato y la no discriminación al haber introducido expresamente como factor discriminatorio el relativo a la "enfermedad o condición de salud", lo cierto es que el empresario no encuentra óbice legal alguno para extinguir la relación laboral durante la baja laboral del trabajador, haya o no mediado acuerdo de interrupción al efecto.

Junto a aquellas cuestiones también has de resolver las siguientes consultas:

- C. La empresa "C" ha descubierto que uno de sus trabajadores ha mentido sobre su titulación. Esta persona dijo poseer el grado en relaciones laborales, cuando en realidad todavía le restaban por cursar dos asignaturas. No sabe si irremediablemente ha de seguir contando con este sujeto.

PROPUESTA DE SOLUCIÓN: si bien es cierto que la nulidad del contrato de trabajo es un efecto excepcional con base, fundamentalmente, en el principio de conservación del negocio y el derecho al trabajo (art.35 CE), existen determinadas situaciones que inexorablemente conducen a la nulidad total. De esta forma si la nulidad afecta a alguno de los tres elementos que conforman la validez del negocio jurídico, esto es, objeto, consentimiento y causa, no se puede más que declarar la inexistencia del vínculo jurídico.

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