

SPAIN

Work Law

Here follows the situation in force about the work Law in march 2004, even if the advent of the Socialist Government after the 14th of March could lead to some remarkable modifications. As a matter of fact, one of the priorities of the Socialist Party's Electoral Program is to reduce the fixed- term bargaining and encouraging, on the other hand, the open- ended contracts.

The reference work law is the so - called "Estatuto de los Trabajadores", approved by the King's Decree - Real Decreto Legislativo¹ - 1/1995. This statute sets the rights of employers and employees, the general conditions of the work contracts, the discharge procedures and the rules of collective bargaining.

Moreover, there are some specific laws concerning particular productive sectors and categories of workers.

Another source of law is the "collective bargaining", negotiated at the company level or at the national or regional one.

There also are a lot of regulations that have modified or integrated the scenario of the work law. The 45/2002 (12th of December) law is one of the most recent, concerning urgent measures for unemployment protection system.

The main rules of the Spanish work law are the following:

- Non - discrimination principle, referring sex, civil status, age, social class, religion, ideology, union affiliation, language. This protection can be applied to the foreigners that work in the country;
- The limit age to sign a work contract. People younger than sixteen years old can't work. Moreover, there are some protection measures for workers under 18 (no overtime, night work or any activity that could be dangerous to health);
- Contract formalisation principle. Although the verbal negotiation is accepted, there are some particular situations in which a written down formalisation is necessary. That is the case of part time, fixed-term and vocational training contracts longer than four weeks;
- The temporal limitation of the trial period in the agreements. The general rule provides 6 months for the technical graduates and 2 months in other cases. Companies with a number of workers under 25 employees cannot establish trial periods exceeding 3 months for workers who are not technical graduates;
- The duration of the working day is set by collective or individual employment agreements. The law sets a limit of 40 hours per week of effective work. In addition, the right to have some periods of

¹ A "Real Decreto Legislativo" is a decree requiring the approval of the Parliament, used into Parliamentary Monarchies.

leave and permission (marriage, trade union activities, birth of children, illness, etc. ...) is regulated;

- The law sets a minimum interprofessional salary that is 6447 euros per year for 2004. The amount is generally divided into 14 monthly salaries, with two extraordinary wages that are usually paid at Christmas and before the summer holidays.

In reference to the duration of the work arrangement, the contracts may be temporary or indefinite. The indefinite nature of the contract is the rule, and therefore, the termination of employment without due justification, raises the workers' right to receive compensation legally provided.

The fixed-term contracts must be formalized in writing and include a sufficient description of the case justifying the temporary nature of it. It is established, moreover, the need for a minimum notice of 15 days from the date of termination of contract.

Between the fixed-term contracts it can be found:

- "Contrato de obra o servicio determinado". The duration of the contract is uncertain and will depend on the time required for implementation of the specific work or services covered by the agreement. At the legal term of it, the worker is entitled to a compensation of 8 days' salary per year of work.
- "Contrato eventual por circunstancias de la producción", provided to meet particular market requirements or to respond to work overcharge periods. The maximum duration of this agreements is 6 working months over a period of 12 months. It is also possible to extend the duration up to a maximum of 12 months over a period of 18 months. Again, at the legal term of the contract, the worker is entitled to receive a compensation of 8 days' salary per year of work.
- "Contrato de interinidad": its duration coincides with the period in which the absent employee is entitled to hold down his job. Among the formal requirements of this contract there is the indication of the name of the replaced worker and the cause of the replacement.

In addition to above, there are also training contracts:

- "Contrato en prácticas" that concerns people with a graduation or an academic degree with professional qualifications or equivalent. They fix the limit of four years from the end of the studies as a period where employers can use this type of contract. The minimum duration is 6 months and the maximum is 2 years. The minimum salary to be paid is fixed between 60% and 75% of salary expected by collective agreements, for a worker who has the same or equivalent job.
- "Contrato para la formación", concerns workers between sixteen and twenty years old who don't have the qualification required to

obtain a "Contrato en practicas". The duration of the contract is between 6 months and 2 years, with the possibility to be extended up to 3 years in accordance with collective agreements. Among the requirements set by this agreement it is established the obligation of providing theoretical training at a level of not less than 15% of the working day maximum.

