

MAIN ASPECTS RELATING TO LABOUR AND SOCIAL SECURITY

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Labour and social security regulations in Spain and the Basque Country have undergone various changes in recent years, aimed at making the labour market more flexible and modern.

Due to its importance and impact, Law 3/2012 of July 6 on Urgent Measures for Reforming the Labour Market stands out, the aim of which was to establish a legal-labour framework that would contribute to the effective management of labour relations and facilitate the creation of jobs and job stability.

Also noteworthy is Law 14/2013 of September 27, on support for entrepreneurs and their internationalisation, which established measures relating to promoting multiple jobs and self-employment, and measures to encourage the inflow of investment and talent into Spain.

However, Spanish labour and social security legislation derives from a broad set of laws that are streamlined and correct each other, the general content of which is summarised in this chapter of this guide, from contracting to obligations in the field of occupational risk prevention.

Before making an investment in a specific productive sector, it is important to know and review the existing regulations in force by which it is affected, as this will determine the particular conditions and aspects of labour relations in that sector.

In general, the labour relations of workers are governed, within the framework of the whole of Spain, by the provisions of Royal Legislative Decree 2/2015 of October 23, which approves the **STATUTE OF WORKERS' RIGHTS** (hereinafter, SOWR), a basic law, which regulates matters of general concern, such as: existing contract types, the rights and obligations of each of the parties involved in an employment relationship..., but which does not cover each of the special aspects of the world of work in the different production sectors.

Therefore, the specificity of the regulation of these special aspects, such as remuneration for workers, the working day and the distribution of work time, is in the hands of collective bargaining, which is carried out between companies and workers' representatives, and is implemented through **COLLECTIVE AGREEMENTS**, signed between the parties, which may be related to the scope of the company, province or sector.

In addition, these agreements can be of general effectiveness, which is an important characteristic of the Spanish legal system, or only for the subjects represented in the negotiation and those who freely decide to adhere to them. In both cases, they are regularly reviewed, as agreed by the negotiators.

The legislative changes introduced in recent years in this area have gradually adapted and modernised the labour regulations in force, so as to make them more flexible, in order to make the labour market more dynamic and promote employability and investment.

01.

EMPLOYMENT CONTRACTS

The different contractual modalities in force in the current regulations are divided into the following large blocks:



PERMANENT CONTRACT

There is no set time limit on the duration of the provision of services.



TEMPORARY CONTRACT

Its purpose is to establish an employment relationship for a specific period of time.



TRAINING AND APPRENTICESHIP CONTRACT

This is an instrument for promoting the insertion into the labour market and training of young people, alternating work and training activities.



INTERNSHIP CONTRACT

Its purpose is for the worker to obtain professional practice appropriate to the level of studies undertaken.

The employer can check the worker's skills by agreeing on a **TRIAL PERIOD**, during which either party, both the employer and worker, can freely terminate the employment contract without the need to allege or prove any cause, give prior notice or pay compensation.

Any **discrimination** in hiring or in the workplace, on grounds of sex, marital status, age, race, social class, religious or political ideology, affiliation or not to a trade union or arising from the different official languages in Spain, is prohibited.

Likewise, **hiring minors under 16 years of age** to carry out any work is **prohibited** and there are certain limitations applicable to the work of persons under 18 years of age (no overtime, no night work, etc.).

02.

SUBSTANTIAL CHANGES TO WORKING CONDITIONS

Companies may substantially change the working conditions of their employees provided that there are proven **economic, technical, organisational or production reasons** and that the legally established procedure for this purpose, contained in Article 41 of the SOWR, is respected.

Likewise, there is the possibility of not applying the working conditions established by collective agreement, by means of a specific procedure, when there are economic, technical, organisational or production reasons that require the agreement of the workers' representatives and the determination of the new conditions to be applied in the company.

03.

TERMINATION OF EMPLOYMENT CONTRACTS

Once a trial period has passed, an employment contract may be terminated for reasons that do not involve a conflict between the employer and the employee, such as mutual agreement, expiration of the agreed duration of the contract, death or retirement of both the employer and the employee, but for cases in which the contract is terminated by the employer, the current employment regulations cover three main cases, the characteristics and main implications of which are listed below:



COLLECTIVE REDUNDANCIES

These take place given for economic, technical, organisational or collective production reasons whenever they affect a significant number of the company's workforce in a period of 90 days.



OBJECTIVE DISMISSAL

This takes place in the following cases:

- » Ineptitude of the worker that became known or occurred after their effective placement in the company.
- » The working filing to adapt to any changes made to their job - before dismissing the worker, the employer must offer the employee a course aimed at facilitating their adaptation to the changes in their job. An employee cannot be dismissed until at least two months have elapsed since the change was introduced or the training period has been completed.
- » When there are economic, technical, organisational or production reasons (see the definition of the causes in the event of collective redundancies).
- » Justified but intermittent absences that reach 20% of the working days in 2 consecutive months, provided that the total absences in the previous 12 months is 5% of the working days or 25% in 4 discontinuous months within a 12-month period.



DISCIPLINARY DISMISSALS

A serious, culpable breach by the worker due to committing one or more of the faults covered by the collective agreement or legal regulation that applies in the company.

In this regard, an employee dismissed for any of the objective or disciplinary reasons set out above may appeal the company's action to the administrative body of mediation, arbitration and conciliation in the first place and to the labour courts in the event of not reaching an agreement before the administrative body.

A dismissal may be classified as:

FAIR or lawful, with the termination of the employment contract being valid in the terms initially proposed and in accordance with which the established procedure has been followed.

UNFAIR, if the legal cause is not proven, or an incorrect procedure has been followed. In this case, the employer may choose between reinstating the dismissed employee and paying them any lost wages, or compensating them at a rate of **33 days' pay** per year worked, within the legally established limits, unless the dismissed employee is a workers' representative, in which case the employee has the right to choose.

NULL, if it is proven that the decision to dismiss is due to some form of discrimination, or involves a violation of the fundamental rights of the employee, leading to the immediate reinstatement of the employee and the payment of lost wages.

It is highly recommendable to have the specialist advice of a professional with knowledge of Spanish labour legislation before undertaking any type of termination of employment contracts as indicated above, both to assess the causes that support the termination action and to define the procedure to be followed.

04.

HIRING OF SENIOR MANAGERS AND OTHER LABOUR RELATIONS EXCLUDED FROM THE LABOUR SPHERE

There are various types of relationships within the Spanish labour system which, due to their nature or specific conditions, are regulated differently from those applicable to the majority of employees.

From the perspective of foreign investment, it is interesting to note:

a) Senior management

The employment conditions of **senior managers** (Royal Decree 1382/1985 of August 1) are subject to fewer limitations than those of other employees, and the parties

involved, the company and manager have a wide margin of negotiation to define their relationship.

b) Financially dependent self-employed employees

These are self-employed workers who carry out their economic activity habitually, personally, directly and predominantly for a single individual or legal entity that represents at least 75% of their income.

Their legal system is regulated by Law 20/2007 of July 11. They are a group of people who, although they are considered to be self-employed, have a higher level of protection.

05.

REPRESENTATION OF WORKERS AND COLLECTIVE BARGAINING

Workers are represented by **TRADE UNIONS**. At company level, depending on the number of workers, this representation is carried out by unitary representation (staff delegates or works councils, which may or may not belong to a union) and union representation (union branches and union delegates representing a union in the company).

It is not compulsory for companies to have workers' representation, if the workers have not promoted union elections, but if they promote them, the company is obligated to allow union elections to be held and such representatives to be appointed under the terms provided for by law.

In general, unitary and union representation have the role of receiving certain information appraised in the SOWR in order to ensure compliance with labour regulations.

They have the right to take part in negotiations prior to executing collective procedures (e.g. substantial changes to working conditions),

collective redundancies, etc.) and to issue reports prior to full or partial transfers of installations, mergers or any change to the legal status of the company, among others.

Certain trade unions and business associations, or the companies themselves, have the power to reach agreements with the force of law for all subjects within their scope of application, provided that such agreements are processed in accordance with a certain procedure: this is called statutory collective bargaining.