With regard to permanent contracts, Law 12/2001 has created some types of contracts designed to encourage open – ended collective bargaining for certain groups of workers. In particular, young people from 16 to 30 years, unemployed women who are contracted in areas with low incidence of female employment, with people aged over 45 years, unemployed for over 6 months. The incentives, which are contributory benefits, are also directed to the processing of fixed-term contracts in employment relationships more stable. In section 5.3.3 "Incentives for foreign investment" of this Guide, there are some of the measures which could see the light with the new socialist government and change the system of incentives previously applied. The employment contract may be in a full-time or part-time formula. After the Law 12/2001 the part-time agreement is defined as one that involves the adoption of a reduced time on a daily, weekly, monthly or annually work time of a worker with a similar job.

Termination of employment

The termination of employment may be due to "natural" (mutual agreement, death, achievement of the term of the contract, retirement), or for dismissal. The Spanish legislation regulates three main conditions for dismissal and termination of the employment contract:

- Collective dismissal;
- Objective causes;
- Disciplinary actions

Collective dismissal. It occurs for economic, technical, organizational or productive reasons of a collective nature for a minimum period of 90 days, covering:

- All the personnel in case of the number of workers affected by this measure is more than 5 and there is total cessation of their business;
- 10 workers in firms with less than 100 employees;
- 10% of workers in firms with a number of employees between 100 and 300;
- 30 workers in firms with 300 or more employees. Collective dismissal must be approved by the competent authorities in the field of work. The compensation provided is legally equal to 20 days' salary per year of work, with a maximum equivalent to 12 months (or a higher compensation in the case has been granted between the parties).

Dismissal for objective reasons. The cases where the law provides for such dismissal are:

- Ineptitude of the worker;
- Worker's inability to adapt to the changes occurring in the workplace;
- Need objectively demonstrated, to abolish jobs for economic reasons, technical, organizational or production;
- Absences, even justified but intermittent, that reach a certain percentage of working days.

Dismissal for objective cause provides a compensation for the worker of 20 days' salary per year worked up to a maximum equivalent to 12 months pay.

Dismissal for disciplinary reasons. The regulations allow this type of dismissal in the following cases:

- Continued and unjustified absenteeism;
- Lack of discipline or disobedience;
- Verbal or physical abuse against the employer;
- Transgression of contractual good faith, as well as the abuse of trust in working;
- Voluntary decrease of productivity;
- Habitual use of alcohol or drugs affecting the workplace.

The employee fired after the "acto de conciliación" (an attempt of amicable conciliation in front of the administrative bodies), has the right to use the courts. In the case where dismissal is declared unfair, the employer must summarize the worker or to pay compensation equal to 45 days' salary per year of employment with a maximum of 42 months.

Transmission of business

There are certain legal provisions relating to employment particularly relevant in conditions of purchase or sale of a business. In fact, both the seller and the buyer meet jointly for the three years following the transaction, working with the obligations that exist in the transmission of the above. Indeed, the legislation provides that the new entrepreneur take over in the rights and obligations assumed by the vendor in respect of employment and social security, including agreements relating to retirement and social protection. There is also the obligation for companies to give prior notice to the representatives of their workers about.

Residence permits and work

Citizens of non-EU countries must obtain a special visa and a residence permit and work in order to work in Spain. There are several types of permits depending on the work and the duration thereof. The permits are granted taking into account the situation of Spanish citizens for the same type of work. However, there are certain preferential categories, such as foreigners who have a special bond with Spain, the workers who are employed for fitting or

repair of imported machinery and senior managers. EU citizens are not subject to the requirements in force for foreigners and are entitled to access any type of work under the same conditions as Spanish nationals. You must, however, request permission to stay in the European police office at the place where it will be fixed residence or work place. There are two types of residence permits according to the duration of stay in Spain: one provided for periods from 3 months to 1 year and permits valid for a period of five years, renewable. In the case of stay less than three months, you just need an identity card or passport.

The Spanish system of social security

As a country member of the European Union, Spain has adopted legislation on social protection, whose basic principles are defined in EU Regulations 1408/71 and 574/72, as amended. The main objective of these regulations is to ensure no adverse treatment, social security, workers who move from one Member State to another. The forms of contribution to the social security system will vary depending on work.

In Spain three systems are applied:

- General system with some special features planned for the artists, – the railway workers, salesmen, professionals “taurinos” (referring to the bull fights) and football players.
- Special system for agriculture, sea, self-employed, civil servants, domestic workers, workers of coal mines and students.

In the general system contributions to Social Security are made by the contractor and worker. The workers are classified on the basis of a series of working groups and professional in order to determine the share of social security.

The contributions for 2003 roughly amounted to 36.95%, as follows: 30.6% dependent on the employer and 6.35% from the employee. The cost to the employer may be increased in case of danger works according to the tariff system established by Royal Decree 2930/1979.