In addition, business associations, or the companies themselves, may reach agreements with collective subjects representing workers who do not comply with said formal requirements and/or business standing: this is called extra-statutory collective bargaining and, unlike statutory collective bargaining, it applies to the individual subjects expressly represented, and to those who freely decide to adhere to the agreement once it has been signed.

Collective bargaining can also take place at various territorial (state, autonomous community, provincial) and sectoral levels, depending on the sector of activity.

Lastly, collective bargaining may include the most important aspects of the employment relationship (collective agreement) or simply refer to specific aspects (agreements or pacts).

The duration of such agreements will depend on what has been agreed between the parties. Typically, the agreed term is one, two or three years at the most.

What happens at the end of the agreed term must also be agreed, with the usual being a permanent extension in the absence of any complaints (promotion of a new negotiation by one of the parties, or automatic at a certain date), and ultra-activity (extension of the validity of collective agreements after their expiration) once a complaint has been made, for one year from the end of the agreed term unless the parties themselves determine another term. It is increasingly common for the parties to agree an indefinite ultra-activity of the agreement, until a new agreement expressly replaces it.



06.

VISAS AND WORK AND RESIDENCE PERMITS

Law 14/2013 of September 27 on Support for Entrepreneurs and their Internationalisation, as amended by Law 25/2015 of July 28, provides for different types of visas and work and residence permits for foreigners to whom European Union law does not apply:

- » Non-resident foreigners who intend to enter Spanish territory for the purpose of making a significant capital investment, stipulated by the Law itself in certain cases.
- » Non-resident foreigners, or foreigners residing legally in Spain, who intend to carry out an entrepreneurial activity, understanding this to be of an innovative nature with special economic interest to Spain and, for this purpose, with a favourable report issued by the central state administration.
- » Companies that require the incorporation in Spanish territory of foreign professionals to undertake an employment or professional relationship, whether in a managerial role or as highly qualified personnel, or graduates and postgraduates of universities and business schools of recognised prestige, stipulated by the Law itself in certain cases.
- » Non-resident foreigners, or foreigners residing legally in Spain, foreigners who wish to carry out training or research, development and innovation activities in public or private entities, stipulated by the Law itself in certain cases.
- » Non-resident foreigners who travel to Spain within the framework of an employment, professional or professional training relationship with a company or group of companies established in Spain or in another country.

It is possible to access more detailed information on the website of the Secretary General for Immigration and Emigration of the Ministry for Employment and Social Security, which contains the procedure to be followed to apply for each, together with the forms required.

Links of interest.

<http://extranjeros.empleo.gob.es/es/UnidadGrandesEmpresas/index.html><http://extranjeros.empleo.gob.es/es/InformacionInteres/InformacionProcedimientos/index.html>

07.

SOCIAL SECURITY

As a general rule, all employers, their workers, self-employed workers, members of production cooperatives, domestic employees, military personnel and civil servants residing and/or carrying out their roles in Spain must register in and are obliged to **contribute to the Spanish Social Security system**.

In those cases in which the system to which workers are subject is the general system, Social Security contributions are made in part by both the employer and the worker. Staff are classified into a series of work and professional categories to determine their Social Security contribution. Each category has maximum and minimum bases, which are generally reviewed annually.

Link of interest.

http://www.seg-social.es/Internet_1/Trabajadores/index.htm

CONTRIBUTION RATES APPLICABLE TO THE EMPLOYER AND THE EMPLOYEE UNDER THE GENERAL SOCIAL SECURITY SYSTEM

	General Rule	Fixed-term contracts
Employer	29.9%	31.1%
Employee	6.35%	6.4%

08.

OCCUPATIONAL RISK PREVENTION

In compliance with the provisions of Law 31/1995 of November 8, approving the LAW ON OCCUPATIONAL RISK PREVENTION LAW in Spain, employers must guarantee the health and safety of their workers, without limiting themselves to complying with legislation and remedying risk situations, which means, among other things, the obligation to carry out risk assessments, adopt measures in emergency situations and provide protective equipment.

This involves all employers having to have a prevention service to give advice and support in these tasks.

To this end, depending on the size of their company, the employer may appoint one or more workers to take care of this activity, carrying it out directly or making use of an outside prevention service.

Failure to comply with obligations in the area of occupational risk prevention may lead to administrative, labour, criminal and civil liability.

